

(2002) 03 PAT CK 0114

In the Patna High Court

Case No : Criminal Appeal No. 106 of 1991 (SJ)

Shivaji Singh and Ram Dayal Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Citation : (2002) 03 PAT CK 0114

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—The Appellants suffered conviction u/s 7 of the Essential Commodities Act (in short "E.C. Act"), for alleged violation of provisions of Section 3 of the E.C. Act, and were sentenced to suffer rigorous imprisonment for six months on being tried by Special Judge, Sitamarhi in G.R. Case No. 1005 of 1989.

2. The factual matrix-Chowkidar Bhagya Narain Rai (P.W. 3), acting on a tip off information about the Appellants carrying diesel and mobil to Nepal territory for their smuggle and to secure high prices from the customers, laid a trap when seizure of two tins containing 20 litres of diesel and five tins containing 90 litres of mobil was effected from possession of the Appellants which allegedly belonged to Appellant No. 1. After the Police was set in motion, investigation commenced which was carried out by Shri Shivendra Sharma, Sub Inspector of Police, Majorganj Police Station, within the district of Sitamarhi, and on conclusion of investigation, the Police laid charge sheet before the Court. In the eventual trial that commenced before the Special Judge, Sitamarhi, while the State examined four witnesses including the Reporting Officer and seizure list witnesses, the Appellants too examined two witnesses and both the State and the Appellants also brought some documents on record. The defence of the Appellants before the trial Court and also this Court had been that the Appellant No. 1 was a big cultivator, who was having pumping set and engine and it was on strength of the orders issued by the Block Development Officer that the commodity in question having been purchased in Sitamarhi, was being carried out for agricultural

purposes and on premises of he being a bona fide purchaser, the Appellants pleaded innocence and the trial Court on consideration of evidences placed on record on behalf of the parties, while negatived the contention raised at Bar on behalf of the Appellants, rendered verdict of guilt finding the Appellants guilty u/s 7 of the E.C. Act and sentenced them in the manner stated above which is being challenged in this appeal.

3. Three-fold contentions were raised at Bar on behalf of the Appellants and it is sought to be urged that while the limit of storage of diesel was 400 litres, there was no storage limit with regard to possession of mobil oil and in that view of the matter, possession of diesel below the prescribed limit would not constitute violation of the provisions of Section 3 of the E.C. Act. The next limb of the argument, canvassed on behalf of the Appellants, was that though the Appellants were being prosecuted on accusation of taking the commodity in question to Nepal territory, there was no evidence about movement of commodity in question solely with an object to smuggle them in Nepal territory and on these premises, it is sought to be urged that the prosecution of the Appellants was unmerited. In quick succession, it is urged that had there been some evidence about movement of goods with an object to smuggle them to Nepal territory, that too would not raise legal presumption about movement of the goods in question to a foreign territory with an object to smuggle them in black market and reliance on this score was placed on a decision of the Apex Court of the land reported in Malkiat Singh Vs. The State of Punjab, and the last limb of argument, pressed on behalf of the Appellant, was that though seizure by an authority below the rank of Deputy Superintendent of Police or by any person not specially empowered by the Government, was prohibited in terms of Rule 12 of the Bihar Motor Spirit and High Speed Oil Licensing Order, 1966, it is not disputed that search and seizure was carried by a person below the rank of Deputy Superintendent of Police, who was admittedly not authorised by the Government and as a logical corollary to this argument, it is urged that prosecution of the Appellant was invalid and reliance on this score was placed on a decision of this Court reported in Ramchandra Pansari Vs. State of Bihar, Though other infirmities too are brought to the notice of the Court that have crept in the prosecution evidence, since I find that the finding recorded by the court below was not sustainable in law, in view of unmerited prosecution of the Appellants, I do not feel it expedient to consider them in detail and the finding recorded by the trial Court is accordingly set aside and the Appellants are acquitted of the charges levelled against them. This appeal accordingly succeeds. Appellants are discharged from the liability of the bail bond.