

(2013) 07 JH CK 0101

Jharkhand High Court

Case No: Criminal M.P. No. 205 of 2008

Dhannu Prasad Sahu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 24, 2013

Acts Referred:

- Essential Commodities Act, 1955 - Section 3, 7
- Penal Code, 1860 (IPC) - Section 420

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Nilesch Kumar, for the Appellant;

Final Decision: Allowed

Judgement

Rakesh Ranjan Prasad, J.

I.A. (Cr.) No. 2300 of 2013

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State. Learned counsel appearing for the petitioner submits that this application has been filed for quashing of the FIR of Lohardaga P.S. case No. 192 of 2007 but during pendency of this application, charge sheet was submitted, upon which cognizance of the offence punishable u/s 420 of the Indian Penal Code and also u/s 7 of the Essential Commodities Act was taken against the petitioner and that order has been challenged by way of interlocutory application and therefore, prayer made in the interlocutory application be allowed to be incorporated in the main application.

2. The prayer made in the interlocutory application is hereby allowed.

3. The aforesaid I.A. stands disposed of.

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4. It is the case of the prosecution that on receiving secret information that the petitioner, a PDS dealer had indulged himself in illegal act of selling the commodities meant for distribution among the beneficiaries of the scheme in black market, a raid was laid. During that course, certain food grains (rice and wheat) belonging to another PDS dealer were found stored there which had been brought for selling it in black market.

5. On such allegation, a case was registered as Lohardaga P.S. case No. 192 of 2007. After investigation, charge sheet was submitted, upon which cognizance of the offence punishable u/s 7 of the Essential Commodities Act and also u/s 420 of the Indian Penal Code was taken, vide order dated 5.5.2008 which is under challenge.

6. Mr. Nilesh Kumar, learned counsel appearing for the petitioner submitted that the Central Government has repealed all control orders applicable to PDS Dealer with effect from 31.8.2001 when it promulgated Public Distribution System (Control) Order, 2001 whereby annexe 6 to the Public Distribution system Order does prescribe that the State Governments are to issue an order u/s 3 of the Act regulating sale and distribution of the essential commodities relating to Public Distribution System but the State Government, Jharkhand has not issued any such order u/s 3 of the Public Distribution System (Control) Order, 2001 and thereby PDS Dealer who even indulge themselves with the illegality and irregularity in the matter of distribution of essential commodities to the beneficiaries of the scheme cannot be prosecuted.

7. Further it was submitted that by virtue of provision as contained in Clause 10 of the said order, the State Government is required to authorize some person with the power of search and seizure but the State Government till date has not come forward with any authorization authorizing any person to make search and seizure in terms of Clause 10 of the said order. Therefore, if any search and seizure is made by a person who has not been authorized in terms of Clause 10 of the said order, such search and seizure would be quite illegal and the prosecution based on such seizure would get vitiated and under this situation, order taking cognizance is fit to be quashed.

8. Thus, it was submitted that the order taking cognizance is fit to be quashed.

9. In this regard it was further submitted that so far the offence u/s 420 of the Indian Penal Code is concerned, it never gets attracted even if entire allegation made against the petitioner is accepted to be true.

10. No counter affidavit has been filed, in spite of several opportunity is being given.

11. The point which has been raised in this application has already been decided in a case of Ropa Oraon vs. State of Jharkhand and another (Cr. M.P. No. 1577 of 2012) wherein it has been held that after commencement of the order known as Public Distribution System (Control) Order, 2001 all the provisions relating to Dealer under

the Public Distribution System would amount to be repealed by virtue of the provision as contained in Clause 14.

12. In such situation, the provision of the Unification Order after commencing of the Public Distribution System (Control) Order, 2001 would not be workable so far it relates to the matter relating to distribution of PDS commodities.

13. Further it was held that in absence of any authorization being made under clause 10 of the said order, any prosecution based upon search and seizure not made by any authorized officer would be quite illegal.

14. In such situation, entire criminal proceeding of Lohardaga P.S. case No. 192 of 2007 including the order taking cognizance is hereby quashed. In the result, this application stands allowed.