(1998) 07 PAT CK 0040

In the Patna High Court

Case No : Cr. Misc. No. 5533 of 1993

M.S. Sharma and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Citation : (1998) 07 PAT CK 0040

Judgement

R.N. Sahay, J.—Petitioner No. 1 is the Executive President, and Petitioner No. 2 is Executive Vice President of New Swadeshi Sugar Mills, Oudh Sugar Mills Ltd. Narkatiaganj in the district of West Cham-paran.

2. By Memo No. 170 dated 19.1.1993 Excise Superintendent, Narkatiaganj, West Champaran filed written complaint in the court of Chief Judicial Magistrate, Bettiah alleging that the Petitioners had wasted 162 quintals of molasses, thereby State suffered loss of excise duty of Rs. 1, 46, 160/-. This fact had been noticed in the report of the Accountant General of the Year 1991-92. The Management was therefore liable to pay the loss of revenue which was caused due to wastage of molasses. It was further alleged that it was the duty of the management of the Sugar Milis to store molasses in safe position under the supervision of Controller of Molasses. It is alleged that the Excise Superintendent, Bettiah, West Champaran had also issued notice dated 29.4.1992 and instructed the management of the factory to deposit Rs. 1,46,160/- in the Government treasury for loss of 162.40 quintals of molasses but the management of the factory did not take any action. That is why, complaint was filed for punishing the Petitioners u/s 10 of Mlasses Control Act, 1947. Audit report has been appended to the complaint to show that under Bihar Mlasses (Control) Act, 1947 and rules framed thereunder, there is no provision in the sugar factories as well as distilleries of wastage of molasses. The management informed the District Excise Officer in course of storage of molasses and the wastage was due to foaming and frothing etc. Rule 8 of Bihar Molasses (Control) Rules, 1955 also provides necessary safeguard against any leakage and any other accident likely to affect the molasses stored in the tank.

3. Learned Counsel for the Petitioners contended that no offence can be said to be made out on the allegation made in the complaint petition. Total molasses produced by the factory during 1991-92 was 1,11,174 quintals. Safe storage capacity of the factory for molasses is 69718 quintals which is more than the required capacity. In fact, no molasses was allotted in that period. The Controller of Molasses-cum-Excise Commissioner should have taken steps to see that during the crushing season sufficient quantity of molasses is allotted to different distilleries but he has failed to discharge his legal obligation as a result substantial quantity of molasses remained for the whole year. Last delivery of molasses was effected on 28.9.1991. When the management came to learn that there is shortage of quantity to the tune of 162.40 quintals, the matter was immediately reported to the Excise Commissioner and a copy of which was also given to Excise Superintendent, Bettiah. It is contended that the loss of molasses will be less than 1% of the total production of molasses for the said year which is negligible. It is submitted that loss of molasses is natural effeet which was due to lapse of time. It is due to delay in allotment of molasses by Controller of molasses and as a result the molasses was to be kept for a long period. It was contended that the molasses when stored for long time shows shortage due to evaporation, seapage, auto combustion and other various reasons. The Central Excise Department on a number of occasions accepted shortage to the extent of 2% which is apparent from Annexure-3. Annexure 4 is the order of the Excise Commissioner passed in 1978 condoning the losses of molasses to the tune of 1233.80 quintals.

4. Rule 8 of the Bihar Molasses (Control) Rules, 1955 reads as follows:

Every owner, occupier or Manager of a sugar factory shall keep covered storage tank for the safe storage of the entire quantity of molasses to be produced. They shall provide necessary safeguards against leakage, or any other accident likely to affect the quality of molasses stored in the tank.

There is no allegation in the complaint petition that the owner, occupier or the Manager of the sugar factory has not kept the covered storage tank for the safe storage of the molasses. Section 10 of the Molasses (Control) Act provides that if any person contravenes any provision of, or fails to comply with any order or direction issued under this Act or the rules made thereunder, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both. Loss of molasses or negligence otherwise is not an offence under the Act and as such the complaint petition is not maintanable. It is highlighted that the State Revenue suffered loss. There is no allegation that the factory had not taken adequate safeguards as required under the Act or the Rules for storage of molasses.

5. Mr. Y.V. Giri, learned senior counsel for the Petitioners has referred to Division Bench decision of this Court in Industrial Corporation Pvt. Ltd. and etc. Vs. State of Bihar and Others, The question in this case was whether penalty can be

imposed for the loss or wastage of molasses by licensees, manufacturers of spirit. It was held by the Division Bench that merely on the basis of audit report levy of penalty is illegal. It is pertinent to quote para-21 of the report:

When the Respondents say that particular quantity of country spirit should be produced from molasses supplied, they are talking of certain fixed parameters and conditions. It may be that the Petitioners are unable to meet those parameters. The production of the spirit in distillery may be on that account uneconomical but it cannot be said that there has been wastage or diversion of molasses inviting penalty under the Molasses Act. The Respondents admit that spirit manufactured from molasses cannot be subject to excise duty by the State under the Excise Act. It is. therefore, too much to assume that because of shortfall of production of spirit there would be consequent shortfall of manufacture of counrty liquor causing loss of revenue to the State. u/s 13 of the Excise Act it would be only for intoxicant that the licence should be required. Can it be said that a person to whom licence has been granted u/s 13 of the Act and to whom molasses have also been supplied is bound to manufacture country liquor? We think not. In that case there could be misuse of molasses entailing penalty, if any, uncer the Molasses Act and the Rules framed thereunder. Section 15 of the Excise Act talks of establishment of distillery, breweries or warehouses for manufacture and storage of liquor but that to our mind has to be read down to mean for the manufacture and storage of intoxicant. Chapter. V. of the Excise Act gives the power to the State Government to impose excise duty and ways of levying such duty. u/s 17 of Chapter IV of the Act relating to manufacture, possession and sale of intoxicant the duty is payable at the time of removal of intoxicant. It is not the case of the Respondents that any intoxicant has been removed without payment of duty. As noted above, it is difficult to comprehend the stand of the Respondents for levy of penal duty or penalty on the ground that there has been less production of country liquor from the molasses supplied to the Petitioner. To our mind, provisions of Act as are inapplicable in the proset case. Again as noted above, we are unable to find any provision under the Molasses Act or the Rules framed thereunder as to how impunged duty or penalty could bo levied under those provisions even though we may assume that there has been less production of spirit from the molasses and then from the spirit to country liquor as per the parameters prescribed. The remedy for breach of the provisions of the Molasses Act or the Rules has to be found thereunder which are not there for the purpose of levying penal duty or penalty in the circumstances of the cases before us.

6. The ratio of this case can very well be applied to the facts of the present case. In the present case also cognizance was taken under Sections 10, 11 and 11-A of the Bihar Molasses (Control) Act. There is no violation of these provisions and the order of cognizance is liable to be quashed.

7. This application is, therefore, allowed and the order taking cognizance and the entire proceeding against the Petitioner is quashed.