
(2000) 12 JH CK 0013

In the Jharkhand High Court

Case No : Criminal WJC No. 2 of 1999 (R) and Cr. Miscellaneous No. 4941/99 (R)

Madhvendra Singh, Tuna Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Bihar Essential Articles (Display of Prices and Stocks) Order, 1977 — Section 6
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 100, 482
Essential Commodities Act, 1955 — Section 7

Citation : (2001) 49 BLJR 209 : (2001) CriLJ 1114 : (2001) AIR Jhar HCR 69 :
(2001) 1 EastCriC 135

Hon'ble Judges : Deoki Nandan Prasad, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Mohit Prakash, JC to G.A. and Ashok Kr. Sinha, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Prasad, J.—Both the cases heard together as they arisen out of the same FIR being Dhanbad (Saraidhela) PS. Case No. 788 of 1998 u/s 7 of the Essential Commodities Act and are being disposed of by this common judgment.

2. Both the applications under Article 226 of the Constitution of India and u/s 482 of the Code of Criminal Procedure have been filed by the petitioners/accused persons for quashing the entire criminal proceedings initiated against the petitioners as well as for quashing the order dated 6.1.1999 passed by the learned Special Judge, Dhanbad in E.C. Act in connection with Saraidhela P.S. Case No. 788 of 1998, whereby the learned Judge took cognizance u/s 7 of the Essential Commodities Act.

3. The brief case of the prosecution as stated that on 28.8.1998, the Petrol Pump of M/s. Sunil Services Petrol Pump, Saraidhela was inspected by the raiding party in pursuance of the direction of the SDO Dhanbad. It was detected that the stock

and price list was not exhibited and the entries made therein were related to dated 8.7.1998, which violates the provisions of Display Order, The petrol pump was also inspected and verified and there was discrepancies. The density of the petrol was found to be incorrect and there was a shortage of 649.16 litres of diesel. Sample of the petrol was also taken in presence of the petitioner, Tuna Singh, who was the Sales man and the sample was sent to the Laboratory through the Supply Inspector and it was found to be defective as the said petrol does not meet specification in respect of colour and destilation test. It is further alleged that after, receipt of the enquiry report as well as the Laboratory test result, this FIR was lodged by Prakhhand Supply Officer, Dhanbad.

4. It is evident that the police investigated into the case and also submitted charge-sheet and after being satisfied from the evidence collected, the learned special Judge took cognizance for the offence u/s 7 of the Essential Commodities Act by order dated 6.1.1999.

5. There was an order in Cr. Misc. No. 4941 of 1999 (R), dated 5.11.1999 that this application will be heard along with CrWJC No. 2/1999 (R). Apparently, both the cases have arisen out of the same FIR.

A counter affidavit has been filed on behalf of the respondent Nos. 2 and 4 stating therein that a team of Officers of Supply Department inspected the petrol pump and found irregularities. The sample of High Speed Petrol was also taken by them, which was found to be adulterated as per the test report of Laboratory and as such this application filed by the petitioners/accused person are fit to be dismissed. It is further alleged- that the Sub-Divisional Officer, Dhanbad being the controlling officer has right to give direction to the officers of Supply Department for inspection. The sanction as required under the proviso of Section 6 of Bihar Essential Articles (Display of Price and Stocks) Order, 1977 has already been made by the Sub-Divisional Officer, Dhanbad, who was not the member of raiding party and as such the sanction order is legal and has been rightly made. The raiding party also found shortage of diesel and there is clear violation of the provisions of Essential Commodities Act and as such the application filed by the petitioner is fit to be dismissed, as the Special Judge has also taken cognizance in the instant case, after being satisfied from the evidence collected by the police during investigation.

6. In the instant case, one supplementary affidavit has also been filed in Cr WJC No. 2 of 1999 (R), by the petitioner enclosing a copy of test report (Annexure I) dated 27.5.1999.

7. The learned counsel appearing on behalf of the petitioner submitted that the sanction order accorded by Sub-Divisional Officer, Dhanbad on 4.11.1998 is not a sanction order but it is a direction for filing the prosecution. It is also submitted that the Sub-Divisional Officer, Dhanbad is not a competent officer for directing his subordinate to file a criminal case. It is further argued that the sanction should have been made for prosecution against individual responsible person but

the said sanction order dated 4.11.1998 is of general and vague nature as the prosecution cannot be launched against the proprietor of firm, if no separate sanction for prosecution against him has been obtained. He also relied upon a case reported in 1988 PLR 500 (Srinivas Sultania v. State of Bihar (DB).

It is further argued that there was no shortage of the diesel as alleged, as well as, the sample of the petrol which was handed over to the Sales man, namely, Tuna Singh, was also tested on the basis of an order passed by the learned Special Judge and it was found upto mark (Annexure I of the Supp. Affidavit). It is further argued that the storage and seizure has not been made by the competent authority as the Inspector of Weights and Measures, Dhanbad was not authorised to collect the sample or seize the petrol and as such the search and seizure is illegal and due to which the whole prosecution case is fit to be quashed. It is further argued that Prakhand Supply Officer is not authorised to make search or seizure which is also illegal and improper, as a result of which the whole prosecution case including the order taking cognizance is fit to be quashed.

8. On the other hand, Mr. Mohit Prakash, J.C. to G.A. submitted that there is no illegality in registering the FIR in the instant case, as the raiding party inspected the petrol pump in pursuance of the direction of Sub-Divisional Officer, Dhanbad and found several irregularities including the said petrol was found to be adulterated as it does not made specification in respect of colour and destillation test. It is further argued that the SDO, Dhanbad is the competent authority to accord sanction and he had accorded sanction accordingly for launching prosecution by order dated 4.11.1998- It is also argued that the police investigated into the case and then finding material, submitted charge-sheet in this case as well as Special Judge, Dhanbad also took cognizance in the case after being satisfied with the evidence collected by the police. It is also argued that the Prakhand Supply Officer is competent authority to search and seizure, the petrol/diesel as provided u/s 7 of the Motor Spirit and High Speed Diesel (Prevention of Malpractice in Supply and Distribution) Order, 1990 and the said order was in existent at the relevant time as the FIR was lodged on 4.11.1998, whereas the new Order, 1998 came into force from 28th December, 1998. It is further argued that the SDO, Dhanbad was not the member of the raiding party and as such he has rightly accorded the sanction in the instant case and there was also shortage of diesel found at the relevant time of inspection. It is further argued that the alleged test was made on behalf of the petitioners being Annexure 1 is also afterthought as there is nothing to show as to who was Mr. S.K. Marandi, who had drawn the sample whereas test was made on 27.5.99 and sample was drawn and handed over on 28.8.1998 as well as this matter, even if test is made on behalf of the petitioner, is subject to consideration at the time of trial and the learned Special Judge has rightly took cognizance in the instant case as well as the entire criminal proceeding cannot be thrown away at this-initial stage when admittedly adulteration as well as shortage of diesel was found. The learned counsel for the State also relied upon a case reported in Rajesh Bajaj Vs. State NCT of Delhi and Others, .

9. From perusal of the written report submitted by the Prakhand Supply Officer, Dhanbad on the basis of which FIR was registered, it is very clear that on the order of the Sub-Divisional Officer, Dhanbad, a raiding party consisting of Prakhand Supply Officers including the Supply Inspector raided M/s. Sunil Service Petrol Pump, Saraidhela and found shortage of 649.16 litres of diesel. There was also no display of stock at the relevant time as required under the provisions of Bihar Essential Articles (Display of Price and Stocks) Order, 1977. The sample of the petrol was also obtained in presence of the Sales man, the petitioner, Tuna Singh, which was sent to the Manager, Indian Oil Corporation Ltd., Laboratory Sipra at Punpun (Patna) and the report, which was received after test, indicates that the said petrol does not meet specification in respect of colour and distillation test and on the basis of which the FIR was registered. Thus, it is clear from the FIR itself that there is a specific and definite allegations about shortage of diesel as well as adulteration in petrol. It further appears that the Sub-Divisional Officer, Dhanbad being the competent authority also directed to launch prosecution against the Management of the said petrol pump (Annexure 2). It is also obvious that prior to the institution of the case, an enquiry was held by the Prakhand Supply Officer, Govindpur and after being satisfied with the enquiry report about irregularities, the instant FIR was lodged. It, is true that the petitioner also got the petrol tested at the belated stage dated 27.5.1999 by which it was pointed that Indian Oil Company did not find any irregularity in the sample so collected by the informant. But Indian Oil Corporation Ltd., Laboratory Sipra at Punpun found adulteration in the said sample of petrol which is duly described in the written report and the test was made at the early point of time when adulteration was found. However, these matters are to be considered and thrashed out finally during the trial on the basis of evidence collected from both sides.

10. It is evident that the Sub-Divisional Officer, Dhanbad was not the member of the raiding party and as such he accorded the sanction for launching prosecution of this" case. No doubt, separate sanction for prosecution must be made against each defaulter/wrong doer. A sanction against firm cannot be treated as a sanction for prosecution of its owner. But, shortage of diesel and adulteration in petrol were also found during the raid. Thus, it is apparent that the allegations as made out in the FIR constitute the offence for prosecution u/s 7 of the Essential Commodities Act.

11. Section 7 of the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990 reads as follows : .

"7. Power of search and seizure.--(1) Any Officer of the State Government, not below the rank of an Inspector in the Department of Food and Civil Supplies, duly authorised and notified in the Official Gazetted by such State Government, or any officer of an Oil Company not below the rank of a Sales Officer may, with a view to securing compliance with the provisions of this Order, or the purpose of satisfying himself that this order or any order made thereunder has been

complied with,--

(i) enter and search any place or premises being made use of of suspected to be made use of in the business of the dealer, transporter, consumer or any other person who is an employee or agent of such dealer/transporter/consumer with respect to which there is reason to believe that the provision of this order have been/are being or are about to be contravened;

(ii) stop and search any person or vehicle or receptacle used or intended to be used for the movement of the product;

(iii) inspect any book of accounts or other documents or any stock of the product used or suspected to be in the business of the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer;

(iv) take samples of the product and/or seize any of the stocks of the product which the officer has reason to believe has been or is being or is about to be used in contravention of this order and thereafter take or authorise the taking of all measures necessary for securing the production of stocks/items so seized before the Collector having jurisdiction under the provisions of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.

(2) While exercising the power of seizure provided under Sub-clause (4), the authorised officer shall record in writing the reason for doing so, a copy of which shall be given to dealer, transporter, consumer or any other concerned person.

(3) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, as far as may be, apply to searches and seizures under this order."

12. It has clearly been described that any Officer of the State Government, not below the rank of an Inspector in the Department of Food and Civil Supplies is entitled and has got power of search and seizure.

13. Likewise, in the instant case, Prakhanda Supply Officer along with other officers made search and seizure of petrol in question as well as the FIR was lodged by Prakhanda Supply Officer, Dhanbad who is also an officer of Food and Civil Supplies Department. Hence, there appears no illegality in the search or seizure made by the said officers who are duly authorised for the search and seizure.

14. It is well settled that extraordinary power under Article 226 of the Constitution or u/s 482 of the Code of Criminal Procedure, the inherent power for quashing of the criminal proceeding should be exercised sparingly and with circumspection. If on the basis of the allegation, a prima facie case is made out then this Court should be loath to quash the entire proceeding. This Court is also not justified in judging the probabilities, reliabilities or genuineness of the

allegation made in the FIR at this initial stage when apparently allegations made in the FIR, prima facie, constitute the offence.

15. Having regard to the facts and circumstances of the case, in my view, there appears no illegality or infirmity in taking cognizance by the Court below. The allegations as made out in the FIR, prima facie, constitute the offence. Hence, there appears no merit in these applications which are liable to be dismissed.

16. In the result, I do not find any merit in both the applications, Cr WJC No. 2 of 1999 (R) and Cr. Misc. No. 4941 of 1999 (R), which are, hereby, dismissed.

However, the petitioners may raise all those points before the trial Court at the appropriate stage of the case.

17. Writ dismissed.