

(1991) 09 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No. 3987 of 1989

Kanhaiya Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 21

Citation : (1992) 1 PLJR 716

Hon'ble Judges : Om Prakash, J;B.N. Sinha, J

Bench : Division Bench

Advocate : Sudhir Kr. Katriar, Rajendra Narain and Shankar Kumar Sinha, for the Appellant; Lala Kilash Bihari, for the Respondent

Final Decision : Allowed

Judgement

B.N. Sinha, J.—This application is directed against the order dated 10th April, 1989 passed by the Special Judge, (E.C. Act), Samastipur in G.R. case No. 1 of 1989 arising out of Samastipur Town P.S. Case No. 522 of 1988 by which he has taken cognizance of the offence u/s 7 of the Essential Commodities Act 1955 (hereinafter to be referred to as the "Act") against the Petitioner and directed him to stand the trial.

2. The facts relevant for the disposal the case may be briefly stated. The Petitioner happens to be the sole proprietor of a Firm own M/s Manoj Coal Company, Baharpur, Samastipur and is a licensee as such per the Bihar Trade Articles (Licences Unication) Order 1984 (hereinafter to be referred as the "Order"). On 31.12.1988, Sri Shyam Kishore Thakur--Opposite party No. 2 entered to the business premises of the Petitioner and held inspection and seized the total quantum of cooking coal and flake coal found in the business premises and two volumes of cash memo of the Firm. The opposite party No. 2 submitted a written report to the Officer Incharge, Samastipur Town Police Station for the

prosecution of the Petitioner u/s 7 of the Act alleging therein that there was contravention of terms and conditions contained IN Clause 5(ii) and Clause 7 of the Licence granted to the Petitioner under the Order. The said written report was treated as the F.I.R. and the case was instituted on the basis thereof u/s 7 of the Act against the Petitioner. The F.I.R along with report is Annxure-1 to this petition.

3. The Police, after usual investigation, submitted charge sheet (Annexure-4) against the Petitioner on the basis of which the cognizance of the case has been taken against the Petitioner which is the impugned order in the present case.

4. The Petitioner filed a petition u/s 482 of the Code of Criminal Procedure 1973 (hereinafter to be referred to as the "Code") before this Court for quashing the impugned order and the prosecution of the Petitioner which was admitted. Thereafter it was listed for hearing before Hon''ble B.N. Agrawal J and it was taken up on 22nd February 1990. The Hon''ble Judge found that the point being raised in the present case is covered by a decision of a Bench of this Court in Ram Chandra Pansari v. The State of Bihar 1988 PLJR 623 but the correctness of that decision has been doubted by a Bench in Criminal Misc. No. 19 of 1984 and the Bench has referred the case for hearing by a larger Bench. It was accordingly ordered that the present case may be put up for hearing on 7th May 1990 awaiting the decision of the Full Bench. Thereafter it was found by the Hon''ble Judge that before Criminal Misc. No. 19 of 1984 could be heard by a larger Bench, the same was withdrawn. Under the circumstances, on 28.6.1990, the Hon''ble Judge ordered for placing this case before a Division Bench Thus, this case has been placed before us.

5. learned Counsel for the Petitioner placing reliance on the case of Ram Chandra Pansari (supra) has submitted that the present case has been initiated on the basis of search and seizure made by opposite party No. 2 who was Deputy Collector cum-Additional Land Acquisition Officer, Samastipur on the alleged date of occurrence and he was not an Officer authorised under Clause 30 of the Order to search and seizure nor there is anything on the record to indicate that he has been empowered by the Government to do so and hence, the search and seizure made by him is illegal and the Petitioner cannot be prosecuted on the basis of that illegal search and seizure. In Criminal Miscellaneous No. 19 of 1984, it was observed by a Bench of this Court as follows:

A learned single Judge, hearing this case, expressed doubt with regard to the law laid down in Ram Chandra Pansari v. The State of Bihar 1988 PLJR 623 and ordered it to be listed before a Division Bench.

Learned Counsel for the State has brought to our notice the case of Narendra Kumar v. The State of Bihar and Ors. 1977 B.B.C.J. 570, in which somehow a contrary view has been taken by a Division Bench of this Court. So, we consider it desirable that this case should be heard by larger Bench.

6. Of course, the case of Ram Chandra Pansari (supra) was with regard to the contravention of Clause 12 of the Bihar Motor Spirit and High Speed Diesel Oil

Licensing Order 1966. But in that case also, search and seizure was made by an Officer not authorised under Clause 12 of that Order and on that basis it was held that the search and seizure was illegal and on the basis of illegal search and seizure, the proceeding cannot be initiated u/s 7 of the Act and hence, the trial was quashed in that case.

7. But as mentioned above, before Criminal Miscellaneous No. 19 of 1984 could be heard by a larger Bench, the same was withdrawn.

8. The facts of the case of Narendra Kumar v. The State of Bihar (supra) were quite different and the search and seizure in that case were challenged on the ground that the Officer conducting the search and making the seizure has not recorded that he had reasons to believe that there was contravention of the provisions of the terms of the terms of Bihar Food Grain Dealers' Licensing Order; and it was held that the search and seizure cannot be held to be illegal on that ground. But it was not challenged in that case that the Officer conducting the search and making the seizure had no power to do so. In the case of Rani Chandra Pansari (supra) the power of the Officer who had conducted the search and made the seizure was challenged on the ground that he was not an Officer empowered or authorised to do so and it has been challenged so in the present case. Hence, it cannot be said that a contrary view has been taken by a Bench of this Court in the case Narendra Kumar (supra).

9. In the present case, the search conducted and the seizure made by opposite party No. 2 was absolutely illegal and without jurisdiction and, hence, it cannot form the basis of initiation of the prosecution against the Petitioner as he was not one of the Officers mentioned in Clause 30 of the Order nor there is anything on the record to indicate that he has been empowered by the Government to CONDUCT search and make seizure. Hence, on this ground, the impugned order taking cognizance of the case against the Petitioner on the basis of that illegal search and seizure cannot be sustained.

10. The impugned order has been also assailed on the ground that the learned court below took cognizance of the case solely on the basis of the charge sheet submitted in the case but the facts mentioned in the charge sheet do not disclose any offence. Hence, the impugned order cannot be sustained. The relevant part of the impugned order reads as follows:

vkjksi i= tks fnukad 1 & 4 & 89 dks bl U;k;ky; dksd bl dk.M esa izkIr gks pqdk gS vkSj vfHkys[k ds lkFk j[kk x;k Fkk] dh voehu fd;k A voyksdu ls vkjksi i= ds dkWye 3 esa vafdr vfHk;qDr dUgS;k lkg ds fo:) /kkjk 1 vko";d oLrq vfHkfu;e ds varxZr izFke n`"VkUr vijk/k curk gS A

Thus, it is evident from the impugned order that the cognizance of the case has been taken by the Special Judge (E.C. Act), Samastipur on the perusal of the charge sheet alone and no other document was perused by him at the time of taking cognizance of the case. The Charge sheet which is Annexure-4 discloses the following facts:

fnukad 3 & 12 & 88 dks Jh ";ke fd"kksj Bkdqj] mi lekg?kkZ lg viu HkwvtZu inkf/ kdkjh] leLrhiqj ds fyf[kr fjiksVZ ds vk/kkj ij uxj Fkkuk dk.M 522 @ 88 vafdr fd;k x;k rFkk bldk vuqla/kku uxj Fkk izHkkjh ds }kjk eq>s lkSaik x;k A vuqla/kku Hkkj xzg.k fd;k A vuqla/kku ls vfHk;qDr Jh dUgS;k lkg ds fo:) /kkjk 7 vko";d oLrq vf/kfu;e ds vUrxZr izR;{k :i ls vfHk;ksx lkfcr gqvk gS A bl dk.M dk vuqla/kku iw.kZ gS vr,o Jh dUgS;k lkg th dkWye 3 esa ntZ gS irk ds lkFk fo:) /kkjk 7 vko";d oLrq vf/kfu;e ds vUrxZr vkjksi i= lefrZr djrk gwa A

But it is apparent from the peruse] of the charge sheet quoted above that it does not contain the facts disclosing any offence. Under the circumstances, taking cognizance of the (Sic) on the basis of such a charge sheet is (Sic) in law in view of the provisions of section of the Act which mentions that no court shall take cognizance of an offence punishable under the Act except on a report in writing of the facts constituting such offence made by a persons who is a public servant defined u/s 21 of the Indian Penal Code. I am (sic) in my view by a Bench decision of this Court in Googan Lal Marwari and Anr. v. The State of Bihar 1978 BBCJ 331. For this person also impugned order cannot be sustained

11. For these reasons, the application is allowed and the order dated 10.4.1989 of the special Judge (E.C. Act), Samastipur in G.R. use No. 1 of 1989 taking cognizance u/s 7 of the Act against the Petitioner on the basis of the charge sheet dated 31.3.1989 is flashed and consequently, the prosecution the Petitioner in that case is also quashed.

Om Prakash, J.

12. I agree.