
(2006) 04 JH CK 0019
In the Jharkhand High Court
Case No : Criminal Appeal No. 306 of 2000

Jageshwar Modi and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Essential Commodities Act, 1955 — Section 7

Citation : (2006) 3 JCR 220

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Advocate : S.L. Baranwal, Vikas Kishore and Sujeet Kumar, for the Appellant;
Alok Lal, APP, for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—The appellants have been found guilty for the offence u/s 7 of the Essential Commodities Act for violation of the Bihar Trade Articles (Licenses Unification) Order, 1984 and sentenced to serve rigorous imprisonment for six months as well as to pay a fine of Rs. 1000/- each and in default thereof, to further undergo rigorous imprisonment for one month passed in Barhi Police Station Case No. 213 of 1992, G.R. No. 2428 of 1992, by Special Judge (E.C. Act), Hazaribagh.

2. The brief facts leading to their conviction are that in the evening of 4th November, 1992, the informant was on patrolling duty, when he received information that one vehicle bearing No. BPM-1792 was carrying nine bags of sugar for black marketing to Telaiya. The informant accordingly informed his superiors and chased the vehicle going from Barhi Chowk to Telaiya in police jeep. It is further stated that the police intercepted the said jeep being driven by appellant Sirazuddin, loaded with nine bags of sugar for which he has no valid documents. The informant knew from the driver of the jeep that appellant Prakash Prasad Barnwal has purchased the said bags of sugar from appellant

Jageshwar Modi, who was lifted the same for its distribution through PDS shop at Guriyo. In the meantime, appellant Prakash Prasad Barnwal was seen reaching there on a TVS Suzuki motorcycle bearing Registration No. BEM-186. The police tried to arrest the said appellant, but he managed to flee away leaving his motorcycle near the jeep.

3. Thereafter police seized the vehicles along with nine bags of sugar and got a seizure list prepared in presence of two witnesses, namely, Vinod Kumar Gupta (PW-2) and Akhilesh Kumar (PW-3). Later on, the matter was reported by the informant to Officer-in-Charge of Barhi Police Station in writing, on which Barhi Police Station Case No. 213 of 1992 was registered u/s 7 of the Essential Commodities Act against all the appellants including the owner of the jeep. The police submitted charge-sheet against four accused persons including the appellants u/s 7 of the said Act, but the appellants claimed to be innocent. The trial Court after examining the witnesses found these appellants guilty for the offences mentioned above and acquitted the owner of the vehicle Wajida Khatoon.

4. This appeal has been preferred on the grounds that the entire prosecution case was based on surmises and conjectures. It is also asserted that no provision of Essential Commodities Act has been violated just for the lapses on the part of the appellants that at the time of seizure, supporting documents could not be produced before the police. The memo of appeal further mentioned that the learned lower Court has committed error on records and wrongly convicted the appellants.

5. Mr. S.L. Barnwal, learned Counsel appearing on behalf of the appellants contended these points before this Court and submitted that it is a settled principle of law that even on absence of valid papers for carrying the control items, offence could not be made out without proving that actually the consignment was being transported for the purpose of black marketing. He has pointedly stressed that the police has not mentioned in any way that nine bags of sugar were not accounted by appellant Jageshwar Modi, who has lifted the sugar for distribution at his PDS shop at Guriyo. According to them, the vehicle carrying the said sugar was intercepted by the police just to harass appellants as he was the purchaser of the lifted sugar, which has come on record, on the basis of the statement of the driver of the vehicle. It is further submitted that the said seized sugar was later on found not liable for confiscation by the Secretary, Food, Supply and Commerce Department, Bihar and a document was filed before the lower Court in defence.

6. Learned APP for the State opposed the contention on the grounds that the vehicle carrying nine bags of sugar was seized by the police and the appellants did not show any valid paper of transportation of the same in the evening of 4th November, 1992 and even during the investigation.

7. The main point for consideration by this Court remains whether the sugar seized by the police in the evening of 4th November, 1992 was actually being

carried for black marketing by the appellants or not. From the evidence on record, it is apparent that appellant Jageshwar Modi was the dealer, who has lifted the sugar for distribution through his PDS shop situated at village-Guriyo. It is also apparent on record that appellant Sirazuddin was carrying those nine bags of sugar on the vehicle and at that time, no valid document was produced before the police. The presence of motorcycle belonging to appellant Prakash Prasad Barnwal and its seizure has now been challenged by the learned Counsel for the appellant. In this context, my attention was drawn towards the admission of PW-2 Vinod Kumar Gupta, the seizure list witness that the seizure list was prepared and signed by him at Barhi Chowk and nothing has been seized in his presence, a common story of seizure list witness. PW-1 is the informant, Shri Narayan Tiwary, ASI, Barhi Police Station, PW-3 Akhilesh Kumar, another seizure list witness, SI Barhi Police Station, who has supported the prosecution story in details. They have been cross-examined at length regarding the seizure and road going to village-Guriyo in which it has been made clear that this vehicle was seized before the road for village-Guriyo bifurcated from the main national highway. They have denied that the signature of the seizure list witness was taken afterwards and the case was filed just to harass the appellants. PW-4 is the Investigating Officer of the case, who has been cross-examined on the point that the sugar was purchased by appellant Jageshwar Modi from Ganesh Trading Company vide Memo No. 763 dated 4.11.1992 for distribution at Guriyo PDS shop. Learned Counsel for the appellant criticized this Investigating Officer on the ground that he could not assess specifically the boundary of the place of occurrence and the sugar was purchased by license dealer. Accordingly, it is suggested that the said sugar of nine bags was purchased by appellant Jageshwar Modi and its carriage by appellant Nos. 2 and 3 was not illegal and therefore, their conviction be set aside. Learned APP submitted that the offence has been committed, the moment appellants fail to produce the documents on the basis of which they were carrying nine bags of sugar.

8. From perusal of the impugned judgment, it appears that the learned lower Court vide paragraph No. 9 at page-6 has held that the sugar lifted for distribution through fair price shop was being diverted by appellant Prakash Prasad Barnwal for black marketing. So far as the question of release of sugar from the proceeding of confiscation as per provision of the Essential Commodities Act is concerned, the appellate authority, Secretary of Food, Supply and Commerce Department, State of Bihar has held that the diversion of route does not constitute any offence. But the facts remain that no such document has been produced before the lower Court nor any specific statement has been made by the appellants during their statement u/s 313 of the Code of Criminal Procedure that seized sugar were being carried after purchase with valid documents. However, the Investigating Officer (PW-4) has admitted that the sugar was purchased from Ganesh Trading Company by the appellant No. 1, who was the licensed dealer and the vehicle was seized on road before the main road bifurcated towards Guriyo. In this view of the fact that actual sale of the sugar in

black marketing could not be proved, then appellant No. 1 having purchased it from Ganesh Trading Company being a license dealer to carry to the fair price shop, no offence appears to have been committed by him. In such circumstances, the other appellants carrying the sugar may not be held guilty for the offences mentioned above.

9. Having considered the above-mentioned facts and the evidence available on record, I find that it is difficult to affirm the finding of the learned lower Court. Accordingly, this appeal has got merit and is allowed. The order of the lower Court convicting the appellants and further sentencing them as mentioned above is set aside. The appellants are found not guilty and they are, accordingly, acquitted and discharged from the liability of their bail bonds.