
(2002) 08 JH CK 0005

Jharkhand High Court

Case No: Criminal Miscellaneous No. 9511 of 1998 (R)

Nemi Chand Goel

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Aug. 6, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Essential Commodities Act, 1955 - Section 7

Citation: (2003) CriLJ 763 : (2003) 1 CurCriR 116 : (2003) 1 EastCriC 203

Hon'ble Judges: Vishnudeo Narayan, J

Bench: Single Bench

Advocate: S.L. Agarwal and Rajesh Kumar, for the Appellant; Shailesh Kumar Sinha, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.

This is an application u/s 482 of the Cr PC filed by the petitioner for quashing of the First Information Report

dated 5.11.1998 in connection with Bermo PS Case No. 126 of 1998 u/s 7 of the Essential Commodities Act, 1955 (hereinafter referred to as

"the Act") pending in the court of Special Judge, E.C. Act, Bermo at Tenughat.

2. The facts giving rise to this case are as follows :

The petitioner is a licensed retail dealer as per license No. 19/91 issued under the provisions of Bihar Trade Articles (Licence Unification) Order,

1984 (hereinafter referred to as "Unification Order") for dealing in sugar, food-stuffs, edible oils including hydrogenated oil at his shop situate at

Kar-gali Bazar, PS Bermo, District Bokaro and the business premises of the petitioner was inspected by Sri Hari Mohan Singh, Supply Inspector,

Chandrapura, the informant, along with other officials. It is alleged that in the course of inspection rice, wheat, edible oils were found in his

authorized godown situated in the house of one Devendra Singh behind the business premises of the petitioner as well as in his authorized business

premises. It is alleged that in the unauthorized godown 110.50 quintals of rice, 18.50 quintals of pulse, 3 quintals of sugar and 3.60 quintals of

edible oils were found and in the authorized business premises 3.15 quintals of Soya bean refined oil and 3.19 quintals of mustard oil, 2.18 quintals

of sugar, 80 kgs. of rice and 30 kgs. of pulse were found and the aforesaid trade articles were seized and seizure list was prepared. It is further

alleged that the petitioner was granted licence to carry on the business in his business premises as described in the licence but he has contravened

the terms of the licence and price display order. A written report was lodged before the Bermo PS by the informant on 5.11.1998 and a case u/s 7

of the Essential Commodities Act has been instituted against the petitioner.

3. It has been submitted by the learned counsel for the petitioner that the allegations disclosed in the written report of the informant do not at all

constitute any offence against the petitioner and no provision of the Act aforesaid as well as of the unification Order or any other Control Order

stands contravened by the petitioner and as such there is manifest error by the informant in, setting the law in motion against him and the institution

of the FIR against the petitioner in the facts and circumstances of this case is nothing but an abuse of the process of law. It has also been

contended that no offence is at all made out against the petitioner even if the entire allegations are accepted to be true. Elucidating further it has

been contended that the Central Government by letter dated 27.1.1995 (Annexure 8 of this petition) decided to abolish the stock limit of rice and

wheat and in this view of the matter the provision of Unification Order is inapplicable in respect thereof as for the application of the Unification

Order, fixation of stock limit is sine qua none. Rice and wheat appear at serial 6 and 1 respectively in Schedule 1 Part A (Food-grains) of the

Unification Order. Section 3 of the act has empowered Central Government by order to make provision for regulating and prohibiting the control,

production, supply, and distribution of essential commodities and Section 5 of the said Act empowers the Central Government to delegate its

power to the State Government to make orders or issue notification u/s 3 of the said Act and in pursuance thereof Central Government has

delegated power to the State Government by notification being GSR No. 800 dated 9.6.1978 and in this view of the matter the delegated authority

is bound to follow the directions of the Central Government in respect of removal of stock limits of rice and wheat and in the case law reported at

2002 (2) JCR 303, the power of delegation has been considered and it has been held that State Government is bound to obey the order of the

Central Government and since stock limit stands delegated to the State Government in respect of rice and wheat in the year, 1995, the Unification

Order, thus, becomes inapplicable. Regarding the pulse it has been submitted that no licence fee has been prescribed regarding the pulse as

described in Clause 4(1)(d) in Part II and index IV of the Unification Order and in ""the case of Om Prakash Bhartia, Cr WJC No. 412 of 1991, it

has been held by Hon"ble Patna High Court that since no licence fee has been prescribed for the pulse, it cannot be said that pulse has been

brought within the purview of Unification Order and similar view has also been echoed in the case of Mali Ram Agarwal 2001 (1) ECC 24 and the

First Information report was accordingly quashed. Regarding edible oils it has been submitted that the Central Government by S.O. 772 (E) dated

10.11.1997 makes certain amendments in the Pulse, Edible Oils, Oil Seeds storage Control Order, 1997 in which oil seeds and edible oils were

deleted in the said Order and a request was made by the Central Government under S.O. 359 (E) dated 23.12.1997 to amend their respective

Orders accordingly in respect of edible oils and edible oil seeds and the State Government in pursuance of S.O. 772 (E) dated 10.11.1997

directed all the Commissioners and the district Officers vide letter No. 5806 dated 14.7.1998 to act as per the amendment aforesaid and, thus, no

licence is required to deal in edible oils and there being no storage limit in respect of edible oils, Section 7 of the said Act has no application and

the prosecution of the petitioner is without jurisdiction. Further more, the unification Order is also inapplicable in respect of edible oils as "A", "B"

and "C" City has not been defined in the Unification Order. Regarding sugar, it has been contended that sugar is a trade article under the

Unification order but no licence is required for a dealer who stores for sale at in one time the trade articles in quantities not exceeding the limits, as

may be prescribed by the State Government with prior concurrence of the Central Government for any trade articles from time to time and the

storage limit has been fixed by the State Government by Notification No. G.S.R. 49 dated 17.10.1985 and Clause 8 of the said notification states

that the retail dealer in sugar means a person who had at any time stored sugar for purchase, sale or storage purposes other than personal

consumption for a quantity exceeding five quintals and not exceeding 50 quintals and in the instant case only five quintals of sugar has been found in

possession of the petitioner which was seized and, thus, the recovery of five quintals of sugar, as alleged, is within the storage limit prescribed by

the Unification Order. Lastly it has been contended regarding the trade articles being kept for black marketing and hoarding that till date neither the

Central Government nor the State Government has fixed any price in respect of any trade articles and even the FIR does not disclose any fixed

price in respect of any commodity recovered and seized from the godown and business premises of the petitioner and, as such, this aspect of the

prosecution case has no leg to stand.

4. It has been contended by the learned APP that under the terms of the licence petitioner has to store the trade articles in his authorized business

premises as indicated in the licence but the seizure list shows that the recovery of trade articles was made also from the unauthorized godown of

the petitioner which is in violation of the terms of the licence and, therefore, the prosecution of the petitioner cannot be said to be illegal and mala

fide.

5. It will admit of no doubt that the petitioner is a licensed dealer of the trade articles by virtue of licence No. 19/91 issued u/s 3 of the Unification

Order. His business premises was inspected by the informant along with other officials and trade articles such as 3.15 quintals of Soyabean refined

oil, 3.19 quintals of mustard oil, 2.18 quintals of sugar, 80 kgs. of rice and 30 kgs of pulse were found in his business premises and besides that the

petitioner had a godown in the house of one Devendra Singh behind his business premises from which 110.50 quintals of rice, 18.50 quintals of

pulse, 5 quintals of sugar and 3.60 quintals of edible oils were found and those articles were seized. Wheat and rice have been notified in item No.

1 and 6 respectively in Part A of Schedule I of the Unification Order as trade articles. The Central Government vide letter dated 27.1.1996

(Annexure 8 of the application) in pursuance of the liberalization of the food-grains" policy decided to abolish the stock limit of rice and wheat and

exclude these two trade articles from the purview of the licensing and State Government have accordingly been informed to give effect to the said

decision. Section 3 of the Act has empowered Central Government by order for regulating or prohibiting the production, supply and distribution

for any essential commodities and by virtue of Section 5 of the said Act, the Central Government had delegated its power in respect thereof to the

State Government vide notification being GSR No. 800 dated 9.6.1978 and this delegation of powers is exercisable subject to such conditions as

may be specified in the direction of the Central Government. The Central Government vide its letter dated 27.1.1995 referred to above gave

direction to the State Government to remove the stock limit regarding rice and wheat. The Unification Order has seen the light of the day and

framed under the delegated authority by the State Government. The matter of delegation of power was considered by this Court in the case of

Ashok Kumar Barnwal and Ors., reported in 2002 (2) JCR 303 (Jhr) It has been held therein that the Central Government being the delegator

and the State Government being the delegatee, the State Government or its officers or authority thereof are empowered to exercise any such

delegated powers, subject to any direction, as may be issued by the Central Government u/s 3 of the said Act. It is, therefore, manifest that the

State Government is bound to obey the order of the Central Government. It appears from the letter No. F(11)(7)/94 ECR and E dated 27.1.1995

of the Government of India that the Government of India took a decision to liberalize food-grains keeping in view of the comfortable food situation

and decided to abolish the stock limits on wheat and rice and the State Government and the union Territories were informed accordingly to give

effect to the decision of the Central Government. Similarly in respect to the edible oil, the Government of India from the Ministry of Civil Supplies,

Consumer Affairs and Public Distribution issued order on 10.11.1997 deleting edible oils by amendment from the purview of Pulses, Edible Oil

Seeds and Edible Oils (Storage Control) Order, 1997. In the case of Smt. Kiran Bala Jain v. State of Bihar. 1996(2) ECC 76, letter dated

27.1.1995 referred to above was considered and it was held that the stock limit of rice and wheat having been abolished, no allegation of violation

of provision of Clause 3 of the Unification Order can be alleged so far as rice and wheat are concerned. Similar view was also expressed by this

Court in the case of Ram Narayan Saw v. State of Jharkhand and Ors. 2001 (2) JLJR 432 : 2001 (3) JCR 261 (Jhr), wherein it has been held that

the authorities cannot allege violation of the provision of E.C. Act for keeping excess stock of rice and wheat nor can confiscate such trade articles

under the provisions of the E.C. Act. The case of Mali Ram Agarwal v. State of Bihar 2001 (1) ECC 24, is related to seizure of edible oils and

pulses. The Court took into consideration the fact that the Central Government issued a notification being S.O. No. 772(E) dated 10.11.1977

deleting edible oils and edible seeds from Central Order and the State Government had also directed all the Commissioners, Deputy

Commissioners and District Officers to comply with the order of the Central Government vide its letter dated 7.6.1998. In view of the facts

aforesaid it has been held in the case of Mali Ram Agarwal, (supra) that the said order in respect to the edible oil stands repealed and the State

Government's notification ceased to be effective from the day the Central Government issued notification repealing the same. It has also been held

therein that the Central Government is competent to withdraw or repeal any order or regulation issued by the State Government in the capacity of

a delegatee of the Central Government. On this score, therefore, it cannot be said that the petitioner has violated the provisions of E.C. Act for

keeping excess stock of edible oils also.

6. According to the unification Order pulse is a trade article and licence is required u/s 3 for dealing in pulse as a trade article. Clause 4(i) of the

Unification Order provides suit every application for grant of licence, wholesale or retail, shall be made to the licensing authority in Form "A" along

with the fee prescribed in Schedule IV. Schedule IV provides the prescribed fee for issuance of licence of different kinds of trade articles. It

appears from Schedule IV of the Unification Order that no licence fee has been prescribed in respect of pulses. In case of Satya Narayan v. State

of Bihar 1988 PLJR 502, it has been held that the Unification Order cannot be said to be in force with regard to pulses and it was observed as

under :

Clause 4 of the Unification Order is clear on this point that every application for grant of licence shall be made to the licensing authority in Form

"A" along with the fees prescribed in Schedule IV. Schedule IV has not prescribed any fee for obtaining licence for pulses. So, in my view, there is

a lacuna in Schedule IV of the unification order as well when pulses have been bifurcated in Part II from foodgrains and Schedule IV prescribed

licence fees for foodgrains then there ought to have been a prescribed fee for pulses as well. In that view of the matter, the question of violation of

Clause 3 of the unification Order or the violation of Clause 3 of the Central Order does not arise at all in instant case.

It is relevant to mention here that in the case of Om Prakash Bhartia (supra) it has also been held that since no licence fee has been prescribed for

the pulses and as such it cannot be said that pulse has been brought within the purview of the Unification Order. In the above circumstances, the

question of violation of the Unification Order in view of the facts stated above does not arise at all for keeping pulses for which no licence fee has

been prescribed. Similarly question of violation of Unification Order with regard to sugar, in the facts and circumstances of this case, also does not

arise by the petitioner. The State Government by Notification No. GSR 47 dated 17.10.1985 has fixed the storage limit of sugar for a retail dealer

which is exceeding five quintals but not exceeding 50 quintals. In the instant case, as per averment made in the written report read with the seizure

list, there is recovery of only 5.18 quintals of sugar from the business premises as well as godown of the petitioner taken together which is definitely

within the storage limit prescribed under law for a retail dealer. Viewed thus, there appears to be no violation of the Unification Order by the

petitioner regarding the sugar, as alleged in the FIR.

7. There is also allegation in the written report of the informant that the petitioner has stored those articles for black marketing. It is relevant to

mention here the Central Government or the State Government has not so far fixed any price in respect of any trade articles and there is also no

whisper in the written report that any price has been fixed in respect of any commodity found in the godown of the petitioner. It is not out of place

to mention here that price has been fixed for the trade articles sold in the Public Distribution Shops only. The business premises of the petitioner

does not fall in the category of shop under the Public Distribution System. In the case of Anil Kumar v. State of Bihar 1999 (2) ECC 849, and also

in the case of Pritam Lal Yadav and Ors. v. State of Bihar 1982 PLJR 304, it has been held that in absence of any order fixing the price of a trade

commodity it cannot be said that the said commodity was stored or being taken away with the intention of selling the same in the black market. The

word "black marketing" is nothing but a misnomer in absence of any control price. Therefore, the Unification Order cannot be said to be

applicable in respect thereof.

8. It is, therefore, manifest from the discussions above that, in the facts and circumstances of this case, there cannot be any violation of any

provision of the Unification Order as well as the terms of the licence and the display order, as alleged. Accordingly, the institution of the case

against the petitioner by lodging FIR is not at all sustainable and it is a patent illegality and also an abuse of the process of law in prosecuting the

petitioner by lodging the FIR. As such, no offence can be said to have been committed by the petitioner under the provisions of Unification Order

punishable u/s 7 of the said Act and the allegations disclosed in the FIR do not at all make out even a prima facie case against the petitioner u/s 7

of the Act. When the alleged act of the petitioner does not amount to violation of the provisions of the Unification Order the prosecution of the

petitioner is unsustainable.

9. Having regard to the facts and circumstances of the case this application is allowed. Accordingly, the entire criminal proceeding including the

FIR of Bermo PS Case No. 126 of 1998 is hereby quashed.