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(2006) 11 JH CK 0039

Jharkhand High Court

Case No: None

Rajpati Sahu		APPELLANT
	Vs	
The State of Bihar (Jharkhand)		RESPONDENT

Date of Decision: Nov. 9, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 326
- Essential Commodities Act, 1955 - Section 7

Citation: (2007) 2 JCR 77

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

The appellant has challenged the judgment of conviction and sentenced dated 20.12.1999 passed by the Special judge, Gumla in G.R. No. 36 of 1987 whereby the appellant was convicted for offences u/s 7(i) of the Essential Commodities Act and sentenced to undergo rigorous imprisonment for two years and also to pay fine of rupees one thousand and in default of payment of fine, to undergo rigorous imprisonment for one month.

2. The prosecution case was registered on the basis of a written report submitted by the marketing officer (PW2) who had alleged while claiming that on receipt of a confidential information that a truck loaded with fifty bags of wheat was intercepted and it was found that the wheat was disposed of by the present appellant who was licence holder in respect of a Government public distribution system (PDS) shop and the bags of wheat which the appellant had lifted from the government godown were meant to be sold in black market. The marketing officer (PW2), along with other witnesses went to the shop of the appellant but found the shop closed. A

display board was found outside the shop the contents of which were noted down and thereafter in presence of the witnesses, the shop was opened and an inventory of food grains and other, materials found inside the shop was prepared. It was found that though about six days earlier, the appellant had lifted fifty quintals of wheat and ten quintals of rice from the godown of the food corporation of India, but no such quantity of wheat was found in the shop, nor was any stock register or sale register found at the shop. The seized bags of wheat were handed over in zimma to one of the witnesses namely Sukhnu Singh. The trial against the appellant was initiated on the basis of the charge sheet submitted by the investigating officer for the aforesaid offence. The appellant has assailed the order of conviction primarily on the ground that the entire judgment of conviction and sentence of the appellant is vitiated and not maintainable in law on account of the fact that the same is against the provision of Section 326(3) of the Code of Criminal Procedure.

Learned counsel explains that the procedure for trial in respect of an offence u/s EC Act has been prescribed as a summary trial in which the substance of evidence has to be recorded by the trying Magistrate and it is incumbent upon the said magistrate to record his finding on the basis of the evidence so recorded. The- trial Judge who succeeds the previous trial Magistrate having not recorded the statement of the witnesses cannot act upon such evidence and cannot record findings on the basis of such evidence. Referring to the evidence recorded by the different trial Magistrates, the learned counsel explains that the statement of PWs 1 and 2 and 3 were recorded by one Presiding Officer while those of PWs 4 and 5 were recorded by another officer and yet the impugned order was passed by a third officer who had succeeded the first and second presiding officers. Adverting to the other grounds, learned counsel for the appellant has submitted that even on the basis of evidence appearing on record, no conviction for the aforesaid offence could have been sustained as because there are numerous contradictions in the statements of the witnesses which negate the prosecution claim regarding search of the appellant''s shop and seizure of articles from there. Referring to the evidence of purported seizure witnesses, learned counsel submits that neither of the seizure witnesses have claimed to have witnessed any search or seizure from the shop of the appellant and further-more, even the person to whom the bags of wheat were allegedly given on zimma has not been examined by the prosecution. Referring to the inconsistencies appearing even in the impugned judgment of the court below, learned counsel submits that the court below while refusing to accept the prosecution claim of search of the appellant''s shop by the informant (PW2), has proceeded to convict the appellant by drawing an illogical inference that since the appellant has claimed that the books/register pertaining to the stock and sale of food grains were kept at the shop and since food grains seized were given on zimma at the time of inspection, the prosecution claim that the appellant had managed to remove the registers before-hand in order to avoid detection of illegalities and irregularities by him is correct. Learned counsel submits that the

finding of the trial court on the basis of conjecture and surmise is totally inconsistent with the principle of appreciation of the evidence.

3. Learned counsel for the State, on the other hand claims to support the judgment of conviction and sentence on the ground that the evidence of PW2 is reliable, consistent and trustworthy and the same is sufficient to record finding of guilt against the appellant for the offence he was charged with.

4. On scrutiny of the lower court records, I find that the prosecution had examined altogether five witnesses, but the substance of evidence of these witnesses were not recorded by a single presiding officer. Rather, the evidences were recorded by two different presiding officers and the special Judge who had recorded the impugned judgment of conviction against the appellant is the third presiding officer who had merely acted upon the evidence recorded by his two predecessors in office. The ground taken by the learned counsel for the appellant that the procedure adopted by the learned court below is contrary to the provisions of Section 326(3) of the Cr. P.C. bears substance. The procedure prescribed for trial in respect of offence for which the accused is charged is procedure for summary trial which lays down that only substance of evidence has to be recorded by the trial court and not the entire statement of witnesses. This implies that the Presiding Officer who records the evidence, being in a position to appreciate the evidence adduced before him, is suitably positioned to act upon the evidence and record his findings on the same. The officer who succeeds him as the trial Judge being not in a position to appreciate the evidence recorded by his predecessor, cannot record any finding on the basis of such evidence. The provisions of Section 326 (1) and (2) of the Code of Criminal Procedure do not therefore apply to the cases tried by way of summary trial. The impugned judgment of conviction and sentence passed by the trial court therefore suffers from an illegality, which is not curable, and renders the impugned judgment vitiated in law. The impugned judgment is therefore not sustainable in law. Since this ground alone is sufficient to dispose of the appeal, it is not necessary to discuss the other grounds urged on behalf of the appellant.

5. For the aforesaid reasons, I find merit in this appeal. Accordingly, the appeal is allowed. The judgment of conviction and sentence imposed upon the appellant by the trial court for the offence u/s 7 of the Essential Commodities Act is hereby set aside. The appellant is on bail. He is acquitted of the charge and is absolved from the liabilities of the bail bond.