

(1970) 04 PAT CK 0020

In the Patna High Court

Case No : Criminal Miscellaneous No. 10 of 1970

Jadu Bansi Prasad and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-04-1970

Acts Referred:

Essential Commodities Act, 1955 — Section 7

General Clauses Act, 1897 — Section 6

Non-Ferrous Metals Control Order, 1958 — Section 4A(1)

Citation : (1970) 04 PAT CK 0020

Hon'ble Judges : Shambhu Prasad Singh, J

Bench : Single Bench

Advocate : S. Shamsul Hasan, for the Appellant; S. Ali Ahmad, for the Respondent

Judgement

Shambhu Prasad Singh, J

1. This is an application for quashing a proceeding, pending against the petitioners in the Court of Mr. I.N. Sinha, Munsif Magistrate, First Class, Patna City, on the basis of a complaint filed on the 14th of September, 1969. The petitioners are being prosecuted for an offence u/s 7 of the Essential Commodities Act (hereinafter referred to as "the Act") read with Section 4A(1) of the Non-Ferrous Metals Control Order, 1958 (hereinafter referred to as "the order"). The allegations against the petitioners are that they, as members of the Co-operative Society known as Khusrupur Kasera Audyogic Sahyog Samiti Limited, obtained permits for copper and zinc from the Director of Industries, Bihar, and on that basis got the aforesaid material from the State Trading Corporation, Calcutta. In violation of the Order they transferred the metal to some persons at Mirzapur in Uttar Pradesh.

2. In the first place, Mr. Shamsul Hasan who appeared for the petitioners urged that the order was rescinded on the 21st of August, 1969, and that the petitioners cannot be prosecuted on the basis of a complaint filed after the order

was rescinded. In support of the contention that the prosecution is illegal, he has relied on the decision in (1). The State of Uttar Pradesh Vs. Seth Jagamander Das and Others, . The prosecution in that case was for violation of the provisions of Non-Ferrous Metal Control Order of 1942. The order was issued under powers vested in the authority by Defence of India Act. The Defence of India Act expired on the 30th September, 1946. Ordinance 12 of 1946 amended Section 1(4) of the Defence of India Act by adding a saving clause in the following terms:--

But its expiry under the operation of this sub-section shall not affect--

(a) the previous operation of, or anything duly done or suffered under this Act or any rule made thereunder or any order made under any such rule...

This Ordinance was also repealed by Act 2 of 1948 with effect from the 5th of January, 1948, and the prosecution was started after that date. In the circumstances, their Lordships of the Supreme Court held that Section 6 of the General Clauses Act had no application to the repeal of a statute made by Parliament in England and the repeal which had been brought by the Constitution of India and that the proceeding against the respondent had rightly been quashed by the High Court. Section 6 of the General Clauses Act inter alia, lays down that where that Act, or any Central Act or Regulation made after the commencement of that Act repeals any enactment already made or to be made, then unless a different intention appears the repeal shall not affect any investigation, a legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as mentioned in that section; and any such investigation, legal proceeding or remedy may be instituted continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. In the instant case as the Order was not repealed by an Act of Parliament or by the Constitution (really there could be no question of such a repeal) Section 6 of the General Clauses Act does apply and a prosecution started after the Order has been rescinded is not illegal. Thus, there is no merit in this contention of Mr. Hasan.

3. Mr. Hasan then argued that the proceeding was fit to be quashed as the petition of complaint does not disclose any offence in as much as according to him, there was no case that the petitioners sold the metal. Section 4A of the Order prohibits a person from selling or even otherwise transferring any non-ferrous metal to a person who does not hold a permit. It will be a matter for the trial court to decide whether on the facts alleged the petitioners can be said to have transferred non-ferrous metal to persons at Mirzapur. Prima-facie, the allegations are not such as not to cover a case of transfer. I do not intend to say anything further about this contention in as much as that may prejudice either of the parties.

4. The point which was urged most vehemently by Mr. Hasan was that as a first information report was filed against the petitioners and they were discharged by

the committing court, they could not be put on trial again on the same allegations and, therefore, the proceeding should be quashed. It appears that after it was discovered that metal supplied to the petitioners were at Mirzapur, a first information report was lodged before the police and they submitted chargesheet against the petitioners for an offence u/s 406 of the Indian Penal Code. The committing court held that on the allegations of the prosecution and evidence on the record the petitioners could not be tried for an offence u/s 406 of the Indian Penal Code and accordingly discharged them. While discharging them, the committing Magistrate also observed that the case against the petitioners could not proceed under the Act for violating the provisions of the Order because of the technical flaw that cognizance was not taken in the case on the report of a public servant as envisaged by Section 11 of the Act. Mr. Hasan is right that the Magistrate was wrong in observing that cognizance for an offence under the Act could not have been taken on a police report. It is now well settled that the charge-sheet submitted by the police can be treated as a report of a public servant within the meaning of Section 11 of the Act and cognizance for an offence under the Act can be taken on that. According to Mr. Hasan, therefore, the Magistrate could have tried the petitioners for an offence under the Act and his order of discharge amounts to an order of acquittal which bars a fresh trial on the same facts. There appears no substance in the contention of Mr. Hasan that the order, of the Magistrate would bar a fresh trial of the petitioners. In the case of (2) Mohammad Safi Vs. The State of West Bengal, it has been held that where a person has done something which is made punishable by law, he is liable to face trial and this liability cannot come to an end merely because the court before which he was placed for trial erroneously forms an opinion that it has no jurisdiction to try him or that it has no jurisdiction to take cognizance of the offence alleged against him. The facts of the case before the Supreme Court were almost similar to the facts of the instant case, and, in my opinion, this case is covered by the aforesaid decision of the Supreme Court. The proceeding, therefore, cannot be quashed on this score.

5. Lastly, it was urged by Mr. Hasan that as the prosecution of the petitioners started in 1964 and the case has remained hanging for about six years, the present proceeding against them should be quashed. It is true that in some cases delay in prosecution has been taken into account in quashing the proceedings, but, in my opinion, the instant case is not a case where the proceeding should be quashed on the ground of delay. In case Magistrate comes to a conclusion that the petitioners have committed the offence alleged, he should take into consideration the question of delay in awarding sentence to them. For the foregoing reasons, the application fails and is dismissed.