

(1990) 03 GAU CK 0023
In the Gauhati High Court
Case No : Criminal Revision No. 138 of 1984

Sri Hiralal Poddar and Another APPELLANT
Vs
State of Assam and Others RESPONDENT

Date of Decision : 07-03-1990

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1990) 1 GLR 407

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : O.P. Bhati, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—This petition is for quashing the Criminal proceeding which was registered as case No. GR Case No. 1885/79 pending before the learned Chief Judicial Magistrate, Guwahati.

2. On 2.5.79 the Inspector of police conducted search in the godown belonging to accused-Petitioner No. 1 and found 394 bags of cement. Accordingly, the First Information Report was filed on 4.5.79 which is available at Annexure-"B" to the petition. It was disclosed in the F.I.R. that accused--Petitioner No. 2 carried the above bags of cement from the cement factory located at Cherapunji in the State of Meghalaya. In view of the above seizure and after investigation, charge-sheet against the present two accused-Petitioners under the provisions of Assam Cement Dealers Licence Order, 1972, for short the order, read with Section 7 of the Essential Commodities Act, 1955 was filed. By the impugned order dated 7. 4. 84, the learned court below rejected the prayer of the accused-Petitioners and framed charge. Hence, the present petition. It may be mentioned that Assam Cement Dealers Licensing Order, 1972 was repealed by the Assam Trade Articles (Licencing and Control) Order, 1982.

3. The main thrust of argument of Mr. Bhati, learned Counsel for the Petitioner is

that the accused-Petitioner No. 2 was appointed as agent for carrying cement from the Cement Factory at Cherapunji to Tura within the State of Meghalaya. One has to go by road from Cherapunji to Tura within the State of Meghalaya through Guwahati within the State of Assam. According to Mr. Bhatti, on perusal of the statements recorded during investigation and other materials, no case has been made out against the accused--Petitioner.

4. In the petition the statements of six witnesses recorded by the investigating officer have been quoted. On perusal of their statements I find that accused-Petitioner No. 2 was appointed as agent by the Executive Engineer, P.W.D. Tura to carry Cement from cherapunji to Tura. From the letter of the Executive Engineer, Tura dated 27.12.79 vide Annexure "F". I find that he was also authorised to unload the cement on transit. Thus, there is no dispute that the accused-Petitioner No. 1 is the owner of the godown and it was taken on rent by accused-Petitioner No. 2 and that accused-Petitioner No. 2 was allotted the contract for carriage of cement from the Factory at Charapunji to Tura and that the accused-Petitioner was also authorised to unload the cement curing transit.

5. Clause (a) of para 2 of the order defines "dealer" which runs as follows:

(a) "Dealer" means a person engaged in the business of purchase, sale or storage for sale, of cement in quantities exceeding 10 metric tonnes at any one time, but does not include an industrial undertaking which is engaged in the manufacture or production of cement under the Industries (Development and Regulation) Act, 1951 (65 of 1951);

Thus from this definition it is clear that to become a dealer under the said order a person must be engaged in the business of purchase, sale or storage for sale. To become a dealer, storage of cement must be for sale. Para 3 of the said order provides that, no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licencing authority, Clause (3), of para 3 of order runs as follows:

(3) For the purpose of Sub-clause (1) and (2) of this clause, any person who stores cement in any quantity exceeding 10 metric tonnes at any one time shall, unless the contrary is proved, be deemed to store the cement for the purpose of sale, provided that any consumer requiring cement exceeding 10 metric tonnes at a time, shall apply in Form D to the Deputy Commissioner or Sub-Divisional Officer concerned for obtaining a Storage permit in Form "E".

From this Clause (3) it is clear that any person who stores cement exceeding 10 metric tonnes at a time unless contrary is proved shall be deemed to store the cement for the purpose of sale. Similar expression appearing in Manipur Food Grain Dealers Licencing Order, 1958 came up for consideration before the apex court in Manipur Administration Vs. M. Nila Chandra Singh, wherein their Lordships held that to bring home the charge, mere possession is not sufficient and the prosecution has to prove by independent evidence that the storage was for sale. Applying the above ratio to the case in hand I am of the opinion that the

prosecution has further to prove that the storage of cement in question was for the purpose of sale. The investigating agency could not collect any material on this point. In fact, from the statements recorded by the Investigating Officer and also from the certificate issued by the Executive Engir., Tura, the presumption is otherwise. In other words, accused-Petitioner No. 2 did not keep the cement at Guwahati for sale, but it was so kept while on transit.

6. For what has been stated above, I find no prima facie case against the accused Petitioners and as such the proceeding is liable to be quashed.

7. In the result petition is allowed by quashing the criminal proceeding registered as G.R. Case No. 1885/79 before the learned Chief Judicial Magistrate, Guwahati and the Rule is made absolute. The accused-persons are discharged from the liability of bail bond.