(2012) 02 JH CK 0028

In the Jharkhand High Court

Case No : Criminal M.P. No. 1226 of 2004

Sohan Lal Tibrewal APPELLANT

Vs

The State of Jharkhand and Another RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Bihar Finance Act, 1981 — Section 49, 49(5)
Customs Act, 1962 — Section 11, 11(2), 132, 133, 134
Essential Commodities Act, 1955 — Section 7

Citation : (2012) 02 JH CK 0028

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad

1. It was stated by the counsel appearing for the Opp. Party No. 2 that since the Opp. Party No. 2 got retired, he is no more interested in pursuing this matter.

2. Since the State is also the party, counsel appearing for the State would be pursuing the case of the prosecution.

3. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State.

4. This application is directed against the order dated 01.12.2000 passed by the then Special Judge, Economic Offences, Dhanbad in C.O. Case No. 13 of 1998 whereby and whereunder, cognizance of the offences u/s 49 of the Bihar Finance Act, 1981 and also u/s 11 of the Customs Act, 1962 has been taken against the petitioner.

5. Learned counsel appearing for the petitioner submits that it is the case of the prosecution that while two trucks were carrying Rice from M/s Sanjay Industries, Kahalgaon to M/s M.R. Enterprises, Kaliyacahak, Maldah, it were intercepted at

Pakur and on the allegation that Rice was being exported to Bangladesh, the case was registered as Pakur (N) P.S. Case No. 195 of 1998 u/s 7 of the E.C. Act and also u/s 11 of the Customs Act.

6. The case was taken up for investigation. After competition of the investigation, the charge sheet was submitted under the aforesaid offences. On submission of the charge sheet, the case relating to offences u/s 7 of the E.C. Act was transferred to the court of Special Judge.

7. At the same time, the copy of the charge sheet was sent to the Special Judge, Economic Offences, Dhanbad upon which the case was registered as C.O. Case No. 13 of 1998. Thereupon, the cognizance of the offences was taken u/s 49 of the Bihar Finance Act, 1981 and also u/s 11 of the Customs Act, 1962. That order is under challenge.

8. Mr. S.N. Sharma, learned counsel appearing for the petitioner submits that no offence is made either u/s 49 of the Bihar Finance Act, 1981 and even u/s 11 of the Customs Act, 1962, still cognizance of the offences have been taken under the aforesaid offences, which is quite bad.

9. It was further submitted that the cognizance order is also bad on account of the fact that before taking cognizance, no sanction for prosecution had been accorded by the competent authority in terms of the provision as contained in Section 137 of the Customs Act, 1962.

10. Further it was pointed out that similarly cognizance of the offence under the Bihar Finance Act, cannot be taken, without there being any sanction by the competent authority in terms of Section 49(5) of the Bihar Finance Act, 1981 and as such order taking cognizance is fit to be quashed.

11. Regard being had to the facts and circumstances and also the provision of law as referred to above, I do find substance in the submission advanced on behalf of the petitioner.

12. Here in the instant case, the cognizance u/s 11 of the Customs Act, 1962 has been taken, without there being any sanction for prosecution whereas u/s 137, sanction is required for taking cognizance of the offence under Sections 132, 133, 134, 135 and 135A. It be pointed out here that the cognizance though has been taken u/s 11 of the Customs Act, but Section 11 of the Customs Act, 1962, pertains to Power to prohibit import or export of the goods notified.

Section-11 of the Customs Act, 1962, does stipulate that if the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions as may be specified in the notification, the import or export of goods of any specified description .

13. Under the situation, Section 11 does not appear to be penal provision.

14. Under these situations, order, under which cognizance of the offence has

been taken u/s 11 of the Customs Act, 1962 is quite bad.

15. Further, I do find that the provision as enshrined u/s 49(5) of the Bihar Finance Act, 1981, speaks about grant of sanction, which reads as follows:

No court shall take cognizance of any offence under this part or the rules made thereunder, except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the 1st Class shall try any such offence. In spite of there being any sanction in terms of Section 49(5) of the Bihar Finance Act, any prosecution u/s 49 would be quite illegal.

16. But here in the instant case, the court, without having order of sanction, has been taken cognizance of the offence u/s 49 of the Bihar Finance Act.

17. Thus, the entire proceeding of C.O. Case No. 13 of 1998, including the order dated 01.12.2000, passed by the then Special Judge, Economic Offences, Dhanbad is hereby quashed.

18. In the result, this application is allowed.

