

Gopal Prasad Khetan and Sandeep Khetan Vs State of Jharkhand and Marketing Officer, Ranchi Sub-Division

Court: Jharkhand High Court

Date of Decision: Oct. 14, 2009

Acts Referred: Essential Commodities Act, 1955 â€” Section 3, 7
Penal Code, 1860 (IPC) â€” Section 420, 467, 468, 471

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad, J.

Through this writ application, first information report of Kotwali (Pandra) P.S. case No. 569 of 2009 (G.R. No. 3465 of 2009) instituted under Sections 420, 467, 468 and 471 of the Indian Penal Code and also u/s 7 of the Essential Commodities Act (hereinafter

referred to as "the Act") has been sought to be quashed. Further prayer is to release all the commodities seized in connection with the said case.

2. Before adverting to the submissions made on behalf of the petitioners, facts giving rise this application are that on 20.8.2009, a team consisting

of Sub-divisional Officer, Sadar, Ranchi, Marketing Officer (informant) and others laid raid on three shops of the petitioners situated in the

premises of the Agriculture Produce Marketing Committee, Pandra as well as the residential premises of the petitioner, Gopal Prasad Khetan. One

being shop No. 381, proprietor of which is Gopal Prasad Khetan (petitioner No. 1), other being shop No. 382, being run by Amitabh Kumar S/o

petitioner No. 1, in the name and style as M/s. Amitabh Trading and third being shop No. K36, being run in the name and style as M/s. Sandeep

Trading by Sandeep Khetan, petitioner No. 2 (son of petitioner No. 1).

3. During raid, huge quantity of pulses, dalhan, rice, Mung etc. were found available but the stock position had not been displayed outside of the

business premises. On demand, stock registers were made available but it were made available in the late hours and as such, physical verification

of the stock could not be made, still first information report was lodged which was registered as Kotwali (Pandra) P.S. case No. 569 of 2009.

4. It further appears that on the next date, when physical verification was made, 2532.75 quintals of pulses were found in the aforesaid three shops

as well as in the residential-cum-business premises of the petitioner No. 1. Thus, according to the prosecution, the petitioners by not displaying the

stock position of the articles and by not maintaining stock register, contravened the provision of the Jharkhand Essential Commodities (Price and

Stock Display) Order, 1977.

5. At the same time, petitioners having alleged to have contravened the provision of the Unification Order as the pulses were found in excess of the

storage limit fixed under the notification No. 1645 dated 12.08.2009 and thereby, petitioners, according to the case of the prosecution, committed

offence u/s 7 of the E.C. Act.

6. Learned Counsel appearing for the petitioners submitted that though on the allegations of the non-maintenance of the stock registers and non-

display of the stock position outside of the business premises, the petitioners have been alleged to have contravened the provision of the Jharkhand

Essential Commodities (Price and Stock Display) Order but admittedly, prosecution was launched without having sanction from the competent

authority and as such, prosecution u/s 7 of the Act for contravening the provision of the Essential Commodities (Price and Stock Display) Order

gets vitiated.

7. In this respect, learned Counsel has referred to a decision rendered in a case of M/s. Mithila Cycle Centre v. State of Bihar 1990(2) PLJR 184

and a case of Mali Ram Agarwal v. State of Bihar and Ors. 2001(1) E Cri.C 24 (R.B).

8. Learned Counsel further submitted that Central Government in exercise of the power conferred u/s 3 of the Act had promulgated the order

known as Removal of (Licensing Requirement Stock Limit and Movement Restriction) on a specified Foodstuffs Order, 2002 wherein any

restriction made earlier in sale, purchase, transport, distribution of wheat, paddy, rice etc was lifted.

9. However, in the year 2006, the Central Government, vide its Central Order No. So 1373 (E) dated 29.8.2006 made amendment in the

aforesaid order whereby stipulation made under the aforesaid order with respect to free sale, transport, stock etc. was kept in abeyance for certain

period which was extended time to time. Pursuant to that, the Secretary, Department of Food, Public Distribution and Consumer Affairs,

purportedly in exercise of power u/s 3 of the Act issued notification bearing No. 1645 dated 12.8.2009 whereby Bihar Control Order, 1984 was

revived and fixed the stock limit with respect to rice, paddy, pulses, edible oil, sugar etc. but the same was never published in the Gazette which

formality was required to be mandatorily done, in view of the provision as contained in Clause 18 of the Unification Order and in that view of the

matter, any prosecution for contravention of the provision of the Unification Order for keeping the pulses in excess of the stock limit would be quite

illegal and, therefore, on these grounds, the first information report is fit to be quashed.

10. It was further submitted that any order regulating sale, purchase, stock of the pulses would not be workable as no license fee had been

prescribed for grant of license for dealing in pulses and on this account also, the prosecution would be bad and consequently, first information

report would be fit to be quashed.

11. However, learned Counsel for the State submitted that storage limit of food grains including pulses fixed by the State Government, vide

notification No. 1645 dated 12.8.2009 was widely published for information to all concerned in all the local newspapers and as such, prosecution

never gets vitiated, even if the said notification has not been published in the Gazette.

12. It was further submitted that as the stock of the pulses found in the business premises of the petitioners more than the storage limit, the

petitioners have rightly been prosecuted.

13. Before advertng to the submission, I feel it appropriate to trace the background under which present notification, bearing No. 1645 dated

12.8.2009 has been issued. After the enactment of the Essential Commodities Act, 1955, State of Bihar in exercise of power delegated to it u/s 3

of the Act was pleased to issue and promulgate Bihar Trade Articles (licenses Unification) Order, 1984. Clause (o) of the said Unification Order

defines pulses which mean any one or more of the pulses as specified in Part "B" of Schedule-1. The Unification Order has also defined retail

dealer as well as wholesale dealer in Clause 2 (p) and Clause 2 (u) respectively. According to Clause 3 of the Unification Order, no dealer can

carry on business of purchase, sale or storage for sale of any of the trade articles mentioned in Schedule 1 except under and in accordance with the

terms and conditions of a licence issued in this behalf by the licensing authority under the provisions of this Order. Clause 4 of the Unification Order

deals with the grant of licence on payment of fee prescribed in Schedule IV. Clause 18 of the Unification Order provides for restriction on the

possession of trade articles in quantity exceeding the limit to be fixed by the Stage Government.

14. Subsequently, the Central Government in exercise of power conferred by Section 3 of the Essential Commodities Act, 1955 issued an order

name as Removal of (Licensing requirements stock limits and Movement Restrictions) on specified Foodstuffs Order, 2002 whereby restriction

earlier put on the matter of purchase, stock, sell, transport etc. on wheat, paddy/rice etc. was removed and thereby dealers were free to deal in the

said food grains. However, the Central Government, vide its Central Order No. S.O. 1373 (E) dated 29.8.2006 made certain amendments in the

aforesaid order whereby stipulation made in the aforesaid order with respect to sale, supply, storage, distribution etc. was kept in abeyance initially

for six months which under different orders were extended time to time. Under that situation, the Secretary, Department of Food, Public

Distribution and Consumer Affairs in purported exercise of power conferred u/s 3 of the Act, issued notification bearing No. 1645 dated

12.8.2009 whereby Control Order, 1984, meaning thereby Unification Order was revived and consequently, stock limit for food grains such as,

rice, paddy, pulses, edible oil, sugar etc. were fixed but that notification was never published in the Official Gazette, though u/s 18 of the Unification

Order it should have been issued with prior concurrence of the Central Government and the notification should have been published in the Official

Gazette. The provision as contained in Clause 18 of the Unification Order, 1984 reads as follows:

18. Restriction on possession of trade articles - No person shall, either by himself or by any person on his behalf, store or have in his possession at

any time any trade article mentioned in Schedule 1 and Schedule II in quantity exceeding the limits fixed -

(i) under an order issued by the Central Government, or

(ii) by the State Government with prior concurrence of the Central Government by issuing a notification in official Gazette from time to time.

15. Admittedly, the aforesaid notification has neither been published in the official Gazette nor anything is on record to show that said notification

has been issued with prior concurrence of the Central Government. Moreover, the said notification as required under the aforesaid clause has

never been issued by the State Government, rather it has been issued by the Secretary of the department.

16. The intendment of the notification being published in the Official Gazette is that in case of fixation of stock limit the public must come to know

the same. Therefore, it would not be operative unless published in the Official Gazette and mere printing of such notice in the newspaper, as has

been done by the authority cannot be equated with the publication of the Official Gazette.

17. Thus, issuance of the notification prescribing stock limit of the food grains never seems to have been done in accordance with the provisions of

the Unification Order and on that account, any prosecution on the ground of having excess food grains/ pulses than the stock limit fixed would

certainly be quite illegal.

18. That apart, the prosecution for contravention of the provisions of the display order also seems to be bad on account of the fact that before

launching prosecution against the petitioners, no sanction has been obtained though under proviso to Clause (6) of the display order, it was

required to be obtained from the competent authority. The proviso to Clause (6) of the display order reads as follows:

Provided that no prosecution shall lie against a person for contravention of any of the provisions of this Order unless the same has been sanctioned

by the District Magistrate or Special Officer, In-charge Rationing or Additional District Magistrate (supply) or Sub-divisional Magistrate with a

limit of their respective local jurisdiction.

19. Thus, proviso makes it clear that no prosecution shall lie against any person for contravention of any of the provisions of the order unless the

sanction has been obtained from the competent authority. This proposition of law has been laid down in a case of M/s. Mithila Cycle Centre v.

State of Bihar (supra). The said principle has been reiterated in a case of Mali Ram Agarwal v. State of Bihar and Ors. (supra).

20. Thus, the prosecution on account of contravention of the provisions of the display order can certainly be said to be bad.

21. So far offences under Sections 420, 467, 468 and 471 of the Indian Penal Code is concerned, the prosecution under the aforesaid penal

offences is also bad as the allegation made in the first information report never constitute those offences as the ingredient for attracting offence of

cheating and also forgery are completely lacking.

22. Under the aforesaid situation, continuance of the criminal proceeding against the petitioners would certainly amount to abuse of the process of

law and hence, the first information report of Kotwali (Pandara) P.S. case No. 569 of 2009 is quashed so far the petitioners, namely, Gopal Prasad

Khetan and Sandeep Khetan are concerned. Consequently, any articles seized in connection of the said case are directed to be released in favour

of the petitioner forthwith.

23. In the result, this application is allowed.