

(2008) 12 JH CK 0016

Jharkhand High Court

Case No: Criminal M.P. No. 1146 of 2006

Chen Pao Lin

APPELLANT

Vs

The State of Jharkhand and Shri
Rajesh Emaneul Patro

RESPONDENT

Date of Decision: Dec. 22, 2008

Acts Referred:

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

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: Indrajeet Sinha and Bibhash Sinha, for the Appellant; Md. Hatim, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

D.K. Sinha, J.

The petitioner Chen Pao Lin has invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure with the prayer for quashment of his entire criminal proceeding initiated in relation to Bistupur P.S. Case No. 257 of 2005 corresponding to G.R. No. 2074 of 2005 including the order dated 5.2.2006 whereby the C.J.M. Jamshedpur took cognizance of the offence u/s 7 of the Essential Commodities Act against the petitioner, now pending before the S.D.J.M. Jamshedpur.

2. The prosecution story in short was that on the written report presented by the Opposite Party No. 2 Rajesh Emanuel Patro, Nazareth Deputy Collector, East Singhbhum, Jamshedpur before the Bistupur police station alleging interalia that he along With the other witnesses including the Addl. District Magistrate (Law and Order) Jamshedpur, conducted search of Fast Food (Chinese) Vehicle No. BR-0634 wherein he found that the petitioner was using the domestic L.P.G. Gas Cylinder

weighing 14.02 K.G., available at subsidized rate, for commercial purposes in the Fast Food (Chinese) vehicle. Besides, two others LPG gas Cylinders weighing 5 K.G. each of Indane were also found. It was alleged that the use of LPG Gas Cylinders made available at subsidized rate in commercial purposes was illegal as it was in contravention of Clause 13 of LPG (Regulation of Supply and Distribution) Order 2000. The opposite party No. 2 made seizure of LPG Gas Cylinders weighing 14.02 K.G and two others LPG Gas Cylinders weighing 5 K.G. each along with one gas regulator in presence of the witnesses. On the basis of the written report and the seizure list, Bistupur P.S. Case No. 257 of 2005 was registered against the petitioner for the offence u/s 7 of the E.C. Act.

3. Mr. Indrajeet Sinha, the learned Counsel, for the petitioner exhorted that the informant, who was the Deputy Collector, Nazareth, was not within his competence to make search and seizure as he acted in contravention of Clause-13 of LPG (Regulation of Supply and Distribution) Order, 2000. Clause-13 speaks about the power of entry, search and seizure.

(1) Any officer of the Central or the State Government not below the rank of Inspector duly authorized by a general or a special order, by the Central Government or the State Government as the case may be or any officer of Government Oil Company not below the rank of Sales Officer, authorized by the Central Government, may with a view to securing due compliance of this order or any other made there under:

(a) stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product.

(b) enter and search any place.

(c) seize stocks of liquefied petroleum gas along with container and/or equipments, such as cylinders, gas cylinder valves, pressure regulator and seals in respect of which he has reason to believe that a contravention of this order has been, or is being, or is about to be made.

(2) The sales officer of a Government Oil Company shall be authorized to secure compliance of this order by the distributors appointed under the public distribution system and or by the consumer registered by them.

4. Admittedly, the informant/opposite party No. 2, an officer of the rank of the Deputy Collector, who made search and seizure in the vehicle of the petitioner dealing in Fast Food (Chinese) behind the hotel known as "New Chhappan Bhog" at Bistupur, was not authorized to make search and seizure and therefore, the criminal prosecution initiated against the petitioner in contravention of specific provisions of law was not sustainable. The learned Counsel relied upon the decision reported in Roy V.D. Vs. State of Kerala, . The Apex court in the case of Roy V.D. v. State of Kerala observed:

The power u/s 482 Cr.P.C. has to be exercised by the High Court, inter alia to prevent the abuse of the process of any court or otherwise to secure the ends of justice. When Criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. So, exercise of power u/s 482 Cr.P.C. to quash proceedings in a case like one in hand, would indeed secure the ends of justice.

5. Though it was urged on behalf of the State that the opposite party No. 2 under the delegated power of the Deputy Commissioner acted by conducting the raids but the Deputy Commissioner had no authority to delegate the power which was prohibited under the law.

6. Regard been had to the facts and circumstances of the case, I find that Clause-13 of LPG (Regulation of Supply and Distribution) Order, 2000 is very specific that the authority delegated to the Opposite party No. 2/Deputy Collector (Nazareth) by the Deputy Commissioner, East Singhbhum was not an authority delegated either by the Central Government or the State Government to conduct raid or to make certain seizure.

7. Admittedly, the Deputy Commissioner is not the State Government under the Rules of Executive Business and in similar situation this Court in Cr. M.P. No. 722 of 2006 had quashed the criminal prosecution of the petitioner-accused on 13.10.2006 wherein also the authority of a Dy. Collector in making search and seizure was challenged and I find that defence of the petitioner stands on similar footing.

8. Under the facts and circumstances, I observe that the criminal prosecution of the petitioner including the cognizance order dated 5.2.2006 passed by the Chief Judicial Magistrate, Jamshedpur in relation to Bistupur P.S. Case No. 257 of 2005 corresponding to G.R. No. 2074 of 2005, now pending in the court of SDJM Jamshedpur is not maintainable under the law, accordingly the same is quashed. This petition is allowed.

I.A. No. 976 of 2008

In view of the above order passed in Cr. M.P. 1146 of 2006 the instant I.A. stands disposed of.