

(2010) 12 PAT CK 0063

In the Patna High Court

Case No : Criminal Miscellaneous No. 32006 of 1999

Shiv Shankar Sao @ Khatai Sao

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Essential Commodities Act, 1955 — Section 7

Penal Code, 1860 (IPC) — Section 420

Citation : (2011) 59 BLJR 380

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole Petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 14.10.1999 passed by Special Judge, Essential Commodities Act, Buxar in E.C. Case No. 10 of 1998. By the said order, learned Special Judge has rejected the discharge petition of the Petitioner.

2. Short fact of the case is that on the basis of fardbyan of one Shiv Nath Paswan, driver of a Tractor, an F.I.R. vide Simri P.S. Case No. 92 of 1998 was registered u/s 420 of the Indian Penal Code and Section 7 of the Essential Commodities Act. It was disclosed by the informant that his co-villager had asked him to carry out 19 bags of wheat and 8 bags of rice to Brahampur Mill, which he had purchased from one Shiv Shankar Sao @ Khatai Sao. Thereafter, while he was carrying the said bags of wheat and rice, police party intercepted the Tractor and food grains kept in the bags, having label of B.S.F.C., were seized by the police. Informant had disclosed that even the bags were loaded on his Tractor as per the direction of this Petitioner. It was claimed in the F.I.R. that food grains, which were ear-marked to be distributed among the people belonging to blow the poverty line, were fraudulently being removed and as such

F.I.R. was registered on 8.8.1998 against one Basant Sao, who had claimed to be purchaser as well as against the Petitioner. After registering the F.I.R., police investigated the same. However, initially, charge sheet was submitted on 7.8.1998 against accused Basant Sao and finally on 29.11.1998, supplementary charge sheet was submitted against this Petitioner. At the stage of charge, the Petitioner filed a petition for his discharge, which was rejected on 14.10.1999 by the learned Special Judge, Buxar

3. Aggrieved with the order of rejection of discharge petition, the Petitioner approached this Court by filing the present petition. On 1.3.2000, this petition was admitted for hearing. While calling for the Lower Court Record, it was directed that pending disposal, further proceeding in E.C. Case No. 10 of 1998 pending in the court of Special Judge, Essential Commodities Act, Buxar shall remain stayed. The order of stay is still continuing.

4. Learned Counsel for the Petitioner, while questioning the impugned order, has raised several points. First of all, it was argued that the present F.I.R. was got registered in a calculated way as per the instance of his enemy, who was associated with a powerful party of the Buxar and who wanted to take the license in his own name. It was further submitted by learned Counsel for the Petitioner that even though the aforesaid F.I.R. was lodged, the Licensing Authority did not take any action in respect of either suspending or cancelling the license of the Petitioner. Immediately after coming to know regarding institution of the present case, the Petitioner filed an application before the competent authority to verify the record as well as articles, which were supplied to the shop of the Petitioner from Food Corporation of India. On the application of the Petitioner, the Sub Divisional Officer, who was the Licensing Authority, instructed the Executive Magistrate to hold an enquiry. During the said enquiry, the Executive Magistrate recorded statement of almost all the Card holders of the Petitioner and none had made any complaint against the Petitioner. Similarly, stock register and allotment order, on comparison by the Executive Magistrate, was found to be in order. No discrepancy was noticed in the stock in respect of wheat and rice. It was submitted that since the Licensing Authority had got the matter enquired and found no discrepancies in either stock register or availability of the food grains, it can be inferred that the present case was got instituted in a well design manner. It was further submitted that during investigation, the Investigating Officer even did not bother to examine the Card holders, who were associated with the Petitioner's shop. The F.I.R., which was lodged on the fardbyan of the informant, was lodged only with a view to implicate the Petitioner without any substance

5. Shri Ajay Kumar Thakur, learned Counsel for the Petitioner has further argued that the Petitioner is a licensee and was owner of the Public Distribution Shop being a dealer. It was argued that even in case of violation of provisions of Unification Order, the Petitioner was excluded from the rigours of the Unification Order, since Petitioner being a dealer of the State Government, was absolved from such offences. In support of his stand, learned Counsel for the Petitioner

has heavily relied on a single Bench judgment of this Court reported in 2007 (1) PLJR (Md. Waizuddin v. State of Bihar). Learned Counsel for the Petitioner has specifically referred to paragraph-6 of order passed in Md. Waizuddin's case (Supra), which is as follows:

6. A perusal of Clause 31(2)(c) of the Unification Order goes to show that the organizations of the State Government and the agency approved by the State Government have specifically been excluded from the rigours of the Unification Order in respect of any violation relating to sale, storage for sale of trade articles by such agency. The Petitioner being the agent of the State Government appointed under an agreement is absolved of any offence arising out of the violation of the unification Order with respect to sale or storage of the trade articles. Accordingly, the Unification Order was not applicable to the Petitioner, a dealer of public distribution shop, and he cannot be prosecuted u/s 7 of the E.C. Act for violation of the provisions of the Unification Order.

6. Learned Counsel for the Petitioner has further argued that the offence alleged in the present case had occurred in the year 1998 and thereafter, the Petitioner had suffered a lot by pursuing the case for a very long period. It was submitted that after lapse of about 12 years from the date of occurrence, it would not be appropriate to direct the Petitioner to participate in the present proceeding before the court below and as such it has been argued that while setting aside the order dated 1.10.1998, this Court may quash the entire proceeding.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Of course, the submission, which has been advanced by the learned Counsel for the Petitioner that the Licensing Authority had conducted enquiry and found no irregularity in the shop of the Petitioner, are required to be examined by the court below, but keeping in view the fact that matter is an old one, it would not be appropriate to outrightly reject the submission of the learned Counsel for the Petitioner. So far as allegation of violation of Unification Order is concerned, which has been supported by an order of this Court passed in Md. Waizuddin's case (Supra), there is some substance. It is not in dispute that some bags of wheat and rice containing level of B.S.F.C. were found on the Tractor of the informant and informant had disclosed that those bags were purchased by co-accused namely Basant Sao from the Petitioner, who was a dealer of Public Distributor System. In the present case, discharge petition was rejected on 14.10.1999 by the Special Judge, which was questioned by the Petitioner by filing the present petition. The present petition was admitted in the month of March, 2000 and while calling for the Lower Court Record, this Court passed an order of stay of the proceeding. In any event, the present petition remained pending before this Court for almost about 10 years.

8. Keeping in view pendency of the present proceeding for such a long time as well as nature of accusation i.e. recovery of few bags of wheat and rice, the court is of the opinion that for just decision in the matter, it would be appropriate to interfere with the proceeding. The Petitioner has already suffered a lot.

9. Accordingly, in view of nature of accusation coupled with the fact that alleged occurrence had taken place almost 12 years back, the court is of the opinion that it is a fit case in which for the ends of justice, this Court may interfere with the proceeding.

10. Accordingly, order impugned as well as entire criminal proceeding in E.C. Case No. 10 of 1998 so far as Petitioner is concerned is hereby set aside and petition stands allowed.