
(2006) 07 JH CK 0130
In the Jharkhand High Court

Harakhlal Bhadani @ Harakhlal

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2006) 4 JCR 619

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner has preferred this petition u/s 482 of the Code of Criminal Procedure for quashing the entire criminal prosecution as well as the order taking cognizance of the offence u/s 7 of the Essential Commodities Act passed by the Chief Judicial Magistrate, Bokaro on 22.2.2005 in Sector-IV P.S. Case No. 74 of 2005 corresponding to G.R. No. 904 of 2005 (T.R. No. 1149 of 2006) pending in the Court of the Sub-Divisional Judicial Magistrate. Bokaro.

2. The prosecution story in brief is that the Marketing Officer. Bokaro on 23.8.2005 seized 400 litres blue Kerosene Oil contained in two drums. 140 litres blue" Kerosene oil contained in four plastic Jerrycans and 200 litres in three Rickshaw containers. One of the Rickshaw containers was bearing the name of the petitioner with licence No. 275/85 containing 150 Litres blue Kerosene Oil. It is alleged that petitioner had lifted 200 Litres of Kerosene Oil but had sold 50 Litres at higher price. The seizure list was prepared in presence of the witnesses and prosecution was launched against him with the sanction of S.D.O. Bokaro vide Order No. 16B. dated 24.8.2005.

3. The learned Counsel for the petitioner submitted that the petitioner is carrying on business as retailer/hawker of Kerosene oil since 1985 and at no occasion he was ever prosecuted relating to his business.

4. The petitioner is in no way related to the seized articles including the seized Rickshaw container bearing his name and licence number and that his name on the container was found by the Investigating Officer as freshly painted and written. The place of seizure is far away from his residence. Learned Counsel further submitted that on 21.8.2005 he had lilted 200 litres of Kerosene oil from the whole sale dealer. M/s. Progressive Distributor aide Memo No. 550 and thereafter he fell ill. Since he was advised by the Doctor to take rest, he could not distribute the Kerosene Oil in Sector-V market and his own Rickshaw container was parked on the opposite side of his house. When he came to learn about the seizure of Rickshaw containers and his complicity therein, he immediately met the S.D.M. on 24.8.2005 and presented his representation for verification of truth. He requested the S.D.M. to verify his Rickshaw container containing 200 Liters of Kerosene Oil parked at his residence but it could not be verified and finding indifferent attitude of the S.D.M. the petitioner submitted two separate applications before the Deputy Commissioner, Bokaro to look into the matter and his false implication in the instant rase. The seized container was bearing the name of the petitioner as well as the licence number 275 of 1985 whereas the licence number of the petitioner was 275/85 which was painted as mentioned in his own Rickshaw container.

5. Advancing his argument on the point of law, learned Counsel for the petitioner submitted that the impugned order, taking cognizance, does not disclose as to what "order" framed u/s 3 of the Essential Commodities Act has been infringed so as to make the petitioner liable for the offence u/s 7 of the Essential Commodities Act. The learned Counsel relied upon an unreported decision of the Court in Cr. M.P. No. 1 of 2006 disposed of on 7.3.2006 wherein this Court held, "in the present case also there is no specific allegation against the petitioners of the violation of any control order so as to attract punishment u/s 7 of the Essential Commodities Act. There appears-merit in the present petition and therefore, the prosecution of the petitioners, Krishna Lal Agrawal, Sanjay Agarwal and Ramesh Ram is quashed."

6. I find substance in the argument on behalf of the petitioner that in the present case neither the informant. Marketing Officer has disclosed the violation of any control order by the petitioner as framed u/s 3 of the E.C. Act nor Chief Judicial Magistrate, Bokaro, after application of his judicial mind, has disclosed the same so as to attract on offence against the petitioner u/s 7 of the E.C. Act. I, therefore, reasonably find that the prosecution of the petitioner, under the facts and circumstances, is not sustainable and hence entire criminal prosecution initiated against him arising out of Sector IV P.S. Case No. 74 of 2005 corresponding to G.R. No. 904 of 2005) pending in the Court of Sub-Divisional Judicial Magistrate, Bokaro is quashed. This Criminal Misc. Petition stands allowed.