(2001) 03 PAT CK 0048

In the Patna High Court

Case No : Criminal W.J.C. No. 258 of 2000

Sohan Kumar Binjrajke — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:

Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 414

Citation : (2002) CriLJ 175 : (2001) 2 PLJR 300

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Braj Ballabh Kumar, for the Appellant; S.D. Yadav, Government Advocate and Nadeem Seraj, J. C. to G.A., for the Respondent

Judgement

P.K. Deb, J.—This writ petition has been filed by the above named petitioner for issuance of appropriate writ for quashing the entire criminal case of Raxaul P-S. Case No. 05/2000 u/s 414, I.P.C. and 7 of the Essential Commodities Act instituted by respondent No. 6, Naresh Sahay against the petitioner and others on the ground that 700 Tins and Jars of Vanaspati were loaded on Truck bearing registration No. WB-03A/ 2239 which were seized by respondent No. 6 and referred the matter to the Collector, East Champaran, Motihari for initiation of confiscation proceeding u/s 7 of the Essential Commodities Act. A Supply Case No. 4/2000 was initiated in the Collectorate of District Magistrate, East Champaran, Motihari. An F.I.R. was also lodged on the basis of the so called statement, of the Driver being Raxaul P. S. Case No. 5/2000.

2. The allegation was that Vanaspati Ghee (Dalda) loaded in the truck was having no valid papers and export permission although it was stated that the same was taken from Birganj to Indore, but practically as per the driver''s statement, they had to be unloaded at Muzaffarpur. The confiscating authority took informations from the custom officials and also made a enquiry and found that all valid papers were there having trading licence etc. of M/s. Bharat International and the

custom officials had mentioned that all papers were valid and after payment of custom duty the vehicle along with the articles were released for going to Indore but still then the police officials had unnecessarily intercepted and to that extent the custom officials had also written to the Special Judge, E.C. Act that the police personel were unnecessarily interfering with the functioning of the custom officials.

3. The confiscating authority vide Annexure 4 dated 17-4-2000 held in the following manner:--

It is indeed surprising as to on what basis the officer-in-charge seized the goods as the seizure and detention have cause significant and irreperable loss to the Opposite Party. The attention of the Superintendent of Police may be drawn to this matter for the act of misdemeanour of the Officer Incharge, Raxaul for seizing and detaining the consignment which has already been cleared by the Customs Department. Such indiscretion causes friction in the smooth functioning of various Departments of Government.

In view of the offence being not made out, the goods be released at once along with the truck on furnishing indemnity bond of Rs. 5,00 lacs for both the items with two sureties of the like amount.

4. On perusal of thhe confiscation order and the letter written by the customs officials to the Special Judge, E. C. Act, East Champaran, Motihari as contained in Annexure 5, a Bench of this Court asked for personal appearance of Respondents 6 and 7, who were responsible for such seizure as it could be found that the seizure were illegal on the face of it. They appeared and they could not show anything more except that what has been stated in the counter-affidavit filed.

5. In the counter-affidavit it has been stated that as per the statement made by the driver, who was not having any paper at the relevant time, a prima facie case was made out and as such F.I.R. was lodged. A letter of the Superintendent of Police as contained in Annexure B dated 13-10-2000 addressed to the District Magistrate had also been referred to and it is their contention that the case is still under investigation. In the Superintendent of Police''s letter it appears that during the course of investigation, some offence could be detected in respect of several trucks which had not paid sales tax properly and the seized truck might be one of them, but regarding the offence as alleged u/s 414, I.P.C. and Section 7 of the E. C. Act, practically nothing could be substantiated. In that way the seizure on the basis of those offences, as clearly observed in the order of the confiscating authority, appears intact although the release had been made on proper indemnity bond. The offence as alleged may not be said to be coming within the jurisdiction of the Special Judge, E. C. Act and in that way the offence as alleged may not be prosecuted further before the Special Judge but those other offences as has been stated regarding non-payment of sales tax is still under investigation. So at this stage no comment can be made regarding the quashing of whole of the F.I.R. but this much can be observed that the

investigation must be completed in the abovementioned F.I.R. within a month next as it appears that the investigation is at the fag end from the letter of the Superintendent of Police itself although in that letter of the Superintendent of Police, there is a reference seeking permission to file appeal against the order of the confiscating authority in releasing the vehicle from confiscation but nothing could be shown before this Court that any such appeal has been preferred or the order of the confiscating authority has been modified. It appears that there might be some hitch between the customs officials and the police officials posted at Raxaul at the relevant time and the petitioner or his vehicle became the victim of it. Now when sandwiched by the letter of the customs officials and the order passed by the confiscating authority, the Superintendent of Police, East Champaran is trying to give protection to his police officials by saying that the case now come up against the truck and its owner with loaded articles of non-payment of sales tax. These are all matters of after thought. The seizure at the very time when it was made was definitely illegal as has been held by the confiscating authority and such illegality could not be cleared up before this Court also. But as the investigation is still going on, I am not going to pass any order regarding closing of the F.I.R. at this stage except that of the observations made above and for the actions taken by the police officials, they should be exemplary penalised and for that reason, the petitioner is hereby directed to be paid a compensation of Rs. 10,000/- (Ten thousand) by the State of Bihar and the amount should be realised from the erring officials for causing harassment and loss to the plying of the vehicle and the detaining of the articles.; Such amount of compensation must be paid within a period of two months from this date.

With the above observation/directions, this writ petition stands disposed of.

