
(2010) 01 JH CK 0088
In the Jharkhand High Court

Ram Lakhan Prasad Keshri

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2010) 01 JH CK 0088

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Through this writ application extraordinary jurisdiction of this Court as enshrined under Article 226 of the Constitution of India has been invoked for quashing the entire criminal proceeding of Chauparan P.S. case No. 24 of 2007 (G.R. No. 661 of 2007) lodged u/s 7 of the Essential Commodities Act and also under Sections 406 and 420 of the Indian Penal Code against the petitioner.

2. It is the case of the prosecution that the informant Ajay Kumar Singh, Block Supply Officer, Chauparan on the direction of the Sub-divisional Officer, Barhi, raided the residential house of the petitioner and did find 10.45 quintals of wheat and 29.45 quintals of rice stored though the same had been lifted from the go-down of State Food Corporation, Chauparan for its distribution among the beneficiaries under the scheme of B.P.L.

3. Further case is that the petitioner had lifted the said food grains from the go-down of State Food Corporation for bringing it to its business place situated in Bhaghar Gram Panchayat but in stead of taking it to that place, the petitioner got it stored in his residential house, obviously for the purpose of selling it in the black market. On the said allegation, first information report was lodged which was instituted as Chauparan P.S. case No. 24 of 2007 u/s 7 of the Essential.

Commodities Act which through this writ application has been sought to be quashed.

4. Learned Counsel appearing for the petitioner submits that the prosecution has been launched as the petitioner after lifting the food grains from the go-down of State Food Corporation did not bring it at his business place, rather it was brought to his residential place which was taken by the informant to have been kept over there for its selling in the black market but the assumption drawn by the informant would not make the petitioner liable to be prosecuted u/s 7 of the Essential Commodities Act, as nothing is there to show that the petitioner had indulged himself in selling the food grains in black market, rather the fact is that after lifting it at 5 P.M. on 28.2.2007 from the State Food Corporation go-down, it was not possible for the petitioner to take it at the business place as it is infested with the M.C.C. activists and in these circumstances, no option was left with the petitioner but to store it in his residential house so that it be transported in the next morning to the business place. In this background, the petitioner cannot be said to have any mens rea for committing any offence whatsoever either under the Essential Commodities Act or under the Indian Penal Code. Moreover, the prosecution has not come forward to say as to the provision of which control order has been contravened and in absence of such fact, the prosecution of the petitioner under the Essential Commodities Act is quite bad and at the same time, the offence either u/s 406 or 420 of the Indian Penal Code never gets attracted even if the entire allegations are taken on its face value to be true and hence, the entire prosecution is fit to be set aside.

5. Having heard learned Counsel appearing for the parties and on perusal of the first Information report, it does appear that the prosecution has not come forward to say that as to the provision of which control order has been violated. Even at the time of hearing it could not be pointed out. That apart, I do find that as per the version of the informant, as has been recorded in the first information report, that the dealer including the petitioner was instructed to take the food grain to business place so that it be distributed among the beneficiaries on the next day, i.e. 1.3.2007 but the raid was laid in the night on 28.2.2007 in the residential house from where the food grains were recovered but the informant forgot to get himself reminded that the dealer was supposed to distribute it on 1.3.2007 as per his instruction. Had the petitioner been found in possession of the food grains in the night of 1.3.2007, the matter would have been different. Under these situations, the petitioner can hardly be said to have contravened the provision of any of the control order issued u/s 3 of the Essential Commodities Act and as such, the prosecution u/s 7 of the Essential Commodities Act would amount to the abuse of the process of law.

6. Further I do find that if the entire allegations are taken to be true in its entirety, it does not constitute offence either u/s 406 or 420 of the Indian Penal Code.

7. Thus, the prosecution is nothing but an abuse of the process of law, rigour of

which the petitioner cannot be allowed to suffer and hence, the entire proceeding of Chauaparan P.S. case No. 24 of 2007 instituted u/s 7 of the Essential Commodities Act and under Sections 406 and 420 of the Indian Penal Code is hereby quashed.

In the result, this application is allowed.