

**(2009) 12 JH CK 0045**

**Jharkhand High Court**

**Case No:** Writ Petition (Cr.) No. 173 of 2009

Binod Sao

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

**Date of Decision:** Dec. 19, 2009

**Acts Referred:**

- Essential Commodities Act, 1955 - Section 3, 6A, 7

**Citation:** (2010) 58 BLJR 324 : (2011) 7 RCR(Criminal) 1499

**Hon'ble Judges:** Rakesh Ranjan Prasad, J

**Bench:** Single Bench

**Advocate:** Atanu Banerjee, for the Appellant; R.K. Singh, G.P. IV, for the Respondent

**Final Decision:** Allowed

**Judgement**

R.R. Prasad, J.

This writ application is directed against the order dated 25.11.2008 passed by the Collector-cum-District Magistrate, Bokaro in Confiscation Case No. 25 of 2008 whereby and whereunder 80 bags of rice measuring 40 quintals recovered from the house of the petitioner was confiscated.

2. The facts giving rise this application are that on 26.4.2008, when a secret information was received that 80 bags of rice, meant for distribution to the card holders by the dealer Raj Kumar Sao, has been kept in the house of this petitioner, the informant Block Development Officer and other officials raided the house of the petitioner and recovered 80 bags of rice. Upon which, a case was registered u/s 7 of the Essential Commodities Act. Thereupon, the District Magistrate, Bokaro on receipt of the report, sent by the Sub-divisional Officer, Bermo at Tenughat initiated a proceeding u/s 6A of the Essential Commodities Act for confiscating 80 bags of rice seized from the house of the petitioner. Accordingly, notice was issued to the petitioner and the said accused Raj Kumar Sao, a dealer under Public Distribution System to show cause as to why not the said rice be confiscated. Pursuant to that,

show cause was submitted by the petitioner stating therein that no offence under the Essential Commodities Act is made out as having possession of 80 bags of rice is not an offence under the Essential Commodities Act as on the day when the raid was laid, no order issued u/s 3 of the Essential Commodities Act relating to prohibition of sale, purchase or stock etc. of rice was in force and as such, initiation of confiscation proceeding is itself bad. At the same time, other accused the Dealer, also submitted his show cause stating therein that without making any verification of the stock of the shop, it has been alleged that, the rice which has been recovered from the house of the petitioner, belongs to him and as such, it is only the surmises and conjecture on the part of the prosecuting agency to say that the said rice belongs to him.

3. However, the District Magistrate, Bokaro did hold that rice which was recovered from the house of the petitioner was meant to be distributed to the card holders by Raj Kumar Sao, a Public Distribution System Dealer and hence, an order was passed for its confiscation.

4. Being aggrieved with that order, this writ application has been filed.

5. A counter affidavit has been filed wherein it has been stated that after the lodgment of the case, it was investigated upon and the Investigating Officer after collecting evidences submitted charge sheet after finding the allegation to be true that the rice belongs to Public Distribution System Dealer, Raj Kumar Sao, who had kept it with the petitioner.

6. Having heard leaned Counsel appearing for the parties, it does appear that the petitioner, who is not the dealer under the Public Distribution System scheme was found in possession of 80 bags of rice but in absence of any order issued u/s 3 of the Essential Commodities Act regarding prohibition of sale, purchase or stock of the rice, the petitioner cannot be said to have contravened the provision of any order issued u/s 3 of the Essential Commodities Act. Consequently, it can be said that in absence of any stock limit fixed by the State Government or the Central Government, one cannot be said to have committed offence u/s 7 of the Essential Commodities Act. However, in this case the proceeding seems to have been initiated as it has been alleged that the rice which was found from the house of the petitioner belonging to one Raj Kumar Sao, a dealer under Public Distribution System but he himself has stated before the Collector that it never belongs to him and that the authorities never made any verification of his shop, still the Collector in his order did hold that the rice belonged to a dealer of a Public Distribution System, which finding can be said to have been based on surmises and conjecture. Moreover, the petitioner is not a dealer under the Public Distribution System scheme and as such, possession of rice of the quantity which was seized in absence of storage limit fixed by the State Government or the Central Government, it can not be a subject matter of confiscation under the Essential Commodities Act, as he cannot be said to have contravened the provision of any of the order made u/s 3 of the Essential

Commodities Act. Further it be stated that the Collector/District Magistrate does get jurisdiction to initiate a proceeding u/s 6A of the Essential Commodities Act only when there has been contravention of any of the order made u/s 3 of the Essential Commodities Act. Thus, very initiation of a confiscation proceeding seems to be without jurisdiction as the petitioner cannot be said to have contravened the provision of any of the order.

7. In this view of the matter, the order dated 25.11.2008 passed by the Collector-cum-District Magistrate, Bokaro seems to be quite bad and hence, it is set aside. Consequently, the Collector-cum- District Magistrate, Bokaro is directed to release the rice in favour of the petitioner or the sale proceed of rice, if it has earlier been sold in auction.

8. This application is allowed.