
(1977) 08 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No"s. 3618 and 3619 of of 1974

H.P. Dhanuka (Hanuman Prasad Dhanuka)

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-08-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 483
Essential Commodities Act, 1955 — Section 10

Citation : (1978) 26 BLJR 74

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Madan Mohan Prasad, J.—These two applications under Sections 482 and 483 of the Code of Criminal Procedure (hereinafter called "the Act") are directed against orders passed by the Magistrate taking cognizance of offences alleged to have been committed by the petitioner u/s 52 of the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1974, for a contravention of Section 39 of the said ordinance,

2. It appears from the prosecution report that on the 20th January, 1974 the cane officer of Muzaffarpur inspected the weighment centre at Sitamarhi of the Belsand Sugar Company Ltd., Riga and found that the weighment clerk Hari Shankar Mishra had weighed a cart laden with cane and issued receipt therefore for 18 quintals 75 kilograms. Immediately thereafter the officer got the cart re-weighed to check the weighment with the result that the actual correct weight was 18 quintals 82 kilograms. It is alleged there was thus shortage of 7 kilograms and incorrect weight was recorded and incorrect receipt granted. The officer accordingly got another receipt showing the actual and correct weight issued to the seller. He further found that the weight of the cart was recorded in the aforesaid receipt as 5 quintals 50 kilograms without cart having been weighed after removing the cane load. He also checked the weighment machine

at the centre and found that to be correct. Upon these allegations the cane officer submitted the prosecution report and the prosecution was sanctioned by the cane commissioner and a complaint was made against the weighment clerk as also the Manager of the aforesaid Sugar Company and the occupier (the petitioner) and cognizance was taken by the Sub-divisional Judicial Magistrate on the 28th of October, 1974. As against this the petitioner has come up in Criminal Misc. No. 3618 of 1974.

3. There are similar allegations with regard to an inspection made on the 10th of January, 1974 when the weighment clerk was one Umakant Das. The receipt granted was for 10 quintals 65 kilograms, whereas the correct weight after re-weighment was found to be 10 quintals 74 kilograms and thus, there was a shortage in weighment of 9 kilograms. The officer took similar steps of getting the fresh receipt issued to the seller according to the correct weight. He has also checked the weighing machine and found that to be correct. Accordingly the complaint in this case is directed against the aforesaid weighment clerk and the Manager and the occupier (the petitioner) as in the other case. The Sub-divisional Judicial Magistrate took cognizance of the offences on the same date as in the other case.

4. Both these applications, have, at the request of the parties, been heard together since the main points involved in these cases are the same and accordingly this judgment will govern them both.

5. Mr. K.D. Chatterjee appearing for the petitioner, at first raised the point that the petitioner, who is merely an occupier of the factory cannot be said to have the mens rea and thus, a cognizance taken against him is not legal, Section 52 of the Ordinance makes the person contravening or attempting to contravene or abetting the contravention of any of the provisions of the Ordinance or the Rules or directions or of the terms and conditions of any licence, punishable. It, however, contains a provision to the effect that where the offender has been acting on behalf of the occupier of the factory or the Manager, such occupier or Manager shall be similarly liable unless he proves that he has used all the due diligence to enforce the observance of the Ordinance or the Rules or of the orders or directions and terms and conditions of the licence and that the offence was committed without his knowledge or consent. This provision having been pointed out to Mr. Chatterjee, he has given up the argument of absence of mens rea.

6. Now, Mr. Chatterjee has raised another point on behalf of the petitioner namely, that upon the facts disclosed in the petition of complaint the petitioner cannot be deemed to have committed any contravention of Section 39 in the following circumstances.

Section 39 of the Ordinance provides as follows:

The occupier of every factory, the owner of every unit, secretary of every co-operative society and every person in charge of weighments shall maintain

subject to such limits of error as is prescribed by the State Government under the law relating to weights and measures, for the time being in force, a record of the correct weight of cane purchased at the place of weighment.

On this basis, it is said that what is required to be maintained is "a record of the correct weight of cane purchased at the place of weighment." In the present case, it is said, the receipt granted contained the gross weight of the cart laden with cane and it was not thus, a record of the cane purchased which figure could have been arrived at only after the cart unladen, with cane and it was not thus, a record of the cane purchased which figure could have been arrived at only after the cart unladen with cane had also been weighed and deducted, counsel in all fairness has said that the point is highly technical but he feels that he is justified in raising the same on the ground that the liability for the offence committed is also technical in view of the fact that it is a vicarious liability for an offence committed by another person so far as the occupier is concerned. I, however, do not find any legal justification for this argument. As appears from the prosecution report the receipt recorded not only the gross weight of the cart laden with cane but the weight of the cart unladen with cane has also been shown as 5 quintals 50 kilograms. The effect is that the receipt granted to the seller of cane was a record of the gross weight and the net weight which would result after deducting the weight of the cart by itself from the weight of the cart laden with cane. The receipt is for the purpose of enabling the seller to obtain price of the net quantity. Obviously therefore, it was a record of the weighment within the meaning of Section 39. The provision requires the occupier to maintain correct weight of the cane purchased. The only record as far as seller is concerned of the quantity of cane sold to the company and purchased by the latter would be this receipt. Although the prosecution report does not state in so many words, it is difficult to imagine that the entry of the two items of weight had not been noted in any record of the company. In natural course of things it will be presumed that the weight was entered in some sort of records of the company in accordance with the weight recorded in the receipt. Obviously, therefore, these papers would form record of the correct weight, according to the company, of the cane purchased. Upon the allegations, these records were false inasmuch as there was a recording of short weight in both the cases in one case of 7 kilograms in one cart and in the other 9 kilograms. Upon the allegations therefore, it is difficult to see how it be said that the provisions of Section 39 cannot be said to have been violated.

7. In this connection it was also urged that it must be stated in the petition of complaint that the actual record was wrong. I am afraid there is no basis for this argument. The petition states in so many words that after re-weighing the cart the weight recorded by the weighing clerk was incorrect, because of the shortage aforesaid. There is thus, no substance in the contention of the counsel.

8. The second point urged by Mr. Chatterjee is that in view of the decision in the case of *R. N. Dutta and Ors. v. State of Bihar* (1), the petition of complaint must

contain the recital that the person complained against was "in charge of and was responsible to the company for the conduct of the business of the company." This was a case in respect of Section 10(1) of the Essential Commodities Act. Learned counsel, on an analogy urges that in this case also therefore, there should have been a recital in the petition of complaint that the offender was acting on behalf of the occupier. I must say at the outset that there is no substance in this contention either. The answer is contained in the proviso to Section 52 which I have referred to earlier and which provides that the occupier shall be "similarly liable in addition or alternatively to the actual offender." The law, therefore, saddles the occupier with the liability where the offender has been acting on behalf of the occupier, An occupier of a factory is defined in Section 2, Clause (1) of the Ordinance as meaning the person carrying on the business of manufacturing sugar by vacuum pan process in a factory and having the ultimate control over the affairs of the factory. The person carrying on the business of sugar in the present case is the Balsand Sugar Company and thus, the occupier of the factory. A similar decision was arrived at on this point in the case of Rabindranath Dutta. A reference to Section 61(2) of the Ordinance, however, will show that where the occupier of the factory is an individual company any of the Directors or in the case of a private company any one of the shareholders may be prosecuted or punished for any offence for which the occupier of a factory is punishable. There is a proviso attached to this provision that the company will give notice to the Cane Commissioner that it has nominated a Director or in the case of a private company a shareholder, to be the occupier of the factory for the purposes of this Ordinance and such Director or shareholder shall be deemed to be the occupier of the factory for the purpose of this ordinance. In the present case admittedly the petitioner is the occupier within the meaning of Section 61, although it has been said in so many words, perhaps, the company gave notice to the Cane Commissioner nominating the petitioner as the occupier. Reading of the aforesaid provisions would thus, show that although the occupier was the company the petitioner admittedly was the occupier within the meaning of Section 61 on the date the offence was committed.

9. It will thus, appear that in view of definition of occupier such a person has the ultimate control over the affairs of the factory and for the purposes of the Ordinance company can nominate one of its Directors or shareholders as the case may be as the occupier, such an occupier also will thus be deemed to have the ultimate control over the affairs of the factory. Section 61(2) provides for the prosecution of the Directors or shareholders of the company and where the company has given notice to one Director being nominated to be the occupier of the factory, such Director would be deemed to be the occupier and thus liable for prosecution. In the present case in the complaint petitioner it has been specifically stated that the petitioner is the occupier of the factory and this is admitted. That being so, the liability of the petitioner for prosecution cannot be challenged.

10. The contention raised by the learned Counsel that the petition of complaint

does not say that the offender was acting on behalf of the occupier and that its absence should lead to the quashing of the prosecution cannot thus be accepted, also because of the following circumstances:

In the present case it is said, that it was the weighing clerk of this company who had made a false record of the sugarcane should by the two persons at the two places and granted receipt. It is obvious from the averment that the weighment clerk being an employee of the company was acting in discharge of his duties as such and therefore, acting as the agent of the company, for which the occupier would be liable in view of the provisions of Section 52 of the Ordinance. It could also have been said in so many words but it is obvious from the averment that this was the intent and purpose. The absence of a clear statement that the offender was acting on behalf of the occupier was thus, not required.

11. The decision in the case of Rabindra Nath Dutta has been followed by the court in many other decisions subsequent thereto but the principles has to be applied in cases where it is applicable. In cases of Directors there may be several Directors of a company and only one or some of them may be having ultimate control over the affairs of the company or may be in charge of and responsible to the company for the conduct of its business at the time of the contravention. The case of Directors would be different from the case of an occupier, whom the law saddles with the liability. Once it is said that a person is an occupier of the factory it should be enough and considered as saying that he has ultimate control over the affairs of the company and again that should be enough to show that he is liable for the contravention of the provisions of the Ordinance or the Rules made thereunder or directions given thereunder. I may add that the purpose of the decision in the case of Rabindra Nath Dutta was to lay down the principle that the facts necessary to constitute the liability of the person prosecuted must be contained in a complaint petition. This serves as a notice to the person complained against of what is alleged against him and why he is sought to be made liable. In the present case before me, the mere statement that the petitioner was an occupier of the company would constitute the statement required for the aforesaid purposes. There is no question of literally applying the principle laid down in Rabindra Nath Dutta's case to every case. For these reasons also I do not find any substance in the second contention of the learned Counsel.

12. All the contentions raised before me having failed this application is dismissed.