

(2006) 10 JH CK 0027
In the Jharkhand High Court

Gurdayal Singh Bhatia @ Gurudayal Singh	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

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

Citation : (2007) 1 JCR 509

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner, Gurdayal Singh Bhatia @ Gurdayal Singh has preferred this petition u/s 482 of the Code of Criminal Procedure for setting aside the impugned cognizance order of the offence as taken against him u/s 7 of the E.C. Act.

2. The prosecution story in brief is that the informant, Rajesh Emanuel Patro, Nazarat, Deputy Collector, East Singhbhum, Jamshedpur, raided the hotel premises, popularly known as "New Chhappan Bhog" of the petitioner on 28.9.2005 wherein it was found that 14.2 Kg. of L.P.G. Cylinder, which was meant for domestic purpose, was being used for commercial purposes, in contravention of the Provision of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000. Four L.P.G. Gas Cylinders being weighed 14.2. Kg. each with one regulator and two gas stoves were seized in presence of the witnesses.

37 The main contention of Mr. S.L. Agarwal, the learned Counsel appearing for the petitioner is that search and seizure were made in contravention of Clause 13 of L.P.G. (Regulation of Supply and Distribution) Order, 2000. Clause 13 speaks about the power of entry, search and seizure:

(1) Any Officer of the Central or the State Government not below the rank of

Inspector duly authorised by a general or a special order, by the Central Government or the State Government as the case may be or any officer of Government Oil Company not below the rank of Sales Officer, authorized by the Central Government, may, with a view to securing due compliance of this Order or any other order made thereunder:

(a) stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product.

(b) enter and search any place.

(c) seize stocks of liquefied petroleum gas along with container and/or equipments, such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this order has been, or is being, or is about to be made.

(2) The sales officer of a Government Oil Company shall be authorized to secure compliance of this Order by the distributors appointed under the public distribution system and or by the consumer registered by them.

4. In the present case, admittedly, the Nazarat, Deputy Collector, East Singhbhum, had entered into hotel premises of the petitioner for making search and seizure who was not authorized under the law to make search and seizure and therefore, the prosecution was launched against the petitioner in contravention of provisions of law is not sustainable. In the case of Roy V.D. Vs. State of Kerala, the Hon''ble Apex Court observed:

The power u/s 482 Cr.P.C. has to be exercised by the High Court, inter alia to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Where Criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the Court; in such a case not quashing the proceedings would perpetuate abuse of the process of the Court resulting in great hardship and injustice to the accused. So, exercise of power u/s 482 Cr.P.C. to quash proceedings in a case like one in hand would indeed secure the ends of justice.

5. In the present case counter affidavit has been filed on behalf of the opposite party No. 2 stating, inter alia, that Nazarat, Deputy Collector, East Singhbhum, was authorized by the Deputy Commissioner, East Singhbhum, Jamshedpur for conducting the raids and for making search and seizure of the L.P.G. meant for domestic purpose being used in commercial purpose.

6. I find substance that Clause 13 of L.P.G. (Regulation of Supply and Distribution) Order, 2000 is very specific and clear that the authority delegated to the opposite party No. 2 by the Deputy Commissioner was not an authority delegated either by the Central Government or the State Government to conduct raid or to, make certain seizure. The Deputy Commissioner is not the State

Government under the Rules of executive business.

7. Moreover, I find that the learned Chief Judicial Magistrate, Jamshedpur erred by the impugned order, while taking cognizance and not disclosing as to which provision of control order has been violated by the petitioner. Under the facts and circumstances of the case, the impugned order dated 4.3.2006 is not sustainable under the law and is liable to be set aside.

8. Accordingly, this petition u/s 482 of the Code of Criminal Procedure by the petitioner is allowed and the impugned order dated 4.3.2006 including the criminal prosecution of the petitioner is quashed. Petition allowed.