(1970) 02 PAT CK 0004

In the Patna High Court

Case No : Criminal Miscellaneous No. 1838 of 1969

Jamuna Singh APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 18-02-1970

Acts Referred:

Bihar Molasses (Control) Act, 1947 — Section 4(b)
Bihar Molasses (Control) Rules, 1955 — Rule 11, 11A

Citation : (1970) 02 PAT CK 0004

Hon'ble Judges : Shambhu Prasad Singh, J

Bench : Single Bench

Advocate : Basudeva Prasad and P.K. Joshi, for the Appellant; Vinod Chandra, for the Respondent

Judgement

Shambhu Prasad Singh, J.—This is an application for quashing a prosecution against the petitioner who is a truck driver pending in the Court of Shri B.B. Saran, Munsif-Magistrate, 1st Class, at Katihar. According to the prosecution case, the petitioner was found carrying molasses on his truck in contravention of Section 4(b) of the Bihar Molasses (Control) Act, 1947, read with Rules 11 and 11A of the Bihar Molasses (Control) Rules, 1955 (hereinafter to be referred to as the Act and the Rules respectively). From the petition of complaint which has been placed before me, it appears that one Baijnath Prasad had purchased molasses from a stockiest firm, Messrs Mohan Lall Kailashpat, at Majhaulia in the district of Champaran, and the petitioner was transporting part of it to Kisanganj in the district of Purnea. Mr. Basudeva Prasad appearing on behalf of the petitioner has urged that the allegations made in the petition of complaint do not make out a case of contravention of provisions of Section 4(b) of the said Act and Rules 11 and 11A of the said Rules and, therefore, prosecution of the petitioner u/s 10 of the said Act was illegal and should be quashed.

2. Relevant part of Section 4 runs as follows:

No molasses produced by factories or held by stockists in the State shall without the permission of the Controller be moved,

(a) by rail or river from any place in the State to any other place therein, or

(b) by road from any place in the districts of Bhagalpur, Saharsa, Purnea and Santhal Pargannas to any other place within or outside those districts.

According to Section 2(a) of the Act, the Excise Commissioner of the State of Bihar is the Controller. In the instant case we are not concerned with Clause (a) of Section 4 as the movement of molasses was not by rail or river. Clause (b) prohibits movement of molasses by road only from a place in the four districts mentioned therein to any other place within or outside those districts; it does not prohibit movement from any place outside those four districts to a place within or outside those districts. As, admittedly, the molasses in the instant case was being moved from Majhaulia, a place in the district of Champaran, not within the districts of Bhagalpur, Saharsa, Purnea and Santhal Pargannas, Section 4(b) is not attracted and it cannot be said that the petitioner was doing any act in contravention of the provisions of that section.

3. Rule 11, as it stands now after the amendment of the year 1967, is as follows:--

No person shall move molasses from the premises of any sugar factory or distillery of otherwise dispose of such molasses except under a movement order in Form M.F. 7 of the Controller as provided in the Act and these rules.

Rule 11A which was introduced by the said amendment of the year 1867 runs as follows:--

The State Government shall fix from time to time by notified orders, the permit fee, per quintal of molasses for issue of movement order. A person desiring to move molasses from sugar factory premises or from any other place of storage shall deposit in Government treasury, the amount payable to Government at the rate so fixed and shall also present the challan along with his application for obtaining the movement order before the Excise Officer posted at the sugar factory concerned or before the Excise Sub-Inspector in whose jurisdiction the place of storage is situated. The said Excise Officer shall check the deposit made and if it is found to be in order, forward the application for the movement order with the challan to the Controller of Molasses for issue of the movement order to him.

A perusal of these two rules makes it abundantly clear that they can apply only when the movement of molasses is from the premises of any sugar factory of distillery. Rule 11A uses the words any other place of storage. These words, if they are to be read without any reference to Rule 11, may mean even the place where a stockiest is storing molasses. But the two rules are to be read together. It is Rule 11 which imposes a restriction on movement of molasses without an order of the Controller. Rule 11A does not impose any restriction; it merely lays down that persons desirous of obtaining order of the Controller for moving molasses shall deposit the required fee before the Excise Officer posted at the sugar factory concerned of before the Excise Sub-Inspector in whose jurisdiction the place of storage is situated, who shall forward the application for the movement order with the challan of the deposit to the Controller. The expression ''any other place of storage'' in Rule 11A, therefore, can refer only to a distillery. In the instant case the petition of complaint does not contain an allegation that the molasses which was found on the truck of the petitioner was being moved from the premises of any sugar factory or distillery. Mr. Vinod Chandra appearing for the State has submitted, however, that the fact that the petitioner produced a certificate bearing seal of the office of Excise Sub-Inspector, Majhaulia Sugar Factory, shows that the molasses was being moved from the premises of that factory and, as that fact is mentioned in the petition of complaint, it should be deemed to contain an allegation that the molasses was being moved from the premises of a sugar factory. It is not possible to accept that contention inasmuch as, according to prosecution case itself, the certificate which was produced by the petitioner was, in fact, not issued by the Excise Sub-Inspector, Majhaulia Sugar Factory, and was a faked one. For producing such a certificate the petitioner may have committed another offence but not an offence of contravening Rule 11. Further, there is also nothing in the certificate, which is on the record, to show that the molasses was being moved from the premises of a factory. There is also on the record a letter of the General Manager of the Majhaulia Sugar Factory addressed to the Excise Sub-Inspector, Katihar, which shows that no molasses from the factory was delivered to any one by truck from 26th of October, 1968 till 8th of November, 1968. The petitioner was questioned and his truck with molasses seized by the Excise Sub-Inspector, Katihar, on 29th of October, 1968. It can, therefore, be safely inferred that the petitioner had not moved the molasses which was found on his truck from the premises of the Majhaulia Sugar Factory. That letter further states that Messrs Mohan Lall Kailashpat had taken delivery of 10,000 quintals of molasses from the mill against an order of the Controller dated 3rd of Jane, 1966 and that the delivery to that firm was completed on 26th of June, 1966. The petition of complaint itself states that there is evidence to show that the molasses which was being carried on the track of the petitioner for Baijnath Prasad was sold to the latter by Messrs Mohan Lall Kailashpat. This is also a circumstance showing that the petitioner had not moved the molasses from the premises of a sugar factory or distillery. In the circumstances, on the allegations made in the petition of complaint and the materials available on the record, it cannot be said that the petitioner has contravened Rule 11 or 11A.

4. Mr. Vinod Chandra has further contended that Rule 11 does not restrict merely movement of molasses from the premises of a sugar factory or a distillery but it also restricts "otherwise disposal" of such molasses and, therefore, the petitioner who was found carrying molasses on his truck, which was sold by Messrs Mohan Lall Kailashpat which had moved it from the premises of Majhaulia Sugar Factory, had contravened Rule 11. Presumably, Messrs Mohan Lall Kailashpat may be

guilty of contravening Rule 11 by disposing of molasses which it had obtained and moved from the premises of Majhaulia Sugar Factory, but the petitioner who is a mere truck driver and was merely carrying the molasses cannot be said to have disposed of the molasses. Since Baijnath Prasad is not a petitioner before me, I do not think it necessary to consider and make any observation on the question whether he cad be said to have disposed of the molasses or not. For the foregoing reasons, in my opinion, it is a fit case where prosecution of the petitioner be quashed. The application is accordingly allowed and the proceeding pending before the court below for prosecution of the petitioner is quashed.

