

(2011) 09 GAU CK 0005
In the Gauhati High Court
Case No : Criminal Appeal No. 92 of 2004

Nirod Nath	Vs	APPELLANT
State of Assam		RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Essential Commodities Act, 1955 — Section 7, 7

Citation : (2011) 5 GLT 576

Hon'ble Judges : C.R.Sarma, J

Bench : Single Bench

Advocate : Mr. T.J. Mahanata, Ms. P. Bhattacharjee & Mr. K. K.Das, Advocate appeared for the Respondent: Mr. B.S. Sinha, Addl. PP., Advocates appearing for Parties

Judgement

C.R. Sarma, J.—The judgment and order, dated 08.03.2004, "passed by the learned Special Judge, Cachar, Silchar, in Special Case No. 34/2000, under Section 7 of the Essential Commodities Act, is in challenge in this appeal.

2. By the impugned judgment and order, the learned Special Judge convicted the appellant for the offence, under Section 7 of the Essential Commodities Act (hereinafter called "the E.C. Act") and sentenced him to suffer rigorous imprisonment for six years and pay fine of Rs. 50,000/, in default suffer rigorous imprisonment for another period of one year.

Aggrieved by the said judgment and order of conviction and sentence, the convict, as appellant, has come up with this appeal under Section 374 (2) of the Code of Criminal Procedure (hereinafter called "CrPC.")

3. Heard Mr. T. J. Mahanta, learned counsel, appearing for the appellant. Also heard Mr. B.S.Sinha, learned Addl.Public Prosecutor, appearing for the Staterespondent.

4. The prosecution case, in brief, may be stated as follows:

On 28.07.2000, at about 8.30 p.m., Sri Shyamal Prasad Saikia, Addl. S.P. (HQ), Silchar (PW 3), on the basis of a secret information regarding concealment of some K.

Oil and diesel etc. in the house of one Sri Nirod Chandra Nath @ Bolo Nath (hereinafter called "the appellant"), rushed to the house of the appellant along with Sri S.B. Sinha, S.L of Silchar Traffic Branch (PW 7) and other police personnal. Thereafter, he conducted search in the house of the appellant and found 60 barrels of diesel and 60 barrels of blue dyed K.oil (about 200 litres in each of the barrels). At the time of the said search, the appellant was not available in his house. PW 3 informed the matter to Sri Hrishikesh Choudhury, S.I. of Food & Civil Supplies, Silchar (PW 8) and instructed him to lodge a FIR and make seizure of the items aforesaid. Accordingly, Sri Nihar Ranjan Nath, S.I. of Police, who was the O.C. of Dholai P.S. at relevant time, lodged the FIR and seized S.K. Oil and diesel aforesaid, vide Ext. 1, from the house of the appellant.

5. On receipt of the FIR, police registered a case under Section 7 of the E.C. Act and launched investigation into the matter. At the close of investigation, police submitted charge sheet against the appellant, under Section 7 of the E.C. Act.

6. The learned Special Judge, Cachar, Silchar, framed charge against the appellant, under Section 7(1) (A) (ii) of the E.C. Act. The charges were read over and explained to the appellant, to which he pleaded not guilty and claimed to be tried.

7. In order to prove its case, prosecution examined as many as 9 witnesses, including the Invstigating Officer. At the close of examination of the prosecution witnesses, the accused person was examined under Section 313 CrPC. He denied the allegations, brought against him and declined to adduce defence evidence.

8. The learned Special Judge, considering the evidence on record, found the appellant guilty of the offence charged under Section 7 of the E.G. Act and accordingly, convicted and sentenced him, as indicated above.

9. Mr. T. J. Mahanta, learned counsel, appearing for the appellant, drawing the attention of this Court to the provisions of Section 7 and Section 2(a)(b)(bb) (bbb) of the Petroleum Act, 1934 (hereinafter called "the Act, 1934"), has submitted that, there is no evidence on record to show that the seized items were petroleum products belonging to the prohibited category. The learned counsel further submitted, that the informant, who lodged the FIR, as complainant, himself investigated the matter and submitted the charge sheet and as such the entire investigation being illegal, the trial got vitiated.

10. Having heard the learned counsel for both the parties, I have carefully perused the evidence on record.

11. PW 3, Sri Shyamal Prasad Saikia, who initially made the search and detected the S.K. oil and diesel aforesaid, stated that, he instructed Sri Nihar Ranjan Nath i.e. PW 9 to lodge the FIR and seized the S.K. oil and diesel aforesaid.

Accordingly, PW 9 made the seizure, vide Ext, 1 and lodged the FIR. He has exhibited the FIR, lodged by him as Ext. 2.

12. In the FIR (Ext. 2), PW 9 has stated that 60 Nos. of barrels (200 litres capacity) containing liquid, suspected to be S.K. oil and 60 Nos. barrels (200 litres capacity) containing liquid suspected to be diesel, were kept by the appellant for the purpose of sale at higher rate in the market and that he had seized the said items. Therefore, from the said FIR, it appears that PW 9 had suspected that the seized items were S.K.oil and diesel. There is no evidence, on record, to show that the said items, suspected to be K.oil and Diesel, were proved to be K.oil and Diesel by adducing cogent evidence, more particularly by proving any report of chemical examination.

13. In order to hold a person guilty of keeping K.oil, diesel etc. illegally, it must be proved that the seized item was petroleum products. Admittedly, the seized items were not sent to the laboratory for chemical examination for the purpose of ascertaining as to whether those were S.K.oil and diesel. Therefore, in the absence of any chemical examination or expert opinion, it can't be held that the seized items were essential commodities, as defined by the E.G. Act. Section 2 (a) (b)(bb)(bbb) and Section 7 of the Petroleum Act, 1934, read as follows:

"2(a) "petroleum" means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon;

(b) "petroleum Class A" means petroleum having a flashpoint below twentythree degree centigrade;

(bb) "petroleum Class B" means petroleum having a flashpoint of twentythree degrees centigrade and above but below sixtyfive degree centigrade;

(bbb) "petroleum Class C" means petroleum having a flashpoint of sixtyfive degrees centigrade and above but below ninetythree degree centigrade."

"7. No licence needed for transport or storage of limited quantities of petroleum Class B or petroleum Class C.

Not with standing anything contained in this Chapter, a person need not obtain a licence for the transport or storage of

(i) petroleum Class B if the total quantity in his possession at any one place does not exceed two thousand and five hundred litres and none of it is contained in a receptacle exceeding one thousand litres in capacity; or

(ii) petroleum Class C if the total quantity in his possession at any one place does not exceed fortyfive thousand litres and such petroleum is transported or stored in accordance with the rules made under Section 4."

14. As provided by Section 7 and Section 2 (a) (b)(hb)(bbb) of the Act, 1934, certain categories of petroleum products can't be kept in possession, beyond the

maximum permissible quantity. In the present case, the prosecution failed to prove that the seized items belonged to petroleum products and that storage of the same was not permissible, without permit issued by the appropriate authority.

15. Sri Nihar Ranjan Nath, S.I. of Police, who deposed as PW 9 lodged the FIR (Ext.12), as complainant. He made the seizure of S.K. oil and diesel aforesaid. He admitted that he had submitted the charge sheet, after obtaining necessary prosecution sanction.

From the above, it is clear that the police officer, who lodged the FIR, as complainant, himself conducted the investigation and submitted the charge sheet.

16. A Division Bench of this Court, in the case of Dipak Nath & Anr. Vs. State of Tripura, reported in 2009 (2) GLT 40, referring to the case of Megha Singh Vs. State of Haryana, reported in AIR 1995 SC 2339, has observed that:

"this practice of conducting investigation by the informant is very unusual and unknown to the criminal investigation and it goes against the principle of impartiality as regards the investigation is concerned."

17. The Supreme Court, in the case of Megha Singh (supra), noticed that Sri Chand, Head Constable arrested the accused and on search being conducted by him, a pistol and the cartridges were recovered from the accused and on the basis of his complaint, a formal first information report was lodged and the case was initiated. The Supreme Court, in the said case, observed that:

"the Head Constable being the complainant should not have proceeded with the investigation of the case and such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation." The Supreme Court allowed the appeal and set aside the conviction and sentence passed against the appellant.

18. In view of the above principle, in the present case, the investigation, conducted by the informant himself, can't be treated as impartial investigation and therefore, the trial as well as the conviction, recorded on the basis of such illegal investigation, suffers from legal infirmity and impediment. It need not be reiterated here that justice should not only be done but it must appear to have been done. The personal liability of any person can't be taken without due process of law. Therefore, the procedure, followed, must not suffer from biasness. No action can stand the scrutiny of law of the procedure, adopted, is found to be bias. In the case at hand, as the complainant has conducted the investigation and submitted the charge sheet, the entire procedure, resulting submission of charge sheet, can't be held to be free from biasness. Therefore, as the investigation does not appear to be impartial, the conviction based on such investigation can't be allowed to stand in the eye of law.

19. In view of the above discussion, I find sufficient merit in this appeal, requiring interference with the impugned judgment and order of conviction and sentence.

20. Accordingly, the appeal is allowed. The impugned conviction and sentence recorded against the appellant is set aside. Consequently, the appellant is acquitted and set at liberty. His bail bond shall stand discharged.

Return the Lower Court Records.