
(1969) 01 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 1526 of 1968

Tejpal Agrawal and M/s Ram Pd. Bankatlal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 30-01-1969

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1969) PLJR 258

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : H.L. Agarwal and G.C. Bharukha, for the Appellant; R.N. Tewari, for the Respondent

Judgement

G.N. Prasad, J.—This is an application for quashing a prosecution that has been instituted against the petitioners on the basis of a report dated the 5th August, 1968 submitted to the Sub-divisional Magistrate, Kishanganj by Shri R.P. Singh, Assistant District Supply Officer, Kishanganj. The offence which the petitioners are supposed to have committed is an offence u/s 7 of the Essential Commodities Act for having taken delivery of 129.12 quintals of wheat in 139 bags consigned to them under Railway Receipt no. 880474 dated the 7th June, 1968 by M/S. Vijay Kumar Ajay Kumar of Balia from Lakhminia in the district of Monghyr to Kishanganj in the district of Purnea. The delivery was taken by the petitioners on the 19th June, 1968. It is said that this was a violation of Government order contained in Notification no. G.S.R. 90, dated the 30th May, 1968, the relevant portion of which provides--

that no person shall, except and in accordance with a permit granted by the State Government in this behalf, export, carry or cause to be exported or carried by rail, river, road or otherwise any quantity of wheat to any place within the district of Purnea from any place outside the said district.

2. It appears that at the time when the above government order came into force there was another order on the question contained in Notification no. 12084--

S.C. dated the 30th June, 1966 which provided that--

no person shall export, carry or cause to be exported or carried any quantity of rice, wheat or wheat products--

(a) by river to any place from any other place within the State of Bihar; and

(b) by rail or motor truck to any place within a twenty mile belt all along the border of the State of Bihar from any place in any area outside that belt within the state;

except under and in accordance with a permit granted by the District Supply Officer, Assistant District Supply Officer or the Block Development Officer, of the district/Subdivision/Block from where it is proposed to be exported or carried.

Further, it appears that in pursuant of the Notification dated the 30th June 1966 the exporting firm, namely, M/S Vijay Kumar Ajay Kumar has taken out a permit from the Block Development Officer, Balia for export of 161 bags of wheat (weighing 93 K.G. each) to the firm of the petitioner at Kishanganj and the period of validity of that permit was 29th May, 1968 to the 7th June, 1968. It was on the 7th June, 1968 that the consignment had been booked by the aforesaid permit holder to the firm of the petitioners at Kishanganj. The delivery of the consignment, however, was taken by the petitioners after the 7th June, 1968, namely, on the 19th June, 1968 at Kishanganj Railway Station.

3. I have quoted the relevant portion of both the notifications, namely, the notification of the 30th June, 1966 and the notification of the 30th May, 1968. It will be noticed that the prohibition against free dispatch of wheat which was imposed under these two notifications was intended to operate against the exporter. Neither of these two notifications contained any prohibition against the importer. Had the intention of the law being to make the import of wheat in contravention of these two notifications to be illegal then clear words to that effect would have been included therein and in the case notifications in question would have said that "no person shall export etc...and no person shall import..." except under and in accordance with a permit granted by the appropriate authority.

4. In the instant case, the exporter had acted within the terms of the permit issued to him by the Block Development Officer of his area, which authorised him to affect the export within any period between the 29th May, 1968 and the 7th June, 1968. In other words, the exporter had not contravened the terms of the notification dated the 30th June, 1966. Even assuming that the exporter did contravene the subsequent notification of the 30th May, 1968 on the footing that on the date of the dispatch he should have obtained a fresh permit in accordance with the subsequent notification, that would not render the petitioners liable for contravention of the terms of that notification because under that notification also no penalty attaches to a person, who has not exported in contravention of the terms of the notification but has taken delivery of a consignment dispatched

to him in terms of a permit which was valid under the earlier notification of the 30th June, 1966. Under the circumstances, the prosecution that has been instituted against the petitioners, is misconceived. I, therefore, quash the prosecution and make the rule absolute.