

(1983) 03 PAT CK 0005

In the Patna High Court

Case No : Criminal Miscellaneous No. 8944 of 1983

Gaya Prasad @ Gaya Pd. Gupta

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-03-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7

Citation : (1988) PLJR 477

Hon'ble Judges : S.S.H. Abidi, J

Bench : Single Bench

Advocate : G.C. Bharuka, N.P. Singh, S.D. Singh and Ramesh Kumar Agrawal,
for the Appellant; Indu Sinha, G.P., for the Respondent

Judgement

S.H.S. Abidi, J.—This application has been filed by petitioner Gaya Prasad alias Gaya Prasad Gupta u/s 482 of the Code of Criminal Procedure against the order of the learned Special Judge, Arrah dated the 11th August, 1983 passed in Suit No. 6 10/83 (58 of 1983 E.C. Act) taking cognizance of the offence u/s 7 of the Essential Commodities Act, 1955 for violation of the provision of Bihar Cement Control Order, 1972 (hereinafter referred to as "the Control Order"). Briefly stated the case is that a complaint was filed on 1.7.1983 by the Assistant Marketing Officer, Buxar alleging inter alia, that from the records of the accounts maintained by the petitioner firm it appeared that the entries of purchase and sale from 1.1.1981 to 28.10.1981 have not been correctly maintained and so the petitioner has committed an offence in violation of the said provision. The learned Special Judge after perusal of the complaint, took cognizance of the offence as said above.

2. Learned counsel for the petitioner has urged that the learned Special Judge has acted without jurisdiction in taking cognizance of the offence as the Act has been amended by the Essential Commodities (Special Provisions) Act, 1981 (No. 18 of 1981) and which came into force on 1.9.1982 vide Notification No. G.S.R.

553E--dated the 31st August, 1982 and section 2 of the said Act provides as under:--

Act 10 of 1955 to have effect subject to certain special provisions for a temporary period:

During the continuance in force of this Act the Essential Commodities Act, 1955 (hereafter referred to as the Principal Act) shall have effect subject to the amendments specified in Sections 3 to 11:

Provided that the amendments specified in Sections 3 to 11 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Act and the provisions of the principal Act shall apply to, and in relation to, such offence as if those amendments had not been made.

3. In Section 11 there is Section 12AA which provides for the offence triable by Special Courts, constituted for the area in which the offence has been committed. Thus by this amendment 12AA, the Special Judge came into existence and the Special Court could take the cognizance of the offence after the enforcement of the said Act 18 of 1981 on 1.9.1982. So, in accordance with the proviso to Section 2 referred to above, the Special Judge could not take cognizance of the offence committed before 1.9.1982, As such, the order dated 11.8.1983 taking cognizance of the offence against the petitioner is bad in law. In the result, this application is allowed and the order dated 11.8.1983 passed by the learned Special Judge, Arrah is quashed.