
(1969) 02 PAT CK 0031

In the Patna High Court

Case No : Criminal Ref. No. 24 of 1968 with Cr. Rev. No. 845 of 1968

Gobind Ram Jhunjhunwala and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-02-1969

Acts Referred:

Essential Commodities Act, 1955 — Section 12A, 7, 8

Citation : (1969) 17 BLJR 575 : (1969) PLJR 370

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Judgement

G.N. Prasad, J.—This reference made by the learned Additional Sessions Judge of Singhbhum has been heard along with the criminal revision application filed by the accused persons, three in number, who had been convicted by the trying Munsif-Magistrate u/s 7 of the Essential Commodities Act and sentenced to undergo rigorous imprisonment for fifteen days each and to pay a fine of Rs. 1,000/- each, or, in default, to undergo rigorous imprisonment for one month each.

2. The prosecution case, as presented in Court, was that, at. about 7-30 p.m. on the 5th December, 1966, a Supply Inspector named Shri Ramchandra Ram (P.W. 1) went to the shop of the petitioners situated in Chakradharpur market and demanded being shown the stock register, the sale register etc. to enable him to hold inspection of the stock of food-grains existing in the petitioners, shop. The petitioners, however, refused to afford the necessary facilities to the Supply Inspector (P.W. 1), and, as a matter of fact, went away elsewhere after locking up the firm. Thereafter, the Supply Inspector contacted the Chakradharpur police and, after the arrival of the police, the petitioners opened their shop and handed over the stock register and the cash memos to the Supply Inspector. The Supply Inspector took charge of these documents and sealed the shop as, by then, the night had sufficiently advanced. On the following day, the Supply Inspector re-visited the shop, along with Shri Tej Pratap Bhagat (P.W. 2), who was the

Assistant District Supply Officer, and checked up the stock of foodgrains in the petitioners' shop. As a result of the weighing, it was found that, with reference to the entries in the stock register etc., (here was an excess stock of rice in the petitioners' shop to the extent of 33.800 Kg. whereas the stock was found short in respect of gramdal by 02.500 Kg., in respect of grain by 62.900 Kg. and in respect of Khesari dal by 19.400 Kg. Accordingly, the Supply Inspector (P.W. 1) submitted a report (Ext. 1) to the Sub-divisional Magistrate stating the relevant facts. On the basis of the said prosecution report, which bore the date "22-12-66", the learned Sub-divisional Magistrate of Chaibassa took cognizance by his order . dated the 2nd January, 1967 of an offence u/s 7 of the Essential Commodities , Act, Thereafter, all the three petitioners were put on trial before a Munsif-Magistrate exercising first class powers at Chaibassa.

3. The defence put forward by the petitioners was that the accusation made against them was false and that there was really no discrepancy in the stock position, as alleged on behalf of the prosecution. In regard to the alleged excess of stock of rice, the defence case was that it had been left behind in the petitioners' gaddi by one Durga Charan Pradhan of Pansua and, therefore, it did not belong to the petitioners' shop. With respect to the alleged shortage of the two kinds of Dal and of gram, the defence case was that those varieties of foodgrains had been forwarded to a grinding mill for being grinded on account of the petitioners' shop; but no entries to this effect had been made as by the time that the books of the shop were taken charge of by the authorities, all the entries in respect of the day's transaction had not been entered in the relevant books.

4. The learned Munsif-Magistrate, as already stated, did not accept the defence case and convicted the petitioners in the manner already stated.

5. Against their conviction, the petitioners preferred an appeal in the Sessions Court, but the appeal was treated as revision, presumably, because it was thought that, by reason of Sub-section (3) of Section 12A of the Essential Commodities Act, 1955, no appeal lay against the order of conviction recorded by the trial court. However, the learned Additional Sessions Judge, who dealt with the matter, has made a reference to this Court, wherein he has recommended that the conviction and sentence, so far as two of the petitioners, Gobind Ram Jhunjunwala and Murli Manohar Jhunjunwala, are concerned, should be set aside and they should be acquitted; and that, in case of petitioner Bhola Ram Jhunjunwala, the conviction and sentence should be set aside, but he should be ordered to be retried in accordance with the procedure prescribed for summary trial of a summons case, or, in the alternative, the trial already held by the learned Munsif-Magistrate should be resumed from the stage immediately after the examination of D. W. 4 and thus giving to mm an opportunity to examine Shri Rudra Pratap Sarangi as a defence witness on his side.

6. So far as the petitioners Go-bind Ram Jhunjunwala and Murli Manohar Jhunjunwala are concerned, I feel no difficulty in accepting the reference made by the learned Judge. The learned Munsif-Magistrate was under the erroneous

impression that these two petitioners were the licensees under the Bihar Foodgrains Dealers Licensing Order, 1966. The licensee was the other petitioner, namely, Bhola Ram Jhunjhunwala, who carried on the business in the firm name of Ramkumar Bhola Ram. These two petitioners could not also be put on trial having regard to the fact that, by his order dated the 2nd January, 1967, the learned Subdivisional Magistrate had not taken cognizance of any offence alleged to have been committed by these two petitioners either u/s 7 or u/s 8 of the Essential Commodities Act, 1955.

7. The case of petitioner Bhola Ram Jhunjhunwala stands on a different footing since he was undoubtedly the licensee and, as such, bound by the terms and conditions of the license which was granted to him under the Licensing Order aforesaid. The learned Judge has noticed that the trial was not held under the summary procedure, as contemplated by Sub-section (2) of Section 12A of the Essential Commodities Act. The trial having been held under the ordinary procedure prescribed in the Code of Criminal Procedure, Sub-section (3) of Section 12A could not operate. In other words, the appeal which was filed in the Sessions Court could not have been disposed of as an application in revision. The prohibition as to the competency of the appeal would have applied only if the accused would have been tried in a summary way under Sub-section (2) of Section 12A. Therefore, the learned Judge should have heard the matter in exercise of his appellate powers, and, as an appellate court, he should have dealt with all the relevant questions of fact and law which arose in the case. The learned Judge seems to have been under the impression that the accused was prejudiced by reason of the fact that the procedure of summary trial should have been adopted instead of the ordinary procedure for the trial of a summons or a warrant case contained in the Code of Criminal Procedure. With this view of the learned Judge, I am unable to agree. By no stretch of imagination, a summary trial can be viewed as more advantageous to an accused person than a trial by the ordinary procedure. However, as this was not a case of summary trial at all, there could have been no question of the applicability of Sub-section (3) of Section 12A and, therefore it was the duty of the Sessions Court to have entertained and dealt with the appeal which had been preferred before it against the order of the trial court. So far as petitioner Bhola Ram Jhunjhunwala is concerned, the matter must, therefore, go back to the Sessions Court. It will be open to the Sessions Court on hearing the appeal to decide whether or not it should take additional evidence in accordance with Section 428 of the Code of Criminal Procedure to enable the defence to bring before the Court the evidence of the defence witness Shri Rudra Pratap Sarangi. But this will not preclude the Sessions Court from deciding whether, upon the materials already on record, the prosecution case against petitioner Bhola Rant Jhunjhunwala is fit to be accepted or not. I have made these observations because it has been brought to my notice that, before the complaint dated the 22nd December, 1966, two other reports relating to this very matter were submitted to the Subdivisional Magistrate—one by the Supply Inspector (P.W. 1) on the 5th December, 1966, and the other by

the Assistant District Supply Officer (P.W. 2) on the 6th December, 1966. But neither of these two reports were brought on the record by the prosecution so that the Court might have been in a position to know what was the earliest version of the incident which had been reported to the Subdivisional Magistrate. However, this will be for the appellate court to consider and decide what inference should be drawn by reason of non-production of these earlier reports.

8. For the aforesaid reasons, I allow the criminal revision and accept the reference in part. The conviction and the sentence, so far as petitioners Gobind Ram Jhunjhunwala and Murli Manohar Jhunjhunwala are concerned, are set aside and they are acquitted. The case of petitioner Bholi Ram Jhunjhunwala is sent back to the lower appellate court for disposal according to law in the light of the observations which I have made above.