**(2006) 10 OHC CK 0049**

**In the Orissa High Court**

**Case No :** Government Appeal No. 45 of 1990

State of Orissa APPELLANT

Vs

Aravind Trading Company and Others RESPONDENT

**Date of Decision :** 10-10-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 323
Essential Commodities Act, 1955 — Section 7

**Citation :** (2008) CLT 202 (Suppl Crl) : (2008) OLR 202 (Suppl Crl) : (2007) 2 OLR 310 Supp

**Hon'ble Judges :** Pradip Mohanty, J

**Bench :** Single Bench

**Advocate :** S.C. Lal and S.K. Mund, for the Respondent

**Final Decision :** Dismissed

## Judgement

Pradip Mohanty, J.—This appeal is directed against the judgment and order dated 23.6.1990 passed by the Special Judge, Koraput-Jeypore acquitting the Respondent of the offence u/s 7 of the Essential Commodities Act, 1955 in T.R. Case No. 59 of 1988.

2. The case of the prosecution is that on 5.9.1987 the Supply Officials P.Ws. 3 and 4 inspected the premises of M/s. Aravinda Trading Company in presence of the accused-Respondent No. 2 Ashok Kumar Agarwal. On verification, it was found that there was shortage of 1002 tins of edible oil. Admittedly, this shortage included 400 tins of ground-nut oil and 600 tins of mustard oil previously pledged with the State Bank of India, Jeypore and kept in Godown No. 3 of Jyoti Mills, as a revealed from the subsequent verification, and the remaining two tins of rap-seed oil were sent to Jyoti Mill premises. These two tins of rap-seed oil, as per the report of the prosecution, were found inside the Mill Hall of Jyoti Mills and there was no mention of removal of these two tins to Jyoti Mill premises on the Stock and Price Declaration Board or in the books of accounts of M/s. Aravinda Trading Company. Further, the said company purchased 320 tins of mustard oil

from Shyambaba Trading Company, Mall Godown, Cuttack vide purchase bill dated 26.8.1987. Though the goods were received on 29.8.1987, the books of accounts did not reflect receipt of the stock. Thus, Respondent No. 1 contravened Clauses 6 and 12 of the Licensing Order and Conditions 2(b) and 3(i) of the Licence. According to the prosecution, on 5.9.1987 after inspection of M/s. Aravinda Trading Company, the Departmental Official had also inspected M/s. Jyoti Mills and found 1800 tins of different edible oils stored in Godown No. 5, which was not the licensed godown of the said firm but the licensed premises of M/s. Matania Brothers of Jeypore. There was no intimation to the licensing authority regarding the change of place of storage, thereby there was contravention of condition No. 2(b) of the licence read with Clause 6 of the Licensing Order. The inspection also revealed that 446 tins of ground-nut oil were found stored inside a Labour Rest Room of Jyoti Mill premises. According to the prosecution these 446 tins belonged to M/s. Arabinda Trading Company, which had not been shown in their account and stored at a place other than the place mentioned in the licence. On this account also the Respondents had violated condition No. 3 of the licence read with Clause 12 of the Licensing Order.

3. The defence plea is one of complete denial. In their statement recorded u/s 323 Code of Criminal Procedure, the accused-Respondents took the further plea that there was leakage in two tins of rape-seed oil, so M/s. Aravinda Trading Company had sent these two tins to the Jyoti Mill premises only for sealing purpose in the forenoon of 5.9.1987. These two tins were kept on the varandah of Godown No. 1 in Jyoti Mill premises. On 29.8.1987, 446 tins of ground-nut oil of the said company was purchased by M/s. Lekhram Mohavir Prasad of Titilagarh, and these tins were booked in M/s. Jawahar Goods Transport, Jeypore, for transportation to Titilagarh. The concerned Transport Company had taken Godown No. 9 of Jyoti Mill premises on rent on 1.9.1987 and stored these tins in that godown. The lease deed Ext. 1 was shown to the departmental official i.e. complainant (P.W. 3) and P.W. 4 on 5.9.1987 itself and P.W. 4 received the original on that day. The 320 tins of mustard oil of Shyambaba Trading Company, Cuttack were purchased by M/s. Jyoti Mills and not by M/s. Aravinda Trading Company, though by mistake the Cuttack Company mentioned the name of M/s. Aravinda Trading Company. On receipt of the goods, the bill was corrected by the clerk accompanying the truck. Further it reveals that due to heavy rains from 2.9.1987 to 5.9.1987 there was leakage of water in the Jyoti Mill Hall, where 1800 tins of different edible oils were stored. Godown No. 5 was taken on lease by M/s. Matania Brothers, Jeypore. After obtaining permission from M/s. Matania Brothers, Jeypore on 4.9.1987 to use that godown an intimation had been sent to the Civil Supplies Officer about proposed shifting of these goods to Godown No. 5 on 5.9.1987. The said shifting was completed in the F.N. of 5.9.1987. 5.9.1987 and 6.9.1987 were public holidays. The concerned licence was seized by the complainant P.W. 3 on 7.9.1987 and same could not be produced before the licensing authority.

4. In order to prove its case, the prosecution examined as many as 5 witnesses

 

including the complainant-P.W. 3 and another official witness of the Supply Department P.W. 4 and proved 41 exhibits. Defence examined only one witness and proved 8 exhibits.

5. The learned Special Judge, Koraput-Jeypore, who tried the case, by his judgment and order dated 23.6.1990 acquitted the accused-Respondents of the above offence. Hence this revision.

6. Mr. Mohanty, learned Additional Standing Counsel submits that in case of intention of storing the commodities in other places, prior intimation thereof has to be given to the licensing authority. The dealer shall have to inform the licensing authority of his having done so within 48 hours of such storage and shall produce the licence for making necessary changes.

7. Perused the evidence of the prosecution witnesses and that of the defence witness and the exhibits. P.W. 3, who is the complainant and an Inspector of Civil Supplies Department, in his deposition admitted that during his inspection the accused-Respondent No. 2 explained that he had sent two tins of rap-seed oil to Jyoti Mills for sealing purpose. Thus, the defence plea that the two tins were sent to Jyoti Mill for sealing purpose is not an after-thought. P.W. 4, who is another official witness, also admitted that the accused Respondent No. 2 is the owner of both the firms.

8. From the above, this Court does not see contravention of any clause of the Licensing Order. There is no contravention of Condition 2(b) of the Licence as alleged. This condition casts a legal responsibility on the licensee to inform the licensing authorities of the change of place of storage within 48 hours of such change and produce the licence before the licensing authority for making requisite changes. But before 48 hours of such shifting, two tins were seized by P.W. 3 under seizure list Ext. 4. Thus there was no scope for the business concern to produce before P.W. 3 the order of the licensing authority regarding change of place of storage. There is also no contravention of Clause 12 of the Licensing Order. Clause 12 provides that the maintenance of accounts and making entries on the Stock and Price Board shall have to be done only at the commencement and closing of the business on each day and not in between. Thus there was no legal obligation to make entry in regard to tins in the book of accounts and on the Stock and Price Board before the inspection of the business concern on that day. Admittedly, the Stock and Price Declaration Board of that day mentioned the stock of rape-seed oil as five tins vide item No. 3 of Ext. 14, an extract of the Board. Therefore, prior to the occurrence the accused had not contravened any Clause of the Licensing Order with regard to these two tins of refined rap-seed oil. Ext. 28 is the purchase bill dated 26.8.1987 issued by Shyambaba Trading Company, Mal Godown, Cuttack with regard to purchase of 320 tins of mustard oil. There is no dispute that the name of M/s. Aravinda Trading Company was written in the relevant column, but the same was scored through and the name of Jyoti Mill was inserted. There is also no dispute that these tins were transported to Jeypore from Cuttack in Truck No. ORK 8121 and

 

in the register of the Check Gate at Nawarangpur, M/s. Aravinda Trading Company was mentioned as owner of these tins. Even then, this Court does not find any irregularity or illegality in the purchase of these tins as is apparent from Ext. 28. These tins, according to the prosecution, passed through Nawarangpur Check Gate on 29.8.1987 at 7.10 a.m. vide Ext. 41. The good must have reached Jeypore on the same day because the distance between Jeypore and Nawarangpur is about 40 kms. In fact, the goods were received on 29.8.1987. P.W. 3, the complainant-Supply Inspector, in para-16 of his deposition admitted that in Jyoti Mill Accounts, receipt of these 320 tins on 29.8.1987 found place. The owner of these two licensed business concern being same, there is no illegality of M/s. Jyoti Mills ultimately purchasing these tins which were sent in the name of M/s. Aravinda Trading Company on credit from Cuttack. Ext. 3, the affidavit dated 14.9.1987 of the proprietor of Shyambaba Trading Company, Cuttack, also reveals that he sold these 320 tins to M/s. Jyoti Mills, but while signing, he mentioned the name of Aravinda Trading Company. His Clerk, who accompanied the goods to Jeypore, finding out this mistake, duly made necessary correction. P.W. 3 in his deposition stated that the letter sent under certificate of posting by M/s. Jyoti Mills intimating their intention to store the stock in godown No. 5 from 5.9.1987 had been received in the Civil Supplies Office. The shifting was made on 5.9.1987. 5.9.1987 and 6.9.1987 were public holidays. The licence was seized on 7.9.1997. So there was no scope for the accused-Respondents to produce the licence before the licensing authority for making necessary endorsement. Of course, intimation regarding the shifting had been sent within 48 hours, as provided by law.

9. In view of the above, this Court finds no illegality or irregularity in the impugned judgment made by the Special Judge, Koraput, Jeypore acquitting the Respondents of the offence u/s 7 of the Essential Commodities Act, 1955 in T.R. Case No. 59 of 1988.

Accordingly, the Government Appeal is dismissed.