

(1991) 07 PAT CK 0007

In the Patna High Court

Case No : Criminal Miscellaneous No. 5361 of 1986

Om Prakash

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1991) 39 BLJR 1399 : (1992) 2 PLJR 709

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.N. Agrawal, J.—This application has been filed for quashing the prosecution of the sole petitioner u/s 7 of the Essential Com modities Act (hereinafter to be referred to as "the Act") violation of the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter to be referred to as "Licensing Order") and the Bihar Rice and Paddy Procurement Order, 1984 hereinafter to be referred to as "Levy Order)."

2. So far the prosecution of the petitioner for contravention of the provisions of Licensing Order is concerned, in my view, the prosecution cannot be allowed to continue as the occurrence is said to have taken place on 7-1-1985, an which date, according to the catena of decisions of this Court, this order was not workable in view of the fact that storage limit was not prescribed and the Order became operative for the first time on 17-10-1985. Therefore, the prosecution of the petitioner for violation of the Licensing Order is fully misconceived.

3. So far the prosecution of the petitioner for contravention of the Levy Order is concerned, it may be stated that the said order relates to procurement of levy of the stock of paddy and rice. Clause 2(h) of the Order defines the expression "rice and paddy" to mean rice and paddy of varieties described in Sehedules I and 11 respectively, appended to the Levy Order. In Schedules I and II different variety

of paddy and rice has been enumerated. In the present case, the discrepancy alleged is with regard to the stock of Chura alone. From a bare perusal of the Levy Order, it would appear that the same relates to procurement of Levy of the stock of paddy and rice. Neither Section 2(h) nor Schedules I and II of the Levy Order nor any other provision in the Levy Order shows that the order shall apply to the product of paddy any rice. In the Licensing Order u/s 2(g) the expression "food-drains" has been defined and the "foodgrains" means any one or more of the foodgrains as specified in part "A" of Schedule I of the Order and includes all products of such foodgrains other than hush and bran. So far the Licensing Order is concerned, Chura may come within the expression foodgrains being product of rice and paddy. So far the Levy Order is concerned, the definition is entirely different. It may be stated that even in the Bihar Foodgrains Dealers' Licensing Order, 1967, "foodgrains" has been defined under Clause 2(a) of the Order to mean any one or more of the foodgrains specified in Schedule I of the Order and includes products of such foodgrains. It appears that in the Levy Order specifically the State Government while issuing the Order was conscious of the fact that the same will not apply to Chura because the purpose of issuing the Order was to charge levy upon the stock of rice and paddy, and, therefore, in the definition clause that is, Clause 2(h), it has not been mentioned that the expression "paddy rice" would mean its product also.

4. In view of the aforesaid discussions, I am clearly of the view that the Levy Order shall have no application to Chura. For the foregoing reasons, I am of the view that the petitioner cannot be said to have contravened the provisions of either the Licensing Order or the Levy order so as to make him liable u/s 7 of the Act and consequently, his prosecution is fit to be quashed.

5. It appears that the prosecution has been launched against several other accused persons besides the petitioner, but only the petitioner has come to this Court for quashing the prosecution. It appears that from the possession of other accused persons, who are not petitioners before this Court, stock of rice was also seized. Therefore, I may clarify that the accused persons other than the petitioner will not be entitled to take benefit of order.

6. In the result, this application is allowed and the prosecution of the petitioner is hereby quashed.