(2012) 09 JH CK 0211

Jharkhand High Court

Case No: Criminal M.P. No. 1346 of 2012

Nayeem Akhtar @ Nayeem Sk.		APPELLANT
	Vs	
State of Jharkhand		RESPONDENT

Date of Decision: Sept. 5, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 100
- Essential Commodities Act, 1955 - Section 3, 7
- Penal Code, 1860 (IPC) - Section 413, 414

Citation: (2012) 09 JH CK 0211

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Gautam Kumar, for the Appellant; R. Mukhopadhaya for the State, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad

1. This application has been filed for quashing of the FIR of Rajmahal (Radhanagar) P.S. case no. 204 of 2012 (G.R. No. 371 of 2012) instituted under Sections 413/ 414 of the Indian Penal Code and also u/s 7 of the Essential Commodities Act. It is the case of the prosecution that when information was received by the police of Radhanagar Police Station that some persons are taking rice meant to be distributed among the persons who are the card holders under Public Distribution System to Bengal for selling it in black market in a vehicle (Tata 407 Truck), it was intercepted by the police. On search 102 bags of rice were found loaded on it. The bags wee having marking of Food Corporation of India. Those begs of rice were seized. Two persons, Masood Alam and Md. Abdul Khalek were apprehended who disclosed that they as well as this petitioner and Farjul Sheikh used to take rice from the Public Distribution System shop and sell it in black

market.

2. On such allegation, a case was registered as Rajmahal (Radhanagar) P.S. case no. 204 of 2012 under Sections 413/ 414 of the Indian Penal Code and also u/s 7 of the Essential Commodities Act against the petitioner and others.

3. The First Information Report is being sought to be quashed on the ground that rice, subject matter of prosecution, related to transaction of business of fair price shop has been seized by the Office-in-Charge of Radhanagar Police Station but he had never been authorized to make search and seizure in terms of Clause 10 of the Public Distribution System (Control) Order, 2001.

4. Learned counsel appearing for the petitioner submits that the Central Government repealed all the control orders applicable to PDS Dealer with effect from 31.8.2001 when Central Government promulgated Public Distribution System (Control) Order, 2001 whereby annexe 6 to the Public Distribution System Order does prescribe that the State Government are to issue an order u/s 3 of the Essential Commodities Act regulating sale and distribution of the commodities relating to Public Distribution System but the Government of Jharkhand has not issued any such order u/s 3 of the Public Distribution System (Control) Order, 2001 and thereby the PDS Dealers 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 and in that event, case of the person other than PDS Dealer stands on better footing. Thus, prosecution against the petitioner gets vitiated.

5. Other limb of the argument is that under the said order the State Government is required to authorize some person with the power of search and seizure in terms of Clause 10 of the said order 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, FIR is fit to be quashed.

6. Mr. Mukhopadhyay, learned counsel appearing for the State submits that the Dealer under the Public Distribution System are being governed by the Bihar Trade Articles (Licences Unification) Order 1984 and under that provision licences are being given to the PDS Dealer to deal with the matter relating to distribution of the commodities and therefore, unless that Unification Order is repealed specifically by any subsequently order, the provision of the said Unification Order would remain in vogue and thereby FIR never warrants to be quashed.

7. The proposition which has been advanced on behalf of the State seems to be contrary to the provision as contained in clause 14 of the Public Distribution System (Control)

Order, 2001 which reads as under:

14. Provisions of the Order to prevail over previous orders of State Governments -- The provisions of this order shall have effect notwithstanding anything to the contrary contained in any Order made by a State Government or by an officer of such State Government before the commencement of this Order except as respects anything done, or omitted to be done thereunder before such commencement.

8. From perusal of the provision of the aforesaid order, It does appear that all the provisions relating to Dealer under the Public Distribution System virtually get repealed by virtue of the provision as contained in Clause 14.

9. In such situation, the provision of the Unification Order after commencement 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.

10. Now coming to other aspect of the matter, the argument has been advanced on behalf of the petitioner that the Officer-in-charge, Radhanagar P.S. who had made search and seizure, upon which case has been registered, has not been authorized by the State Government to make search and seizure. This plea which has been taken by the petitioner has not been controverted by the State Government.

11. In such situation, one needs to refer to clause 10 of the said order which reads as under :

10. Power of search and seizure -- (1) An authority authorized by State Government shall be competent to inspect or summon such records or documents as may be considered by him necessary for examination and take extracts or copies of any records or documents produced before him.

(2) If the said authority has reasons to believe on receipt of a complaint or otherwise that there has been any contravention of he provisions of this Order or with a view to securing compliance with this Order, he may enter, inspect or search the fair price shop or any premises relevant to transactions of business of the fair price shop.

(3) The said authority may also search, seize or remove such books of accounts or stocks of essential commodities where such authority has reason to believe that these have been used or will be used in contravention of the provisions of this Order.

(3A) The authority conducting search and seizure under sub-clause (3) shall inform the State Government or an officer authorized by it in this behalf, the details of the search conducted and the stocks of essential commodities so seized by them under that clause.

(4) The provisions of section 100 of the Code of Criminal Procedure 1973, relating to search and seizure shall so far as may be, apply to search and seizure under this Order.

12. From perusal of the aforesaid provision, it does appear that only the authority authorized by the State Government would be competent to make search and seizure of a place on receipt of a complaint of irregularities is being committed by the Public Distribution System Dealer.

13. In absence of any denial that the Block Supply Officer has never been authorized by the State Government, plea of the petitioner has to be accepted that Block Supply Officer had no such authority to make search and seizure and thereby any search and seizure made by the Block Supply Officer would be quite illegal. Furthermore, the case lodged on the basis of such search and seizure certainly gets vitiated.

14. This proposition has also been laid down in a case of Sri Narayan Prasad @ Sri Narain Sao and Others Vs. The State of Bihar and Others, , Similar issue fell for consideration before the Patna High Court in a case of Maheshwar Prasad and Another Vs. The State of Bihar, wherein it has been held that previous order relating to Public Distribution System becomes ineffective on commencement of the Public Distribution System (Control) Order, 2001.

15. At the same time, it has also been held that in absence of any authority in terms of clause 10 of the Public Distribution System (Control) Order, 2001 search and seizure made by a person would be quite illegal.

16. Thus, there remains no doubt that search and seizure made by the Officer-in-Charge of Radhanagar P.S is quite illegal and on the basis of such seizure, any prosecution laid would not be maintainable.

17. So far as the offence u/s 413/ 414 of the Indian Penal Code is concerned, it never gets attracted as it is never the case of the prosecution that the petitioner was habitually dealing with stolen property or that rice was stolen properly

18. Under the circumstances, first information report of Patamda P.S. case no. 75 of 2011 is hereby quashed. In the result, this application stands allowed.