

(2004) 10 JH CK 0015

Jharkhand High Court

Case No: Criminal M.P. No. 1355 of 2003

Kailash Prasad Saha @ Kalu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Oct. 5, 2004

Acts Referred:

- Essential Commodities Act, 1955 - Section 7

Citation: (2004) 3 BLJR 1898 : (2005) CriLJ 400 : (2004) 4 JCR 540

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: Rajeev Sharma, for the Appellant; A.B. Mahato, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

Heard the parties.

2. In this application, the petitioner has prayed for quashing of the order dated 6.9.1999, passed by the Special Judge, Sahibganj, whereby he has taken cognizance against the petitioner for the offence under Sections 7 of the Essential Commodities Act and also the order dated 4.12.2002 passed by Sub-Divisional Judicial Magistrate, Rajmahal, framing charge against the petitioner u/s 7 of the Essential Commodities Act.

3. On the basis of a written report lodged by the Supply Inspector, Rajmahal, a First information Report was registered against the petitioner and one another, wherein it was alleged that on 19.6.1999, the informant alongwith raiding party, reached the N11 Kothi Ghat and there it was found that the petitioner was loading wheat on a boat of Prasadi Mandal. The petitioner as well as Prasadi Mandal was apprehended.

On enquiry, the petitioner admitted that he was the owner of the Wheat, whereas the other accused Prasadi Mandal admitted that the boat belonged to him. On demand, the petitioner could not produce any document relating to the wheat, which was being loaded by him on the boat. Thereafter the godown of the petitioner was also inspected and "wheat, "rice" and "chura" were found to be stored there illegally. Accordingly, the wheat found on the boat, kept at the ghat and the rice and chura etc. found in the godown were seized. It appears that after completion of investigation, the police submitted charge-sheet and on the basis of that, by order dated 6.9.1999, cognizance was taken u/s 7 of the Essential Commodities Act by the Special Judge, Sahibganj. The petitioner and other accused person who were charge-sheeted, appeared before the learned Special Judge. It appears that by order dated 4.12.2002, the learned Sub-Divisional Judicial Magistrate, explained the substance of accusation to the accused persons, to which the accused persons denied and claimed to be tried and thereafter the case was fixed for evidence and summons were issued to the prosecution witnesses.

4. Now the petitioner is challenging the order taking cognizance and the criminal prosecution by filing this application.

5. This application was filed before this Court on 11.11.2003, therefore, it appears that after about a lapse of, five years from the date of cognizance, the petitioner has approached this Court for quashing the said order of cognizance.

6. The main ground for challenge of order taking cognizance by the petitioner, is that the Special Judge could not have taken cognizance on 6.9.1999 as the power of Special Court was seized with effect from 18.7.1.998 and, therefore, the order taking cognizance by the Special Judge was void.

7. It was next submitted that the commodities seized, were free sale commodities and there was no control on price as well as on sale of those articles. It was further submitted that there is no storage limit so far the wheat and rice was concerned as the Central Government had already abolished the storage limit on and from 27.1.1995.

8. This Court in the case of Ram Chandra Prasad Agarwal and Ors. v. The State of Bihar reported in 2003 (2) JLJR 765 after relying on the decision of the Supreme Court in the case of State of Tamil Nadu Vs. Paramasiva Pandian, has already held that after the expiry of the Essential Commodities (Special Provision) Act, 1981 the jurisdiction to try the case under the Essential Commodities Act has been restored to the Judicial Magistrate having competent jurisdiction and on this ground a prosecution u/s 7 of the Essential Commodities Act cannot be quashed. It has further been held by this Court in that very decision in the case of Ram Chandra Agarwal (supra) that only because the Central Government has decided to excluded wheat and rice from the purview of licensing does not and cannot mean that automatically Part "A" of the Schedule 1 of the Unification Order, 1984 regarding

foodgrains has been amended and the words wheat and rice have been deleted from Part "A" of Schedule of Bihar Trade Article (Licences Unification) Order, 1984. Paragraph 13 and 14 of the said judgment. in this regard are relevant which is quoted hereinbelow :-

"13. So far as the third submission of the learned counsel for the petitioner is concerned, I hold that only because the Central Government has decided to exclude wheat and rice from the purview of licensing does not and cannot mean that automatically Part "A" of the Schedule 1 of the Unification Order, 1984 regarding foodgrains has been amended and the words wheat and rice have been deleted from Part A of the Schedule of Bihar Trade Article (Licences Unification) Order. 1984. It is important to note that the letter issued by the Government of India G.S.R. No. 11 dated 11th September, 1997, the Government of Bihar made certain amendments in Bihar Trade Articles (Licences Unification) Order, 1984 and--amended Part "A" Schedule 1 of the said order and the words wheat and wheat products excluding "husk" and "bran" were inserted.

14. From the above amendment made on 11.9.1997 by G.S.R. No. 11, it is clear that the word wheat and wheat products were kept intact and only "husk" and "bran" were excluded and, therefore, the argument of the learned counsel for the petitioners that no licence for carrying on business in wheat or rice is required to be taken under Clause 3 of the Bihar Trade Article (Licences Unification) Order, 1984 cannot be accepted.

9. In view of the aforesaid decisions of this Court as well as of the Supreme Court discussed above, both the submissions of the learned counsel for the petitioner are hereby rejected.

10. Though the petitioner has made a prayer for quashing of the order dated 4.12.2002, stating to be the order framing charge but in fact that is not an order framing charge. The cases under the Essential Commodities Act are tried summarily and in a summery proceedings formal charge is not framed rather substances of accusation are explained to the accused persons, therefore, the prayer made by the petitioner to quash the order framing charge appears to be wholly misconceived. After the substance of accusation is explained to the accused and ,if the accused does not plead guilty and claims to be tried then the trial commences from that date. No illegality has been pointed out by the learned counsel for the petitioner in the order dated 4.12.2002 explaining the substance of accusation to the accused persons.

11. In view of my discussions and findings above, no case at all for quashing the order taking cognizance dated 6.9.1999 or the order dated 4.1.2002 is made out.

12. Accordingly, 1 find no merit in this application and thus is dismissed.