

Achal Chhabra and Amar Nath Chhabra Vs The State of Bihar

Court: Patna High Court

Date of Decision: Sept. 13, 1995

Acts Referred: Essential Commodities Act, 1955 " Section 7, 8

Citation: (1996) 1 PLJR 249

Hon'ble Judges: D.S. Dhaliwal, J

Bench: Single Bench

Advocate: P.D. Agarwal and S.L. Agarwal, for the Appellant; I.N. Gupta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.S. Dhaliwal, J.

Achat Chhabra and his father, Amar Nath Chhabra, the two Petitioners herein, seek quashing of their criminal

prosecution including order taking cognizance and the order dated 31.3.89 whereby their application for dropping the proceedings in TELCO

(Gobindpur) P.S. Case No. 209/87 u/s 7 of the Essential Commodities Act (hereinafter to be referred to as "the Act") was dismissed by Special

Judge (E.C. Act), Jamshedpur.

2. The brief facts leading to the prosecution of the Petitioners are, that on 27.1.87 Shri Yogendra Mehra, Dy. S.P. (Food) on receiving secret

information that one Subodh Das had stored cement at his residence, raided the disclosed place and recovered 70 bags of Cement. This led to

registration of TELCO (Gobindpur) P.S. Case No. 209/87 against the said Subodh Das. During investigation it transpired that the Subodh Das

had purchased the cement from the Petitioners. After completion of the investigation police submitted charge-sheet against both the Petitioners and

Subodh Das for their having committed offence punishable u/s 7 read with Section 8 of the Act. Acting on the same the learned Special Judge

(E.C. Act), Jamshedpur, took cognizance of the offence. Petitioners, thereafter, filed application for their discharge which was dismissed by the

Special Judge vide order dated 31.6.89.

3. I have heard the learned Counsel for the Petitioners, the Addl. P.P. for the State and have perused the record.

4. Mr. P.D. Agrawal, learned Counsel for the Petitioners has submitted that since no storage limit has been prescribed in respect to the cement, the

Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter to be referred to as "the Licensing Order") was not workable on the date of

recovery and in that situation the Petitioners cannot be said to have violated any of its provisions so as to make them liable for offence u/s 7 of the

Act.

5. I find sufficient merit in the contentions raised by the learned Counsel for the Petitioner. It is well settled by now that in absence of any storage

limit fixed by the State Government in respect to a Trade Article, the Unification Order cannot be held workable in respect to that Trade Article.

The Government of the State of Bihar fixed storage limit in respect to certain articles for the first time vide Notification dated 17.10.85 and as such

the Licensing Order became operative with regard to only those articles for which storage limit was prescribed. The perusal of the said Notification

goes to show that it nowhere prescribes any storage limit in respect to cement. Thus, there being no storage limit prescribed for article of cement

on the alleged date of recovery, the Licensing Order in respect to cement was not workable on that day and as such the Petitioners cannot be said

to have violated its provisions. In this situation the prosecution of the Petitioners under Sections 7/8 of the Act arising out of alleged violation of the

Licensing Order cannot be sustained, being bad in law.

6. In the result, the petition is allowed. Both the impugned orders passed by the Special Judge (E.C. Act), Jamshedpur, as also the Criminal

prosecution of the Petitioners pending in that Court in TELCO (Gobindpur) P.S. Case No. 209/87 are hereby quashed.

7. As the case of Subodh Das, co-accused of the Petitioners stands on the same footing, the ends of justice require that his prosecution be also

quashed and I order, accordingly.