
(1967) 09 PAT CK 0014

In the Patna High Court

Case No : Criminal Miscellaneous No. 759 of 1967

Lakshmi Narain and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-09-1967

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 7

Citation : (1968) 16 BLJR 119

Hon'ble Judges : K.K. Dutta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.K. Dutta, J.—All the four petitioners are accused in a case u/s 7 of the Essential Commodities Act for which offence cognizance has been taken by the Sub-divisional Magistrate as per order passed on 21-8-67 on the basis of a report submitted by U. Narayan, Additional District Supply Officer, Gaya Sadar. The allegations as made out in this report are shortly to the effect that as directed by the. Sub-Divisional Magistrate the Additional District Supply Officer raised the house of Petitioner No. 1. Lakshmi Narain at Village Bhojpur, tola Chulhai in P.S. Wazirganj on 20-8-67, along with a Magistrate and a Police party and as a result of the search he recovered different quantities of food grains as specified in the report, the total weight. There of being 1092 maunds. The report further shows that during the search and recovery it was alleged by petitioner No. 1 that the other three petitioners were also his share-holders in the grains and that the grains of all of them had been kept together and it could not be possible to demarcate which portion and how much belonged to whom. According to the report, all these petitioners were living in the same house and all of them, except petitioner No. 4, were presented at the time of the search and none of them could point out their respective shares. It was also mentioned that from the appearance it appeared that there was a common godown of these persons.

2. After taking cognizance of the case as against the present petitioners the

learned Sub-divisional Magistrate passed an order on 21-8-67 directing that the seized grains should be put to sale after releasing 78 maunds of paddy, 5 maunds of Kurthi, 55 maunds of gram, 5 maunds of Khesari, 7 maunds of gram Dal and 50 maunds of Masur in favour of the accused persons. The sale proceeds were ordered to be deposited in the Government treasury. Subsequently, on 22-8-67 the present petitioners filed a petition with a prayer that the aforesaid grains should not be sold and all the seized grains should be released in their favour. The Sub-divisional Magistrate thereon passed an order releasing a total quantity of 200 quintals of grains as specified in his order dated 22-8-67 and further directed that the rest of the seized grains should be put to sale through the fair price shop and the sale proceeds should be deposited into the Treasury. The present petition arises out of this order of the Sub Divisional Magistrate and the contention of these petitioners is that this order is altogether illegal and without jurisdiction.

3. In support of this contention reliance was placed on the provisions of Section 3 of the Bihar food grains (Declaration of Stock by Cultivators), order, 1967, which runs as follows:

Every cultivator holding one or more food grains in quantity exceeding 100 quintals, either produced by him from his own lands or acquired by any other means, shall have to declare within 15 days after the end of every quarter ending on the 31st March, the 30th June, the 30th September and 31st December, the stock of food grains held by him on the last day of the quarter in the Form of the schedule II appended to this Order.

It was contended that the petitioners are all cultivators and as such they were entitled to keep at least 100 quintals of food grains each i.e., a total quantity of 400 quintals and as such in any view of the matter the Sub Divisional Magistrate should have passed an order directing the release of at least 400 quintals in their favour out of the total quantity of grains seized. This contention appears to be based upon a complete misconception of the provisions of the aforesaid Section. It is manifest that in view of this Section it is not obligatory upon a cultivator to submit any return in case the total quantity of food- grains held by him does not exceed 100 quintals. In case, however, he holds a total quantity of food grains in excess of 100 quintals and in spite of holding such amount of grains he fails to file returns as, provided by this Section, that would constitute a violation of the provisions of this Section, and therefore, constitute an offence u/s 7 of the Essential Commodities Act. Now Clause (b) of Sub-section (1) of Section 7 of the Essential Commodities Act provides that any property in respect of which an order framed u/s 3 of this Act has been contravened or such part thereof as the court may deem fit, shall be forfeited to the Government. This is, of course, subject to the provision that if the court is of opinion that it is not necessary to direct forfeiture in respect of the whole or as the case may be, any part of the property, it may, for reasons to be recorded, refrain from doing so. Similarly Section 6A of the Act as introduced by the amendment made in the year 1966

provides for confiscation of any food grains etc. which have been seized in pursuance of order issued u/s 3 of the Act. If the Collector is satisfied that there has been a contravention of the order, it would thus appear that the entire food grains which have been seized for violation of the provisions of Section 3 of the Bihar Food Grains (Declaration of Stock by Cultivators) Order, 1967, are liable to be forfeited or confiscated if the case ends in conviction of the petitioners.

In face of these facts the contention that they are entitled to release of at least 100 quintals each, i.e., 400 quintals in all, out of the seized food grains, is evidently quite untenable. In this connection it may also be mentioned that u/s 516-A of the Code of Criminal Procedure the Sub Divisional Magistrate has the powers to pass order for proper custody of the property till the conclusion of the trial and the Section further provides that if the property is subject to speedy or natural decay or if it is otherwise expedient to do so, the court may also order it, to be sold or otherwise disposed of. In the present case, the learned Sub-divisional Magistrate has taken into consideration the present scarcity of food grains and in that view of the matter he has passed an order for sale of only a part of the seized food grains after releasing 200 quintals in favour of the petitioners, although he could have passed such an order with respect to the entire seized grains. That before the position the order can not be said to be either illegal or improper.

4. In this connection reference may also be made to the fact that as shown by the report of the Addl. District Supply Officer, the total quantity of grains recovered and seized amounted to 1092 maunds which is in excess of 400 quintals and as such even if the entire stock belonged to the four petitioners and they were separate from each other as claimed by them and were therefore entitled to keep upto 100 quintals each without submitting any returns, the possession of over 400 quintals by them without submitting any such returns prima facie constitutes an offence u/s 7 of the Essential Commodities Act, being in violation of the aforesaid provisions of the Bihar Food Grains (Declaration of Stock by cultivators) Order, 1967.

It was, however, contended before me that the Addl. District Supply Officer did not actually weigh the seized grains and the amounts of different food grains as mentioned by him are merely based on conjectures. A supplementary affidavit has been filed on behalf of the petitioners to this effect today after the hearing of the present petition. The allegations as made in this affidavit relate to questions of fact which can not be entered into at this stage and it will be open to the petitioners to raise this point at the time the trial of the case is taken up.

5. Considering all these above aspects, I hold that there is no illegality whatsoever in the order as passed by the learned Sub Divisional Magistrate and the application is accordingly dismissed.