(1985) 04 PAT CK 0020

In the Patna High Court

Case No : Criminal Misc.No. 4223 of 1981

Shri Krishna Gyanoday Sugar Ltd. APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1985) 33 BLJR 666 : (1985) PLJR 776

Hon'ble Judges : B.P. Griyaghey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Griyaghey, J.—This is an application u/s 482 of the Code of Criminal Procedure to quash the order taking cognizance dated 3-10-1980 in case No. 236/c of 1980 by the Sub-divisional Judicial Magistrate, Bagaha at Bettiah by which cognizance u/s 7 of the Essential Commodities Act read with Sugar (Control) Order, 1966 has been taken.

2. A complaint was filed by the District Supply Officer, Paschim Champaran, Bettiah. It was, in fact, a complaint prepared by the Deputy Director (Sugar Technical) Government of India, Ministry of Agriculture and Irrigation (Department of Food), Directorate of Sugar, Krishi Bhawan, New Delhi against the petitioner for the contravention of the provisions of Sugar (Control) Order 1966 with this allegation that the petitioner is a manufacturer of sugar and the Inspector Sugar on 27-9-1975 when visited the godown of the petitioner took nine samples of sugar certified to be true representative samples from the stock In the factory godown. Out of nine samples five samples were forwarded to National Sugar Institute, Kanpur for determining its Indian Sugar Standard and it was found by the said Institute that two of them were different than what was marked on the sample. It was, therefore, alleged that the petitioner company had violated clause 4 (i) of the Notification of the Government of India, Ministry

of Food and Agriculture, dated 14-4-1970, a copy of which was annexed with the complaint-petition.

3. The contravention in question alleged against the petitioner rests on clause 5 of the Sugar (Control) Order, 1966 which is an order issued u/s 3 of the Essential Commodities Act, Clause 5 of the Sugar (Control) Order, 1966 provides that the Central Government may, from time to time, by general or special order, issue Order and directions to the producers regarding the production, maintenance of stock, storage, sale, grading, packing, marking, etc. of any kind of sugar. In pursuance of the power given under that clause 5 of that Order, the Central Government had issued a direction in the form of Sugar (Packing and Marking) Order, 1970 on 14-4-1970, one of the clauses of which runs like thus which is either Clause 4(1) or 3(1) of the said Order:

Every producer shall at the time of packing mark on the bag in which the sugar is packed, its quality in terms of Indian Sugar Standards in force at that time and shall also ensure that the quality of sugar contained in the bag corresponds to the quality of sugar marked thereon until it is sold and delivered by him.

It is the contravention of this direction in the above quoted Order that this petitioner is being prosecuted and for which cognizance has been taken against him u/s 7 of the Essential Commodities Act.

4. learned Counsel appearing on behalf of the petitioner has challenged the legality of the order taking cognizance on the ground that, in fact, there was no contravention of any Order issued by the Central Government u/s 3 of the Essential Commodities Act (hereinafter to be referred to as the Act). The contention in this respect is that it was the Bihar Sugar (Control) Order, 1966 which was the Order issued u/s 3 of the Act and that the contravention that is said to have been made in the present case is not that of any clause of that Sugar Control Order but another Order, namely, the Sugar (Packing and Marking) Order, 1970 which his said to have been issued under clause 5 of the Sugar (Control) Order, 1966. It is contended by the learned Counsel that it is the only contravention of the main Order, namely, Sugar (Control) Order 1966, which is issued u/s 3 of the Act, that a person can be prosecuted u/s 7 of the Act. In this connection, learned Counsel refers to clause 7 of the Sugar (Control) Order, 1966. There are two Sub-clauses (a) and (b) in this clause 7. learned Counsel refers to Sub-clause (b) of clause 7 which provides that when the Central Government is of the opinion that any stock of sugar with any producer is below any of the Indian Sugar Standard grades of sugar, it may direct the producer to re-process the said stock with a view to conform to one or more of the Indian Sugar Standard Grades of sugar. It is contended that it is only when a producer fails to comply with the direction to re-process, a direction issued under that Sub-clause (b) of clause 7, that the producer can be held to be guilty for the offence contravening the Order. It is contended by the learned Counsel that the purpose of the Sugar Control Order is that only a sub-standard sugar may not be sold in the market and that it is to prohibit that clause 7 has been provided and in that

clause 7 since there is a provision that a second opportunity should be given to the producer to reprocess and conform to the standard, the producer cannot be prosecuted before such an opportunity is given. In this connection learned Counsel refers to judgment of Allahabad High Court in the case of The Balrampur Sugar Co. Limited v. The State Cr.R. No. 216 of 1973. learned Counsel refers to a photostat copy of the certified copy of that judgment. I have gone through that judgment and I find that a similar argument like that placed by the learned Counsel in the present case was made there and accepted, but the line of reasoning-that has been given In that decision does not appear, I may say with respect, to be in consonance of the provisions of the Sugar (Control) Order, 1966 and the provisions of Sections 3 and 7 of the Act. In that decision, (a photostat copy of the certified copy of which has been filed,) the reasoning given by His Lordship appears to be that since in the Sugar (Packing and Marking) Order, there is no provision that the 1970 contravention of any of the directions given under this order is a penal offence, a person contravening any such direction cannot be said to have contravened the provisions of Section 7 of the Act. The argument of His Lordship further appears to be that it is only contravention of clause 7 of the Sugar (Control) Order 1966 that the same can be penal. It may be pointed out with due respect that Section 7 of the Act provides, that it is the contravention of any Order or direction issued u/s 3 of the Act that is penal. It is not necessary that in the Order issued u/s 3 of the Act, there should be a specific provision (in the Order itself) making a particular direction as penal. It is u/s 7 of this Act that the contravention of the direction of any order issued u/s 3 of the Act is penal. It may be also noticed that his Lordship appears to have observed that the contravention of clause 7 of the Sugar (Control) Order 1966 is penal. But even in clause 7 of that Sugar (Control) Order, 1966 there is no such specific provision that its contravention is penal. So, it need not be stated in the Sugar (Packing and Marking) Order 1970 that its contravention is penal.

5. It is contended by the learned Counsel for the petitioner that when Sub-clause (b) of clause 7 of the Sugar (Control) Order, 1966 provides a further chance to the producer to re-process, if the stock found is of the below standard, a person cannot be said to have contravened any Order until that chance is given and is not complied with. But, I think that this reasoning is not correct, Clauses 5 and 7 of the Sugar (Control) Order 1966 are independent provisions. Clause 5 provides for the producer to maintain stock with packing and marking according to the directions issued by the Central Government under clause 5, and one of the directions that has been issued under Sugar (Packing and Marking) Order 1970 (issued under clause 5 of the Sugar (Control) Order, 1966) is that the producer shall at the time of packing mark on the bag in which the sugar is packed, its quality in terms of the Indian Sugar Standard in force at that time. In the present case, there was contravention of this direction and, therefore, its contravention was penal u/s 7 of the Act. In spite of the fact that there is a further provision in Sub-clause (b) of clause 7 of the Sugar (Control) Order, 1966, that the Central Government may, in some cases, ask the producer who is

storing sugar not according to the standard, to reprocess the said stock. Clauses 5 and 7 read together would show that both the provisions are there and a producer may be guilty for contravention of any direction issued under clause 5, and besides that, the Government may ask the producer also to re-process the stock. Re-process is another matter to regularise the contravention that has been made, but in spite of that if there is a contravention under clause 5, that is no doubt punishable u/s 7 of the Act.

6. In this view of the matter, the contention of the learned Counsel in this respect that the order taking cognizance sould be quashed is not tenable in law. There is no merit in this application. It is accordingly dismissed.

