
(2013) 07 JH CK 0176

In the Jharkhand High Court

Case No : Criminal Rev. No. 388 of 2013

Ramchandra Saw @ Ramchandra Sao @ Ramchandra Prasad	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6A(6), 6B, 7
Penal Code, 1860 (IPC) — Section 120B, 414, 420

Citation : (2013) 3 JLJR 650

Hon'ble Judges : H.C. Mishra, J

Bench : Single Bench

Advocate : Rajan Raj, for the Appellant; L. Sahay, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioner as also learned counsel for the State. The petitioner is aggrieved by the order dated 25.04.2013 passed by the learned Chief Judicial Magistrate, Hazaribag, in Ramgarh P.S. Case No. 75 of 2013, whereby the application filed by the petitioner for release of three tankers bearing registration Nos. WB-03B-1732, JH-02T-7585 and JH-02T-7586, has been rejected by the Court below, on the basis of the report submitted by the Investigating Officer that all the three tankers were subject matter of confiscation and accordingly, they may not be released.

2. It appears from the impugned order that the Court below had sought information about the initiation of the confiscation proceeding, which was replied by the Investigating Officer stating that he had made proposal for confiscation of the tankers to the Deputy Commissioner, Ramgarh, vide memo No. 1010 of 2013 dated 5.4.2013. It also appears from the impugned order that the learned Additional Public Prosecutor had written to the Deputy Commissioner, Ramgarh, seeking information whether the confiscation proceeding had been initiated with respect to the seized tankers or not, but no reply was received by him. The Court

below taking into consideration the report of the Investigating Officer that he had made the proposal for confiscation of the tankers, rejected the application filed by the petitioner for release of the tankers in question.

3. The aforementioned three tankers, which belonged to the petitioner, were seized by the police on 7.3.2013, when one tanker bearing registration No. WB-03B-1732, which was filled with 12,000 liters of diesel oil, at Hindustan Petroleum Depot, Ranchi Road, for being transported to C.C.L. Kedla, but the tanker was not taken to the destination, rather at a nearby place the diesel from the said tanker was being taken out with the help of a pipe, and being filled in another tanker bearing registration No. JH-02T-7586. Another tanker bearing registration No. JH-02T-7585 was there for the same purpose. The accused persons, including the petitioner were apprehended and they admitted that they used to take out the diesel from the tankers transporting diesel oil from the depot of the Hindustan Petroleum, and mix it with kerosene oil. Accordingly, the apprehended accused persons were arrested and the three tankers were also seized and Ramgarh P.S. Case No. 75 of 2013 was instituted for the offences under Sections 414, 420, 120-B of the Indian Penal Code, and Sections 7 /8 of the Essential Commodities Act (herein after referred to as the "Act"). The petitioner being the owner of all the three tankers, filed application for release of the tankers in question which was rejected by the Court below by the impugned order dated 25.04.2013, which has been challenged in the present revision application.

4. A counter-affidavit has been filed by the State bringing on record the order contained in memo No. 249 dated 7.5.2013 passed by the Deputy Commissioner, Ramgarh, in Confiscation Case No. 13 of 2013, issuing notice to the petitioner u/s 6-B of the Act to show-cause as to why the tanker No. WB-03B-1732 loaded with about 12,000 liters of diesel in it and tanker Nos. JH-02T-7585 and JH-02T-7586 be not confiscated. The said order has been brought on record as Annexure-"A" to the counter-affidavit.

5. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, the Court below has not given any specific reason as to why the tankers in question be not released in favour of the petitioner, even though there was nothing on record before the Court below that the confiscation proceeding had actually been initiated. Learned counsel further submitted that even otherwise, from the order passed by the Deputy Commissioner, Ramgarh, as contained in Annexure-"A" to the counter-affidavit, it is apparent that only the notice u/s 6-B of the Act has been issued to the petitioner and accordingly, the confiscation proceeding has not been initiated as yet. Learned counsel submitted that the Courts exercising the criminal jurisdiction have ample powers to order the release of the vehicles/ essential commodities, etc., seized in connection with the police cases and this power cannot be curtailed. In support of his contention learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court of India in

Sachida Nand Singh and Another Vs. State of Bihar and Another, , wherein it has been held that the provision curbing the general jurisdiction of the Court must normally receive strict interpretation unless the statute or the context requires otherwise (Para-7). Reliance has also been placed by the learned counsel upon the decision of the Supreme Court of India in State of Madhya Pradesh and others Vs. Rameshwar Rathod, , wherein where, the question before the Apex Court was whether Sections 6-A, 6-B and 7 of the Act ousted the jurisdiction of the criminal court, it was held as follows:-

6. ...We are, however, unable to accept this contention because normally under the Criminal Procedure Code, the criminal courts of the country have the jurisdiction and the ouster of the ordinary criminal court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. In view of the language used and in the context in which this language has been used, we are of the pinion that the High Court was right in coming to the conclusion that the criminal court retained jurisdiction and was not completely ousted of the jurisdiction....

(Emphasis supplied)

7. Learned counsel for the petitioner has lastly placed reliance upon the decision of the Patna High Court in Shambhu Prasad Sah Vs. The State of Bihar, reported in 1976 BBCJ 444, in which Section 6-A(6) of the Act, which was brought by Bihar Third Amendment, Ordinance No. 123 of 1976, was taken into consideration by the Patna High Court and it was held as follows:-

6. ...Section 6A of the Ordinance covers two matters; (i) the subject matter of confiscation and (ii) proceedings for confiscation. If the subject matter has been seized by the Collector but no proceeding for its confiscation has been started by him, or, where a proceeding has been started by him without taking the subject matter in his custody, the Collector cannot be said "to be seized with the matter under this section". If the Collector is not seized with the matter under this section, the appellate authority would be equally so. In my opinion, therefore, the expression "seized with the matter under this section" must be understood as meaning that the article proposed to be confiscated has been taken into custody by the Collector and through him by the appellate authority and a step has been taken towards confiscating the same. Confiscation it must be clearly understood, is a step next after seizure. There can be no confiscation without first seizing.

(Emphasis supplied)

7. Placing much emphasis on the decision of the Patna High Court, wherein it has been held that the confiscation is a step after seizure and there can be no confiscation without first seizing the article by the Collector, learned counsel has submitted that in the present case the confiscation proceeding had not yet started with respect to the tankers seized in connection with this case, as the Dy. Commissioner had not taken the tankers in his custody, and as such the Chief Judicial Magistrate, Hazaribag, ought to have released the tankers in question in

favour of the petitioner. Learned counsel has accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

8. Learned counsel for the State on the other hand has opposed the prayer and submitted that the order issued by the Deputy Commissioner, Ramgarh, as contained in Annexure-"A" to the counter-affidavit clearly shows that the confiscation proceeding had already been initiated and accordingly, there is a clear bar u/s 6-A(6) of the Act ousting the jurisdiction of the criminal Courts. Learned counsel accordingly, submitted that there is no illegality in the impugned order passed by the Court below.

9. Section 6-A(6) of the Essential Commodities Act, which has been brought on the statute book by Bihar Act 9 of 1978, reads as follows:-

6-A (6) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act no. II of 1974) when Collector or the appellate authority is seized with the matter under this section, no Court shall entertain any application in respect of essential commodities, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such commodities as far as its release, distribution, etc., is concerned and the jurisdiction of Collector or the appellate authority with regard to the disposal of the same shall be exclusive.

10. A bare perusal of this enactment clearly shows that no Court shall entertain any application in respect of release of essential commodity, vehicle, etc., and the jurisdiction of the Collector or the appellate authority with regard to the disposal of the same shall be exclusive, when the collector or the appellate authority "is seized with the matter under this section". Section 6-A of the Act gives the power to the Collector of the district to pass of order of confiscation, with respect to the essential commodity seized, or any package etc., in which such commodity is found, or any animal, vehicle etc., used in conveyance of the essential commodity, when such essential commodity is seized in contravention of Section 3 of the Act.

11. It is not in dispute that diesel is an essential commodity within the meaning of the Act and there is a licensing order with respect to the High Speed Diesel Oil. Thus, from bare perusal of Section 6-A(6) of the Act, it is apparent that the Collector of the district has been given the exclusive jurisdiction in the matter of disposal of the seized essential commodity, including the vehicle in which it was being carried, and the jurisdiction of all other courts is firmly ousted, when the Collector or the appellate authority is seized with the matter of confiscation of such commodity or vehicle. This provision of the Act was not under consideration before the Supreme Court in Rameshwar Rathod's case (supra), and even in said decision it has been held that the ouster of the ordinary criminal court in respect of a crime can be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. Section 6-A(6) of the Act clearly ousts the jurisdiction of the criminal courts and vests the exclusive jurisdiction in the

Collector or the appellate authority in the matter of disposal of the seized essential commodity, including the vehicle in which it was being carried, when the Collector or the appellate authority is seized with the matter of confiscation of such commodity or vehicle. Accordingly, in my considered view, the said decision is of no help to the learned counsel for the petitioner. The decision of the Supreme Court in Shambhu Prasad Sahu's case (Supra), also only shows that the provision curbing general jurisdiction of the Court should normally be strictly construed. Even if the provision u/s 6-A(6) of the Act is strictly construed, there can be no doubt that the jurisdiction of the criminal Court is ousted in the matter of release of the seized essential commodity or the vehicle, once the Collector or the appellate authority is seized with the matter of confiscation.

12. This takes us to the consideration of the decision of the Patna High Court in Shambhu Prasad Sah's case (supra), relied upon by the learned counsel for the petitioner. In this decision, Hon"ble Single Judge of Patna High Court has proceeded on two assumptions for interpreting the expression "is seized with the matter under this section", namely; (i) if the "subject matter" has been seized by the Collector, but no proceeding for its confiscation has been started by him, and (ii) where the proceeding has been started by him without taking the "subject matter" in his custody. It has been held by Patna High Court that where the proceeding has been started by the Collector without taking the "subject matter" in his custody, the Collector cannot be said "to be seized with the matter under this section", as it must be understood as meaning that the article proposed to be confiscated has not been taken into custody by the Collector, and that if the Collector is not seized with the matter under this section, there can be no bar of sub-section 6 of Section 6A.

13. With all due respects to the said decision, I beg to differ from the reasoning given by the Hon"ble Judge of Patna High Court, for the simple reason that the expression "is seized with the matter under this section" as mentioned in Section 6-A(6) of the Act is not with respect to essential commodity or the vehicle or other articles, i.e., the "subject matter". In the said decision the Hon"ble Judge has taken into consideration the expression "subject matter of confiscation" which expression has not been used at all in sub-section 6 of Section 6-A of the Act. The plain reading of Section 6-A(6) of the Act shows that the expression used is "when Collector or the appellate authority is seized with the matter under this section" and this expression clearly relates to the confiscation proceeding and not to the "subject matter" of the proceeding, which in my considered view has been erroneously taken into consideration by Hon"ble Single Judge of Patna High Court. This matter had already been decided by a Division Bench of Patna High Court in Kanhailal Bhagat Vs. State of Bihar and Ors., reported in 1976 BBCJ 15, wherein it has been held that the physical production of the articles before the Collector is not at all necessary, rather the seizure of the articles should be referred to the Collector who may apply his mind to the facts and circumstances of the case and if he is satisfied that there is contravention of the provision of the orders, he may after complying with the requirement of Section

6-A and 6-B of the Act, confiscate the goods in question. The Division Bench of the Patna High Court has laid down the law upon consideration of Sections 6-A and 6-B of the Act in the following terms:-

13. So far as the contention of the learned counsel for the petitioner that the articles seized were never produced before the respondent Deputy Commissioner, which was a condition precedent to the exercise of the jurisdiction u/s 6A of the Act, is concerned, our attention was drawn to the words "where any essential commodity is seized... it may be produced, without any unreasonable delay, before the Collector of the district". The words "it may be produced" occurring in section 6A of the Act, in my opinion have to be so interpreted as to cover cases in which, due to the nature of the article seized, it may not be possible to produce it before the Collector. It cannot be conceived that the intention of Parliament was that, before the power under that section could be exercised, the seized food-grains, which might weigh even several thousand quintals in some cases, have to be physically produced before the Collector. In my view, this does not mean physical production of the articles in question in every case what it means is that the seizure of the articles in question should be reported to the Collector of the district who may apply his mind to the facts and the circumstances of the case; and, if he is satisfied that there has been a contravention of the provisions of the order in question, he may, after complying with the requirements of sections 6A and 6B of the Act, confiscate the goods in question.

(Emphasis supplied)

14. I am of the considered view that once it was decided by the Division Bench of Patna High Court that production of articles before the Collector is not at all necessary for initiation of the confiscation proceeding, the Hon'ble Single Judge has taken the contrary view which is per incurium the decision of the Division Bench of the same High Court.

15. The order contained in Annexure-"A" to the counter-affidavit clearly shows that the Deputy Collector, Ramgarh, had applied his mind to the facts of the case and has issued notice u/s 6-B of the Act to the petitioner as to why the tankers along with the diesel loaded on one tanker be not confiscated, as they were found to contravene the provisions of the Essential Commodities Act. Once the Deputy Commissioner, Ramgarh, had applied his mind and issued show-cause notice to the petitioner, in my considered view the Deputy Commissioner, Ramgarh, was "seized with the matter under this section" and it cannot be said that since he had not taken the physical possession of the tankers in question, the confiscation proceeding had not been initiated. Once it is found that the Collector under the Act is seized with the matter of confiscation under the said section, the jurisdiction of the Court below in the matter of releasing the tankers in question is clearly and firmly ousted u/s 6-A (6) of the Essential Commodities Act, and accordingly, no fault can be found in the impugned order dated 25.4.2013 passed by the learned Chief Judicial Magistrate, Hazaribag, in

Ramgarh P.S. Case No. 75 of 2013, refusing to release the seized tankers in favour of the petitioner. For the foregoing reasons, I do not find any illegality and/or irregularity in the impugned order passed the learned Court below, worth interference in the revisional jurisdiction. There is no merit in this application, which is accordingly, dismissed.