
(2009) 12 JH CK 0074
In the Jharkhand High Court

Ganesh Prasad, Jay Prakash Kumar and Balchand Sah	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (2009) 12 JH CK 0074

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—As the aforesaid three applications have arisen out of same Dhurwa P.S. case No.163 of 2009 and the issues are the same, they were heard together and are being disposed of by this common order.

2. In all the three applications, prayer has been made to quash the first information report of Dhurwa P.S. case No. 163 of 2009 and also for direction to the respondents to release the articles seized from the shops of each of the petitioner.

3. The facts giving rise these applications are that on 28.8.2009 when the shops of these petitioners were raided, different commodities such as rice, pulses, flour, sugar, suji, maida were found stored in the shops of the petitioners which, according to prosecution, were excess than the stock limit fixed. At the same time stock of those commodities had also not been displayed at the display board outside of the shops. Accordingly, written report was submitted to Dhurwa Police Station, upon which a case was lodged as Dhurwa P.S. case No. 163 of 2009 against all the three petitioners u/s 7 of the Essential Commodities Act (hereinafter referred to as 'the Act') for contravention, though it has not been said in the first information report, of the order issued u/s 3 of the Act and also for contravention of the provision of the Jharkhand Essential Commodities (Price and Stock Display) Order, 1977.

4. Learned Counsel appearing for the petitioners submits that though on the allegations of non-display of the stock position outside of the business premises, the petitioners have been alleged to have contravened the provision of the Jharkhand Essential Commodities (Price and Stock Display) Order but admittedly, prosecution was launched without having sanction from the competent authority and as such, prosecution u/s 7 of the Act for contravening the provision of the Essential Commodities (Price and Stock Display) Order gets vitiated.

5. Learned Counsel further submits that the Secretary, Department of Food, Public Distribution and Consumer Affairs purportedly in exercise of power u/s 3 of the Act issued notification bearing No. 1645 dated 12.8.2009 fixing the stock limit with respect to rice, paddy, pulses, edible oil, sugar etc. but the same was never published in the Gazette which formality was required to be done mandatorily, in view of the provision as contained in Clause 18 of the Unification Order and as such, the said order is not workable in the eye of law.

6. Learned Counsel further submits that the said notification is also bad on account of the fact that under the Essential Commodities Act, such notification is required to be issued by the State Government with prior concurrence of the Central Government but surprisingly, the said notification has been issued by the Secretary of the Department that too without taking concurrence of the Central Government.

7. Therefore, this Court in a case of Gopal Prasad Khetan and Anr. v. State of Jharkhand and Anr. [W.P(Cr.) No. 314 of 2009] has held that notification bearing No. 1645 dated 12.8.2009 prescribing stock limit of the food grain never seems to have been done in accordance with the provision of the Unification Order and on that account, any prosecution on the ground of having excess food grain/pulses and other materials than the stock limit fixed would certainly be illegal. Similar is the case here and hence, the first information report is fit to be quashed.

8. A counter affidavit has been filed wherein it has been stated that all the petitioners had stored the commodities in excess than the stock limit fixed under notification No. 1645 dated 12.8.2009 and besides that, they had not displayed the stock position in the display board outside of the business premises and as such, all the petitioners are liable to be prosecuted u/s 7 of the Act for contravening the provision of the order issued u/s 3 of the Act and also for contravening the provision of the Jharkhand Essential Commodities (Price and Stock Display) Order, 1977.

9. Admittedly, the notification fixing stock limit of the commodities has neither been published in the official Gazette nor seems to have been issued by the State Government with prior concurrence of the Central Government, rather the same has been issued by the Secretary of the Department, who, under the Act, has no authority to issue such notification. Thus, notification bearing No. 1645 dated 12.8.2009 never seems to have been issued in accordance with the

provision of the Unification Order and on that account, any prosecution on the ground of having excess food grain/pulses/other commodities than the stock limit fixed would certainly be quite illegal.

10. That apart, the prosecution under the Essential Commodities Act for contravening the provision of the Jharkhand Essential Commodities (Price and Stock Display) Order also seems to be bad as no sanction for launching prosecution for contravention of the said provision has been accorded by the competent authority.

11. For the reasons discussed above, continuance of the criminal proceeding against the petitioners would certainly amount to abuse of the process of law and hence, the first information report of Dhurwa P.S. case No. 163 of 2009 is hereby quashed so far the petitioners, namely, Ganesh Prasad, Jay Prakash Kumar and Balchand Sah are concerned.

12. So far the matter relating to release of the commodities are concerned, it does appear that the commodities which were seized were directed to be released in favour of the petitioners on giving undertaking in the terms as indicated under order dated 16.9.2009 but since the prosecution itself has been found to be illegal, undertaking need not to be given effect to.

13. In the result, these applications are allowed.