

(2007) 07 JH CK 0014
Jharkhand High Court
Case No: None

Bandana Jha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 18, 2007

Acts Referred:

- Essential Commodities Act, 1955 - Section 6A, 7
- Penal Code, 1860 (IPC) - Section 413, 414

Citation: (2008) CrLJ 320

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

Heard learned Counsel for the parties. The prayer of the petitioner in this application is to quash the order dated 12.7.1999-taking cognizance for the offence under Sections 413 and 414 of the Indian Penal Code in connection Baragora (Barsol) P.S. Case No. 13 of 1998.

2. An First Information Report was registered being Baragora (Barsol) P.S. Case No. 13 of 1998 at the instance of Mahesh Prasad Ranjan, Sub Inspector of Baragora (Barsol) P.S. It was alleged in the said first information that on 25.3.1998 at about 11 a.m. he got confidential information that one godown was being run by one Shivji Singh at Darisol for keeping petroleum products for the purpose of black marketing. On receipt of this information, he along with Block Supply Officer and one Magistrate with police force reached the godown of Shivji Singh, where he found two tankers bearing registration No. WMK 8332 filled with petrol and petrol was being removed through a pipe and being filled in a drum and another tanker bearing registration No. WB 33/ 3266 was found standing with bitumen. Apart from these tankers the informant also found Rajdoot Motorcycle attached with a carrier

loaded with one jar and several drums were found in the godown. The police arrested the persons found in the godown and asked about the relevant documents from them but no body could produce any document nor they could give any satisfactory explanation. In presence of two independent witnesses and Block Supply Officer and on inspection several petroleum products were found. It is alleged that for the goods recovered from the godown, the persons could not produce any license and the police believed that the seized goods were brought by committing theft and for the purpose of black-marketing, which is punishable under Sections 413 and 414 of the Indian Penal Code read with Section 7 of the Essential Commodities Act.

3. After completion of investigation, the police submitted charge sheet under Sections 413 and 414 of the Indian Penal Code against the accused persons including the petitioner, on the basis of which the cognizance was taken on 12.7.1999 as aforesaid.

4. Mr. Shankar Lal Agarwal, learned Counsel appearing on behalf of the petitioner submitted that even the entire allegations made in the F.I.R. are accepted in its entirety, no case is made out for the offence under Sections 413 and 414 of the Indian Penal Code, because she was the owner of the truck bearing registration No. WB-33-3266, which was allegedly standing near the godown filled with bitumen and according to the allegations it was only alleged that the said truck bearing registration No. WB-33-3266 was standing near the godown and the persons present in the godown could not produce any document relating to the said bitumen and, therefore, police believed that the articles were brought by committing theft and selling the same in black marketing.

5. Mr. Agarwal further submitted that with regard to the same occurrence a confiscation case being Confiscation Case No. 1 of 1998-99 was initiated by the Deputy Commissioner u/s 6A of the Essential Commodities Act for the confiscation of the truck and the bitumen loaded in it. The Deputy Commissioner, though passed the order for confiscation on 21.7.1998, but the said order was set aside by the learned Sessions Judge at Jamshedpur, in Confiscation Appeal No. 1 of 2002 holding that the seizure of the tanker was unjustified.

6. I have gone through the allegations made in the F.I.R., charge sheet submitted by the police and the order taking cognizance as well as the order passed by the learned Sessions Judge, Jamshedpur, in Confiscation Appeal No. 1 of 2002.

7. Section 413 of the of the Indian Penal Code deals with habitually dealing in stolen property, which reads as under:

Section 413:- Habitually dealing in stolen property.- Whoever habitually receives or deals In property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years,, and shall also be liable to

fine.

8. In order to attract u/s 413 of the Indian Penal Code, the prosecution has to bring on record past history of the accused to show that he habitually receives or deals in property, which he knows or has reason to believe to be stolen property.

9. So far as Section 414 of the Indian Penal Code is concerned, it deals with assisting in concealment of stolen property and it reads as under:

Section 414:- Assisting in concealment of stolen property-- Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

10. In order to attract Section 414 of the Indian Penal Code, the essential ingredients to be established are that the person must be found to be voluntarily assisting in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property.

11. At the stage of taking cognizance only prima facie case has to be seen as to whether on the materials available on record do make out a case for proceeding against the accused or not. Establishing the ingredients for attracting provisions of the aforesaid sections will come only during the trial and not at the stage of taking cognizance. It is established law that at the stage of taking cognizance the Magistrate has to peruse and find the from the materials on record i.e. from the allegations made in the F.I.R., case diary and charge sheet that whether any prima facie case for commission of offence is made out or not. No detail enquiry is required to be gone into at this stage.

12. In the present case I find that the learned Magistrate in the impugned order has clearly stated that he has perused the F.I.R., charge sheet and the case diary and after considering the same he found that prima facie case for the offence under Sections 413 and 414 of the Indian Penal Code is made out against the accused including the petitioner and, thereby took cognizance against them. I do not find any illegality or infirmity in the said order.

13. So far as the order passed by the learned Sessions Judge in Confiscation Appeal is concerned, the said confiscation case was initiated for the alleged contravention of the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984, Bihar Motor Spirit and High Speed Diesel Oil Dealers Licensing Order, 1996 and Bihar Kerosene Oil Dealers Licensing Order, 1965, whereas in the present case I am not concerned with the allegations of violation of the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984, or Bihar Motor Spirit and High Speed Diesel Oil Dealers Licensing Order, 1996 etc. Therefore, in my view, even the confiscation appeal was allowed in favour of the petitioner, the petitioner cannot get advantage

of it, as the points and issues involved in this application are quite different and distinct.

14. In view of the finding above, I hold that the question of establishing the ingredients for the offence u/s 413 and 414 of the Indian Penal Code would arise only when the trial of the case begins.

15. So far as the order-taking cognizance of the offence under Sections 413 and 414 of the Indian Penal Code is concerned, the same does not require any interference.

16. Consequently, having found no merit in this application, the same is hereby dismissed.