
(1990) 03 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 546 of 1986 (R)

Shambhu Nath Agarwala

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 27-03-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7

Citation : (1990) 03 PAT CK 0001

Hon'ble Judges : L.P.N. Shahdeo, J

Bench : Single Bench

Advocate : G.C. Bharuka, P.D. Agrawal and S.K. Agrawal, for the Appellant; K.P. Verma and D.K. Sarkar, for the Respondent

Final Decision : Allowed

Judgement

L.P.N. Shahdeo, J.—In this application u/s 482 of the Code of Criminal Procedure, the Petitioner has prayed for quashing of the criminal prosecution including the order taking cognizance, dated 2-1- 1986 passed by Sri N.K. Prasad, Special, Judge, (E.C. Act), Dhanbad, whereby he had taken cognizance of the offence u/s 7 of the Essential Commodities Act, in the following circumstances.

2. It appears that the Marketing Officer, Dhanbad, on 28.12.1985 had inspected the business premises of the Petitioner who is a wholesale dealer having a wholesale dealer's licence and in course of inspection at two places 647 bags of rice (weighing 645.50 quintals) in total, were found in stock limit allegation made against this Petitioner who is a wholesale dealer is that he was found to have stored rice beyond the storage limit fixed for such nature of business. Thereafter complaint was filed and cognizance was taken which is being challenged in this application.

3. Mr. G.C. Bharuka, learned counsel for the Petitioner has submitted that there was no storage limit fixed at the relevant time and, therefore, the Petitioner had not committed any offence. It is also submitted that the State Government has

not defined what is A, B and C classes of city and what is the storage limit fixed in respect of aforesaid of city or for rural or urban area. In absence of such notification or fixation of storage limit, the criminal prosecution of the Petitioner is abuse of the process of the court.

4. The business premises of the petitions inspected admittedly on 28-12-1985 at Gobindpur within the district of Dhanbad and it is also admitted position that 647 bags of rice were found in stock at two different places within the business premises of the Petitioner. The crucial point, therefore, for determination is that as to whether any storage limit was fixed for wholesale dealer in respect of the that was found in possession. If there was no storage limit fixed for rice as alleged against the Petitioner, the Petitioner cannot be said to have committed an offence.

5. The emphatic argument of the learned Counsel for the Petitioner, has not been disputed by the learned Counsel appearing for the State Mr. D.K. Sarkar. Fortunately Mr. K.P. Verma, Advocate General, was also available. He was also apprised of all the facts and he conceded that no notification has been issued by the State Government fixing the storage limit in respect of A, B and C classes of city or in fact what is meant by A, B and C classes of city, has also not been (sic) as yet. It has been also admitted by the Advocate General that there is no provision in the Bihar Trade Articles (Licences Unification) Order, 1984 to indicate that the definition given of A, B and C classes of city in other Act has been adopted in this Order. This shows that the State Government was required to issue independent notification under relevant Order what it wanted to mean in respect of A, B and C classes of City or for the storage limit either for the wholesale dealer or a dealer. In view of the admission made by the State, that there was no relevant notification fixing storage limit in respect of A, B and C, classes of city for wholesale dealer or a dealer in rice, admittedly on admitted facts, the Petitioner has not committed any offence by storing 647 bags of rice in his business premises.

6. There is yet another point involved this case, that admittedly this inspection was done at Gobindpur. The State counsel appearing on its behalf has failed to point out what was the storage limit fixed in respect of Gobindpur or for the district of Dhanbad at that particular time. It is also conceded by the State that the State Government has not defined what it meant by urban or rural area and what should be the storage limit in respect of any of the urban or rural area no far the storage of foodgrains is concerned.

7. Coming to the case of the Petitioner itself it has to be reasonably concluded without any difficulty that in absence of any storage limit fixed for the foodgrains in respect of Gobindpur or in the district of Dhanbad, the Petitioner had admittedly not committed any offence. Therefore, mere storage of 647 bags of rice in his business premises is no offence unless the storage limit is fixed for it by relevant notification, for the relevant time and that having not been done, this application must succeed.

8. In the result, this application is allowed. The criminal prosecution including the impugned order taking cognizance against the Petitioner are quashed.