
(1945) 04 PAT CK 0005
In the Patna High Court

Gangadhar Sahu

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 11-04-1945

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 4
Defence of India Rules, 1962 — Rule 81(4)

Citation : AIR 1946 Patna 107

Hon'ble Judges : Beevor, J

Bench : Division Bench

Judgement

Beevor, J.—The petitioner has been convicted under Rule 81(4), Defence of India Rules for having sold kerosene oil above the maximum controlled price.

2. It is urged that there was no legal cognizance of the offence taken. The complaint was filed by one Shyam Jha who is not a public servant. The Sub-divisional Magistrate sent the matter to the Assistant District Supply Officer to enquire. This officer made an enquiry and submitted a report in which he stated that he found no specific case against the accused and he also at another stage of his report said: "As for the specific complaint, I do not find any convincing material" though he apparently found that there was some dissatisfaction with the shop-keeper accused on general grounds. Rule 130(1), Defence of India Rules, provides that

no Court or Tribunal shall take cognizance of any alleged contravention of these Rules or of any order made thereunder, except on a report in writing of the facts constituting such contravention, made by a public servant.

3. The learned Magistrate has stated:

There appears to be no difficulty in taking cognizance of the offence within the meaning of Rule 130, Defence of India Rules. The report of the Enquiring Officer have (sic) stated the facts constituting the alleged contravention and this only is what is wanted for the purpose. The Enquiring Officer's report is no doubt not in

the nature of a complaint within the meaning of Section 4, Criminal P.C., but Rule 130, Defence of India Rules does not require a complaint for the starting of the case.

I regret I cannot agree with the view taken by the learned Magistrate. The Enquiring Officer certainly mentioned that allegations had been made before him of certain facts which allegations, if true, would have disclosed an offence under the Defence of India Rules. A report of such allegations, however, is not a report of the facts constituting the offence. It is quite clear to my mind that in order to comply with Rule 130, Defence of India Rules, it is necessary that some public servant must make himself responsible for the prima facie existence of the facts which will constitute the offence. There is no such complaint in this case.

4. The conviction and the sentence are, therefore, set aside and the petitioner is discharged from his bail.

5. The fine, if paid, must be refunded.