

(1989) 12 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 1004 of 1983 (R)

Mukesh Agrawala @ and Mahesh Agrawala @ and Mukesh
Kumar Agrawala

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-12-1989

Acts Referred:

Bihar Coal Control Act — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7

Citation : (1990) 1 PLJR 428

Hon'ble Judges : Surendra Narain Jha, J

Bench : Single Bench

Advocate : Jai Prakash, for the Appellant; G.P. Roy, for the Respondent

Final Decision : Allowed

Judgement

Surendra Narain Jha, J.—This application u/s 482 of the Code of Criminal Procedure has been filed on behalf of the. Petitioner for quashing the order of cognizance dated 23 12 82 taken against him u/s 7 of the Essential Commodities Act (for short "the E.C. Act") and all subsequent proceedings in G.R. Case No. 170/80.

2. The facts which led to the filing of this application, in short, are that on 22.10.79 at about 9 00 A.M. the informant along with ran ding party raided the business premises of the Petitioner who deals in middling. It is alleged that at the time of raid, one Munshi at the coal depot was present and he was asked to produce the coal licence but he replied that the same is with the Petitioner who is the proprietor of the aforesaid depot. It was further alleged that a Display Board was hanging in the business premises but was not properly filled up. So; there was also violation of the provisions of Bihar Essential Articles (Prices and Stock) Display Order (for short the Display Order).

3. Learned Counsel appearing on behalf of the Petitioner has submitted that the

Bihar Coal Control Order is not applicable in respect of middling and, therefore, the criminal prosecution launched against the Petitioner is wholly Without jurisdiction and cannot be sustained in law.

4. Section 2 of the Bihar Coal Control Order defines the coal which means coal received in the State of Bihar otherwise than against the Central Government quota and includes coke.

5. From the F.I.R. it appears that the Petitioner was found in possession of 774 M. tons of middlings which was seized by the raiding party. It was submitted by the learned Counsel that the middling is nothing but almost like slurry, waste product of coal washery. Slurry is not coal or derivative of coal and it is not covered by the definition of coal in the Bihar Coal Control Order or Bihar Trade Articles (Licences Unification) Order, 1984 (for short the Unification Order,) as it has already been decided in the case of Waste Products Reclaimer P. (Ltd.) and Ors. v. Coal Controller and of Ors. 1986 B.L.T. (Rep.) 177 Pat : 1987 PLJR 263. According to learned Counsel, middling is also a derivative of coal and it is not covered by the definition of coal which has been held in number of cases, namely, Cr. Mise. NO. 56/83 (R), Cr. Misc. No. 67/83 (R), Cr. Misc. 75/83 (R) disposed of on 24.3.87 and Cr. Misc. No. 31/83 (R) disposed of on 30.3.87. In all the aforementioned cases, it has been decided that the Bihar Coal Control Order or the Unification Order is not application so far as middling is concerned because in all those cases the Petitioners who were prosecuted, were dealing in middling.

6. It is relevant to mention here that in the case of Waste Products Reclaimer P. (Ltd.) and Ors. v. Coal Controller and Ors.(supra), it has been held that the industrial effluent which comes out of coal washery during the process of washing of coal consisting of water, mud, oily and chemical substance, fine particles of coal and carbonaceous materials is commonly called slurry but this is not collected for the purpose of converting into briquettes. The true nature of slurry is that it is a residue, reject or waste of an industrial process consisting of mud, ash, oily substance, water and carbonaceous ingredients. So far as middling is concerned, in my view, it will also come within the category of industrial effluent which comes out of coal washery. Therefore, more or less, it is the rejected out-come of the coal washing process. In that view of the matter, it will not come within the purview of the definition of coal as defined under the Bihar Coal Control Order, 1956 or the Unification Order.

7. In the case of Waste Products Relcaimer P. (Ltd.) and Ors. v. Coal Controller and Ors. (supra) it has also been held that coal has not been defined in the Display Order but in schedule-I to that Order, trade article mentioned is "Coal including soft coke." Since slurry is not coal nor it is soft coke, the Display Order shall have no application to the business in blurry or middling.

8. In that view of the matter, any prosecution for violation of Display Order does not arise at all in the instant case against the Petitioner since middling is not covered under the Display Order.

9. For the reasons stated above, the criminal prosecution of the Petitioner appears to be wholly without jurisdiction and cannot be sustained in law.

10. In the result, this application is allowed. The criminal prosecution against the Petitioner is hereby quashed.