

(1994) 01 PAT CK 0020

In the Patna High Court

Case No : Criminal Writ. Jurisdiction Case No. 2 of 1994 (R)

Sushil Kumar Agrawal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 419, 420

Citation : (1995) 1 BLJR 443

Hon'ble Judges : G.C. Bharuka, J; Amir Das, J

Bench : Division Bench

Judgement

G.C. Bharuka and Amir Das, JJ.—Heard Mr. S.L. Agarwal, learned Counsel for the petitioner and Mr. V. Shivnath G.P.I, for the respondents.

2. The present writ application has been filed by the petitioner for quashing a criminal prosecution arising out Ghatshila Police Station Case No. 161 of 1993, dated 21-12-1993 instituted under Sections 419 and 420, Indian Penal Code and Section 3/7 of the Essential Commodities Act, 1955 as also for release of 600 tins of Sunflower Refined Oil which has been seized in relation to the said case.

3. According to the petitioner, he holds a licence for dealing in edible oils in terms of Bihar Trade Articles (Unification of Licences) Order 1984 (hereinafter referred to as "Unification Order" only) being Licence No. 1/91 which has been renewed up-to-date. He carried on the said business under the name and style M/s. Lakshmi Bhandar at Dalbhum, as Proprietor. As stated by the petitioner, the case of petitioner is that he had purchased 600 tins of Sunflower Refined Oil from M/s. Lohioa Industries of Hyderabad which he had sold to various wholesale dealers of Jamshedpur who are also licensees. While the said consignment was being transported on a public carrier truck bearing No. B.P.J. 7983 from Dalbhum to Jamshedpur on the National Highway 33 near village Phuldungri the same was intercepted by the Respondents 2 and 3 namely, the Officer-incharge and the Sub-Inspector of Ghatshila Police Station and unauthorised seized. The petitioner

immediately approached the Sub-Divisional Officer concerned and made a written complaint with regard to the mala fides exercised by the said respondents expressly alleging that the said illegal action has been sought to be taken for illegal gratification but since no step was taken by the Sub-Divisional officer he reported the matter to the Deputy Commissioner, Singhbhum (East). The learned Deputy Commissioner, immediately entrusted an enquiry and called for a report from the District Supply Officer who, under his report, dated 21-12-1993 (Annexure "5"), reported that no contravention whatsoever, has been committed by the petitioner since he possessed of all legal documents for sale and transportation of the said goods. Thereupon, as has been said by the petitioner, the Deputy Superintendent of Police, Ghatshila to see that the goods and the truck is released in favour of the petitioner but the Respondent Nos. 2 and 3 inspite of abiding by the said direction have instituted the present F.I.R. (Annexure "6") making misconceived allegation which neither also sustainable in law nor on the fact.

4. The petitioner has filed documents as annexures to show that the goods seized are Sunflower Refined Oil. No doubt Sunflower is an edible oil but the provision of the Unification Order does not apply to such oil because it is not one of the trade articles for the purpose of the said Order as would be evidence from the definition contained in Clause (2)(t) read with Schedule I, Part "D" of the Unification Order. Beyond this Order there is no other Order made under the Essential Commodities Act or under any other existing law which in any way regulates the sale, purchase or movement of any edible oil. No doubt there is a Central Order putting the restriction on the storage of edible oils but in the present case we are not concerned with that. Apart from the aforesaid considerations, now from the report of the District Supply Officer who is supposed to be aware of all relevant laws relating to control of essential commodities, has clearly opined and reported to the Deputy Commissioner as per Annexure "5" that the petitioner has not contravened any Order made under the Essential Commodities Act. In this view of the matter prima facie we are satisfied that the action of the Respondent Nos. 2 and 3 lacks, bona fide and the matter needs to be enquired into by the competent higher authorities to check such unwarranted tendencies in police cadres.

5. Anyhow, we direct the Deputy Commissioner, Singhbhum (East) to immediately look into the matter and if he finds that the petitioner has not contravened any law justifying the seizure and detention of the articles in question then he will pass appropriate orders for releasing the same within three days from the date of communication of this order. If he finds that the prosecution case against the petitioner is found to be frivolous then he will see that it is not further continued.

6. Keeping in view the facts and circumstances of the case, the allegation of mala fides and our prima facie satisfaction relating to non-contravention of any law, we also direct that in case of arrest or surrender of the petitioner in the above-

referred police case he will be released on bail on his furnishing security of Rs. 5, 000/- (Rupees five thousand) only with two sureties of the like amount each to the satisfaction of the Court concerned.

7. The writ application is, accordingly, disposed of.