(2006) 04 PAT CK 0063

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 62 of 1992

Gopal Prasad Singh @ Gopal Singh and Banoram APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:
Essential Commodities Act, 1955 — Section 7

Citation : (2006) 2 PLJR 553

Hon'ble Judges : Chandra Mohan Prasad, J

Bench : Single Bench

Advocate : Shyameshwar Dayal, for the Appellant; Naresh Prasad, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Chandra Mohan Prasad, J.—The Hon''ble Mr. Justice Chandra Mohan Prasad C.M. Prasad, J. Vide judgement doted 31.3.1992 of the Special Judge, Begusarai, passed in Begusorai P.S. case no. 214 of 1985, each of the two appellants has been convicted u/s 7 of the E.C. Act for violation of Clause 16, 17 of the Bihar Trade Articles, Licensing Unification Order, 1984 and also for violation of Clause 10 of the Cool Control Order, 1956 and sentenced to under go R.I. for three months.

2. The prosecution commenced with the written report (Ext. 2) of Arvind Sharma (P.W. 2) who alleged that on 4.9.1985 he on the orders of the Subdivisional Magistrate, Begusarai had purchased 5 kgs of coal from the coal depot of the appellant Copal Prasad Singh and Rs. 4.50p had been realised from him as price of the coal but on demand cashmemo for the purchase was not given to him. On the basis of the written report (Ext. 2) the informant Shashi Bhushan Sharma the Supply Inspector filed a report dated 4.9.1985 before the Officer Incharge Begusarai, P.S. alleging that appeallant Copal Prasad Singh is licencee dealer of cool and appellant Banoram was working as his sales man and that the appellants were selling cool at the rate of Rs. 36/- per 40 kg. whereas

the fixed price was @ Rs. 24/- per 40 Kg. and that the appellant had also not disclosed the price on the board and they were also not issuing cash memo to the purchasers on demand and Arvind Sharma (P.W.3) had not been given cashmemo for purchase of 5 kg of coal at a price of Rs. 4.50 p. On the report (Ext.1) of the Supply Inspector Shashi Bhushan Sharma (P.W. 1) investigation was commenced and charge sheet was submitted and thereafter the. appellants were put on trial and they have been convicted and sentenced as above.

3. During trial three witnesses were examined by the prosecution. P.W.1 Shashi Bhushan Sharma is the informant himself. P.W.2 Arvind Sharma is the candidate peon who is said to have purchased coal from the appellants and P.W.3 Radhey Shyam Dubey is the I.O. who submitted charge sheet in this case.

4. P.W.1 deposed that on 5.1.1985 he had gone to the coal depot of the appellants and had found that the petitioner was selling coal at a higher price than the fixed price i.e. Rs. 24 for per 40 kg. and that he was also not giving cashmemo to the purchaser nor he had displayed the stock on the notice board.

5. In para 4 he says that after investigation he got his report (Ext.1) typed and then filed before the police for institution of case. At para 5 of his evidence, he deposed that his report bears the date 4.9.1985. He also deposed that the peon had brought the purchased coal to his office where he had kept it during the night. He further deposed in para 6 that he had no knowledge as to who had given money to the candidate peon for purchasing coal and that under whose order the purchase was made. He also deposed that he had no personal knowledge about the. appellants selling coal at a higher price.

6. Thus the P.W.1 who is the supply inspector says that the appellants were selling coal at a higher price but in his cross-examination at para 7 he contradicts to say that he has no personal knowledge about the appellants selling coal at a higher price. This witness says that he had visited the coal depot of the appellants on 5.9.1985 and thereafter he had filed his written report (Ext.1) before the police. But this written report (Ext.1) bears the date 4.9. 1985. How the written report could have been prepared on 4.9.1985 ? The argument of the learned Counsel for the appellants was that the supply inspector P.W.1 did not in fact inspect the appellants coal depot and he filed antedated report (Ext.1). In the circumstances of the case the submission of the appellants counsel appears to carry substantial reasons and this circumstance makes the claim of the P.W.1 that he had inspected the appellants coal depot on 5.9.1985 and had found that the price was not displayed on the board and the coal was being sold at higher price highly doubtful.

7. P.W.2 Arvind Sharma is the candidate peon who deposed that on the orders of the S.D.O. he had gone to purchase coal from the coal depot of the appellant Copal Pd. and the appellant Banoram who was selling the coal there sold 5 kg of coal at a price of Rs.4.50p whereas the fixed Govt. rate was @ Rs. 24/- per 40 kg. He also deposed that on demand cashmemo was not given to him for the

purchase. He further deposed that he gave a written report (Ext. 2) about the purchase before the Supply Inspector. In course of examination he deposed that the money for purchasing coal had been received by him in the Najarat and Najir Babu had given him the money and that after purchase of coal he had kept the coal in the Najarat.

8. Learned Counsel for the appellants argued that according to the P.W.2 coal has been purchased from the Govt. money given by the Najir and admittedly after purchase the coal had also been kept in the Najarat. The learned Counsel also argued that when the coal had been purchased from Govt. money given from the Najarat through Najir and the coal was also kept in Najarat after purchase there must have been some record about the giving of money from the Najarat for the purchase of the coal because the cool had been purchased from Govt. money. Stating so the learned Counsel continued to argue that the prosecution has not shown any official paper of the Najarat to show that the money for purchasing coal had been given by the Najir on the date of occurrence and that any coal was in fact purchased and kept in the Najarat. It was also argued that when the coal had been purchased and kept in Najarat, it must have been entered in the stock register of the articles of that dote. But any such stock register mentioning stock of the coal was not brought on record. Further submission was that in absence of any such paper of Najarat the story of purchasing coal is discredited. The. Learned Counsel further argued that the Najir who is said to have given money to the P.W.2 for purchasing coal for the Najarat has not been examined to say that he had given any money to the P.W. 2 for purchasing the coal nor he has come forward to show that the coal was in fact purchased and kept by the P.W.2 in the Najarat on that date. In such view of the matters I find that the story of purchasing coal as stated by the P.W.2 becomes highly doubtful.

9. Thus considering the evidence of P.W. 1 and 2 who are the only witnesses brought by the prosecution to say about the selling of coal by the appellant at a price higher than the fixed by the Government and also about not displaying the price on the notice board, I find that in view of discussions made above the story of purchase of the cool have not been proved beyond shadow of doubt. The further allegation that the appellants did not displasy the price on the notice board has become highly doubtful in view of the evidence of the supply inspector (P.W.1) that he had inspected the shop on 5.9.1985 and thereafter had prepared and filed his report before the police but the report bears the dated 4.9.1985 which indicates that a ante dated report had been prepared by the P.W.1.

10. In such view of the matters I find that the prosecution has not been able to prove its case beyond all reasonable doubt hence the appellants are entitled to be acquitted of the charge. Therefore, the order of conviction and sentence as passed by the learned Special Judge is hereby set aside. The appellants are acquitted of the charge and they are discharged from the liabilities of bail bonds executed by them.

In the result the appeal is allowed.