
(2009) 02 PAT CK 0034

In the Patna High Court

Case No : Criminal Miscellaneous No. 88 of 2005

Shibu Banka @ Sheonath Banka

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (2009) 3 PLJR 800

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Heard Mr. Jyotendra Pratap Singh, the learned counsel for the petitioner, Mr. Jharkhandi Upadhaya, the learned A.P.P. for the State and Mr. Durgesh Nandan, the learned counsel for O.P. No. 2. The petitioner who is one of the FIR named accused of Jhajha P.S. Case No. 161 of 2004 has prayed for quashing of the entire criminal proceeding arising therefrom including the order dated 23.12.2004 passed by the learned Sub-Divisional Judicial Magistrate, Jamui. whereby he has taken cognizance u/s 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act) against both the accused including this petitioner.

2. The submissions advanced by the learned counsel for the petitioner for assailing the impugned order is that although the case was initiated on the basis of a written report submitted by the Supply Officer, Jhajha on 25.10.2004 for having allegedly stored cereals beyond the storage limit he did not mention in the said written report as to what Order made u/s 3 of the E.C. Act had been violated.

3. The next submissions advanced by the learned counsel for the petitioner was that Bihar Foodgrains (Movement Control) Order, 1967 stood repealed as no storage limit for storage of foodgrains had. been fixed and the towns categorized.

4. Mr. Durgesh Nandan, the learned counsel for O.P. No. 2, Supply Officer, sought to raise objection by stating that since no stay had been granted by this court the trial court had proceeded with the trial and as per latest report the substance of accusation has been explained to the accused and in that view of the matter the petitioner could not challenge the order taking cognizance.

5. The State has expressed similar views and supported the stand taken by the learned counsel for O.P. No. 2.

6. Having considered the submissions of the learned counsel for the petitioners I am unable to accept these submissions advanced by the learned counsel for O.P. No. 2 which is sought to be supported by the learned A.P.P. for the State.

7. It is by now well settled both by the Apex Court and by this Court that unless the FIR or the written report states as to what Order made u/s 3 of the E.C. Act has been violated no prosecution lies for offence u/s 7 of the E.C. Act since the punishment can come only after violation of certain Orders since Section 7 of the E.C. Act happens to be the penal provision and is attracted only when certain Order made u/s 3 of the E.C. Act is said to have been violated or contravened. There are a catena of decisions of this Court to suggest that since the State Govt. has not been able to classify the cities and fix the storage limit of foodgrains and other request the Foodgrains (Movement Control) Order as also the storage limit Order was not workable in the State of Bihar.

8. If the very inception of a criminal proceeding is based on unwarranted and unsustainable grounds, the fact that the accusations have been explained to the accused does not wipe out the position in law and the subsequent act of the accusations having been explained to the accused cannot justify the apparently unwarranted proceeding started against the petitioner.

9. Due regard being had to the facts and circumstances of the case and the discussions made in the foregoing paragraphs, I am of the view that the very inception of the proceeding against the petitioner was unwarranted and an abuse of the process of the Court. Accordingly the order taking cognizance and the criminal proceeding arising therefrom, so far as the petitioner is concerned, is hereby quashed and the application is allowed.