
(1984) 07 AHC CK 0044

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1125 of 1984

Swarup Chand Jain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6A, 6E, 7

Citation : (1984) 07 AHC CK 0044

Hon'ble Judges : K.N. Goyal, J

Bench : Single Bench

Advocate : J.N. Saran, for the Appellant;

Judgement

K.N. Goyal, J.—The Petitioner has approached this Court u/s 482 Code of Criminal Procedure with the allegations that he is being unnecessarily harassed on the basis of an FIR lodged against him u/s 3/7 of the Essential Commodities Act (hereinafter to be referred as the Act) vide Annexure-1.

2. Yusuf and Sant Lal rickshaw pullers were apprehended by a constable on 23rd August, 1982 while they were taking on their rickshaws thirty tins of refined palm oil. The oil was seized and on being ascertained that the oil belonged to the Petitioner proceedings were started against him as well. The Petitioner prayed to the Magistrate for release of his oil but his request was turned down by the Magistrate and his revision was also dismissed by the learned Sessions Judge. Both the courts below have taken the view that in view of the fact that palm oil had been notified on 8-3-78 as an essential commodity as a specie of edible oils, the courts had no jurisdiction to interfere in the matter as the matter lay within the purview of the Collector u/s 6-A of the Act. The courts held that their jurisdiction was barred by Section 6-E of the Act.

3. I have heard the learned Counsel for the Petitioner and learned Deputy Government Advocate for the State. It appears that there is a Central Control Order u/s 3 of the Act, namely, the Pulses, Edible Oil Seeds and Edible Oils

(Storage Control) Order, 1977. This Order relates to edible oils apart from pulses and edible oil seeds, as such it may be assumed that the order covers palm oil as well. This order contains three substantive clauses. Clause (3) provides that no person shall carry on business as a dealer in edible oils except under and in accordance with the terms and conditions of licence granted under a State order if the stocks of edible oils in his possession exceeds five quintals. In the instant case the quantity seized was less than five quintals. That apart, no State Order on the subject of licencing of dealers in edible oils has been brought to the notice of this Court. Indeed the order passed by the learned Magistrate and learned Sessions Judge disclose that although a plea was taken in those courts as well to the effect that no such control order had been issued by the State Government, no order was produced on behalf of the prosecution before those courts either. It must, therefore, be assumed that no State order has been promulgated u/s 3 in regard to licencing of dealers in edible oils. Accordingly Clause (3) of the Central Order aforesaid is not attracted.

4. Clause (4) provides that no dealer shall store or has in his possession oil seeds in excess of the quantity specified. The quantity specified range from fifty to hundred quintals according to the categories of cities. In this case there can be charge of violation of this clause.

5. Clause (5) of the Order provides for filing of returns by a dealer referred to in Clause (3). As Clause (3) itself is not attracted, Clause (5) is not attracted either, nor is there any charge in this respect. The only allegedly incriminating evidence is about possession of thirty tins of palm oil. This does not come within the mischief of any of the three clauses referred to above.

6. This petition is accordingly allowed and the first information report dated 23-8-1982 in respect of which investigation proceed against the Petitioner is hereby quashed. It is further directed that the thrity tins of palm oil belonging to the Petitioner be released in his favour.