

**(2001) 08 PAT CK 0012**

**In the Patna High Court**

**Case No : Criminal Miscellaneous No. 6142 of 1997**

Ratan Lal Agrawal

APPELLANT

Vs

State of Bihar

RESPONDENT

**Date of Decision : 24-08-2001**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Essential Commodities Act, 1955 — Section 7  
Trade Article (Licences Unification) Order, 1984 — Section 2

**Citation : (2001) 4 PLJR 759**

**Hon'ble Judges : P.K. Sinha, J**

**Bench : Single Bench**

**Advocate : N.K. Agrawal, Binay Kumar Sinha, K.C.K. Sinha and D.N. Tiwari, for the Appellant; Prabhat Ranjan, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

P.K. Sinha, J.—This is a petition u/s 482 of the Code of Criminal Procedure preferred by Petitioner Ratan Lal Agarwal praying therein to quash the entire proceeding arising out of Harsidhi PS. Case No. 128 of 1996, pending in the Court of Special Judge, Essential Commodities Act, (hereinafter to be referred to as "the Act") East Champaran u/s 7 of the Act.

2. It may be mentioned here that by order dated 3.4.1997 this Court, while admitting this petition, had also ordered that further proceeding in relation to the aforesaid case would remain stayed.

3. It is also pointed out that the case diary of this case was called which has been received showing that the investigation has already been concluded but, during investigation no independent witness supported that any such raid and recoveries were made and even witness Jamuna Prasad who is said to have been given seized articles on "Jimanama", said that nothing was given to him on "jimanama".

4. The facts, in brief, are that Supply Inspector at Harsidhi filed First Information Report before the concerned police official on 19.10.1996 stating therein that on confidential information that the Petitioner who looked after the work of M/s Jaiprakash Narayan Agrawal, also whole-sale Dealer in Levy Sugar, had stored by purchasing the same from fair price shop. On this a raid was made in the house of the Petitioner and from a room 12 quintals and 50 kilograms of sugar was recovered for which the Petitioner failed to produce licence and cash memo. This was registered as a case at the police station u/s of the Act.

5. learned Counsel for the submits that the Petitioner under the Trade Articles (Licences Unification) Order, 1984 ("1984 Order" in short) cannot be said to be a dealer, a retail dealer or a whole-sale dealer as defined u/s 2(e), (p). and (u) of 1984 Order, 1 is submitted that under Clause 3 of the. 1984 Order a dealer is he who has been engaged to carry on business of purchase, sale or storage for sale of any the trade articles mentioned in except under and in accordance terms and conditions of a licence in this behalf by the Licensing learned Counsel submits that Clause 18 of the 1984 Order relates to the on possession of trade articles which is meant for general public who is not a dealer, retail dealer or a whole-sale dealer.

6. The argument of the learned Counsel is that if there has to be a restriction on storage by a person who is not a dealer, limit for that has to be fixed in accordance with Clause 18 of 1984 Order whereas storage limit of trade articles under notification G.S.R. 49 dated 17.10.1985 was issued by the Government of Bihar under Clause 3 of the 1984 Order which is only meant for dealers. Clause 18 of the 1984 orders runs as follows:

Restriction on possession of trade articles.--No person shall, either by himself or by any person on his behalf, store or have in his possession at any time any trade articles mentioned in Schedule I and Schedule II in quantity exceeding the limits--

(i) under an order issued by the Central Government or

(ii) by the State Government with prior concurrence of the Central Government by issuing a notification in Official Gazette from time to time.

7. The argument of the learned Counsel is that the Government has not yet issued any notification in exercise of powers under Clause 18 of the 1984 Order with respect to the possession or storage of trade articles although it has issued such notification, with prior concurrence of the Central Government, under Clause 3 for the purpose of sale. Thus unless any such notification is issued prescribing the storage limit under this clause, this clause does not come into play.

8. Obviously G.S.R. 49 dated 17.10.1985 was issued, as will be clear on perusal thereof, under Clause 3 of the 1984 Order, not under Clause 18 of the 1984 Order. The argument is that, therefore, for a person who is not a dealer, no

storage limit has been provided under law. For this learned Counsel has relied upon a Division Bench decision of this Court in the case of The State of Bihar Vs. M/s. Parte Products (in 1620), M/s. Lucky Confectionary Pvt. Ltd. (in 1621) and M/s. Lucky Biscuits Company (in 1623), . Similar question arose in that case as to whether for a person who did not come under the definition of "dealer" under 1984 Order, any such notification providing storage limit was issued under Clause 18 of the 1984 Order. In that case on behalf of the State it was conceded that no such notification or Order had been issued either by the Central Government or by the State Government.

9. Learned Additional Public Prosecutor has defended the criminal proceeding against Petitioner submitting that recovery of such amount of sugar did show that storage was for business purposes, and Petitioner was dealing in sale of sugar.

10. Now only question that remains to be examined is as to whether the Petitioner could be said to be a dealer in order to come under purview of the aforesaid notification of the State Government.

11. A dealer has been defined under Clause 2(e) of the 1984 Order to mean a person, a firm, an association of persons or a Co-operative Society other than a national and state-level Co-operative Society, engaged in the business of purchase, sale or storage for sale of any trade articles whether or not in conjunction with any other business and includes his representative or agent.

12. From the first information report it will appear that the allegation was that this Petitioner was also looking after the work of M/s Jaiprakash Agrawal, a wholesale dealer of sugar but from the F.I.R. itself, as pointed out by the learned Counsel for the Petitioner, it will appear that the store of M/s Jaiprakash Agrawal was also verified on that very day where 149 bags of sugar were found which were found to be accounted for with no irregularity. learned Counsel submits that there is no allegation that the Petitioner had kept the sugar as an agent or employee of M/s Jaiprakash Agrawal but allegation is that he had kept the sugar for black marketing the same. However, as pointed out by the learned Counsel for the Petitioner there was no allegation that the Petitioner himself had indulged into any business so as to claim him to be a dealer. Obviously a dealer is a person who stores for sale or for purchase, trade articles in regular course of business, for the purpose of his business and not the one in whose personal possession some trade articles may be found. This being so the allegation obviously is not to show the Petitioner to be a dealer in sugar, so that the aforesaid storage limit notification could be made applicable to him.

13. This being the position this application is allowed and criminal proceeding arising out of Harsidhi P.S. Case No. 128 of 1996, pending in the Court of Special Judge, Essential Commodities Act, or in his successor Court, East Champaran is hereby quashed.