

(2002) 01 PAT CK 0045

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 369 of 1990

Shankar Sahni and Krishna Kr. Thakur

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 262, 264, 326(1), 326(2)
Essential Commodities Act, 1955 — Section 7

Citation : (2002) 2 PLJR 129

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Abhay Shankar Sinha and Ravi Shankar Dhari Singh, for the Appellant; Ashwini Kr. Sinha, for the Respondent

Final Decision : Allowed

Judgement

I.P. Singh, J.—Both the Appellants have been convicted u/s 7 of the Essential Commodities Act (in short the Act") and sentenced to undergo rigorous imprisonment for one year each.

2. Prosecution case, in short, is that on confidential information that dealer Krishna Kumar Thakur had kept four drums of kerosene oil in the Angan of accused Shankar Sahani for selling the same in black market. Sri. R.N. Rai, SJ., Dhamdaha Rs. along with other police officers raided the house of Shankar Sahani on 10.5.88 at 11.30 A.M. He found one drum containing 90 litres of K. Oil at the darwaja of Shankar Sahani. He also found 3 drums in his Angan. One drum contained 90 litres of K. Oil whereas another drum contained half drum of K. Oil and the third drum contained 60 litres of diesel. He seized aforesaid K. Oil and diesel in presence of witnesses Ramanand Sah and Dinesh Thakur and prepared the seizure list thereof in their presence. Accused Shankar Sahani stated that accused Krishna Kumar Thakur had given aforesaid K. Oil and diesel to him for selling the same in the black market. On the basis of written report Ext. 3 given by Shri Ramanand Rai, Officer-in-Charge Dhamdaha P.S. formal

F.I.R. was drawn up against the accused persons. The police took investigation and after completion of the same submitted charge sheet against the Appellants. Accordingly cognizance was taken and the trial concluded with the result as indicated above.

The Appellants pleaded not guilty.

3. In support of its case the prosecution examined nine witnesses. P.W. 1 is Md. Idrish, P.W. 2 is Syed Quaiser Hasan Rizwi, P.W. 3 is Anisur Rahman. They are the police officers. P.W. 4 is Charitar Paswan. P.W. 5 is Ram Nath Rai, the then S.I. Dhamdaha, P.S. 6 is Mahendra Prasad Singh, the then Supply Officer, Dhamdaha, P.W. 7 is Dinesh Thakur, P.W. 8 is Ramanand Sah and P.W. 9 is Shib Shankar Tiwari, I.O. of this case.

4. Learned Counsel appearing on behalf of the Appellants has submitted that in the present case the procedure for trial was summary procedure and it was necessary that the same Special Judge who had recorded the entire evidence ought to have decided the case and the successor in office could not have decided the case on the evidence recorded by his predecessor. In this connection he has placed reliance on the case of Vyas Sah Vs. The State of Bihar, .

5. The rational behind the aforesaid view appears to be that u/s 262, Code of Criminal Procedure the procedure specified for the trial of summons case has to be followed in summary trials and Section 264 of the Code of Criminal Procedure lays down that the Magistrate shall record the substance of the evidence. Thus it is evident that in summary trial only substance of evidence has to be recorded which does not record the entire statement of the witnesses instead it only records the substance of the statement of the witness what he stated before the Court. Therefore, the Judge or the Magistrate who has recorded substance of evidence is in position to appreciate the evidence led before him and the successor Judge or Magistrate cannot appreciate the evidence on the basis of, evidence recorded by his predecessor. Therefore, it appears why the provisions of Sub-sections (1) and (2) of Section 326 of the Code of Criminal Procedure have not been made applicable to summary trials.

6. In the present case the evidence was recorded by different Presiding Officer and finally the judgment was delivered by the Special Judge on the basis of the evidence recorded by his predecessor. The Special Judge, who delivered the judgment had not himself recorded the evidence of the witnesses. As such he could not have proceeded from the stage where his predecessor had left the case and could not have used the evidence recorded by his predecessor. Eight witnesses were examined by the Special Judge, Shri B.K. thakur whereas P.W. 9 was examined by Special Judge Bhagwan Pd. Singh on 8.6.89 and judgment was delivered by Shri Bhagwan Pd. Singh on 17.9.1990. Therefore, the judgment and order is vitiated on account of said illegality and the same is not sustainable in the eye of law.

7. According, the order of conviction and sentence passed by the Court below is

set aside, the Appellants are acquitted of the charges leveled against them and they are discharged from the liability of bail bonds. In me result, this appeal is allowed.