
(1943) 07 PAT CK 0003

Patna High Court

Case No: None

Sagarmal Agarwala

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: July 22, 1943

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 162

Citation: AIR 1944 Patna 390

Hon'ble Judges: Sinha, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Sinha, J.

The petitioner in this case was convicted by a Magistrate of the first class of Chaibassa under Rule 81(4), Defence of India Rules and sentenced to pay a fine of Rs. 1000 and in default to rigorous imprisonment for six months. On appeal the learned Sessions Judge of Manbhum Singhbhum affirmed the conviction but reduced the sentence to one of fine of Rs. 200 only and in default of payment of the fine rigorous imprisonment for six months. Hence this application in revision. The prosecution story shortly stated is that on 15th December 1942, the petitioner sold sugar to P. W. 1 Haahim at the rate of Rs. 23 per maund though the controlled price was only Rs. 14-4-0 per maund and thereby contravened Rule 81(2)(b), Defence of India Rules. P.W. 1 had at once reported the matter to the Sub-Inspector of police at Chakradharpur where the purchase had been effected and the Sub-Inspector after recording the first information appears to have investigated the case at once with the result that after recording the evidence of the first informant and several other persons who had figured as eye-witnesses to the transaction submitted charge-sheet against the accused under Rule 81(4), Defence of India Rules.

2. The defence, on the other hand, was that the petitioner had not sold the sugar in question at all and that as a matter of fact the sale had been effected by the firm called Padam Sukh Chogalal and in support of the defence version the accused examined an employee of the firm as also adduced in evidence certain documents in the shape of counterfoils and entries in the rokar of the firm. In this Court three points have been argued on behalf of the petitioner, namely, (1) that there has been no compliance with the mandatory provisions of Rule 130(1), Defence of India Rules; (2) that the provisions of Section 162, Criminal P.C., have been contravened; and (3) that there is a reasonable doubt as to the identity of the firm with which the dealing in sugar took place. As to the first submission, in my opinion, there is no substance. The relevant rule, namely, 130 (1), Defence of India Rules provides:

No Court or tribunal shall take cognizance of any alleged contravention of these rules, except on a report in writing of the facts constituting such contravention made by a public servant.

3. In this case after the Sub-Inspector of police had recorded the first information alleged by the purchaser of sugar, he made his own investigation into the truth of the allegations made therein. After completing his investigation he submitted a regular written charge-sheet giving all the details for the prosecution of the petitioner. Hence there was a report in writing of a public servant upon which the petitioner was prosecuted. Hence, in my opinion there has been a sufficient compliance with the provisions of the rule in question. On the second question, my attention has been drawn to the evidence in cross-examination of p. Ws. 2 and 3 whose evidence has been used as corroborative of the prosecution case as lodged by the first informant. In the course of the cross-examination it was suggested to these witnesses that as a matter of fact they had not named the petitioner to the investigating officer though the latter deposed in Court (presumably on the basis of the entries in the case diary) that these witnesses had actually named the petitioner to the Sub-Inspector of police. It is argued that the learned Sessions Judge has used the police diary, or the statement of the Sub-Inspector based as it is on the police diary, in complete disregard of the provisions of Section 162, Criminal P.C. In my opinion this contention is not well-founded either in fact or in law. It was the accused who brought it out during the cross-examination of the prosecution witnesses that they had not named the accused during the investigation. That statement they wanted to use in their favour at the trial. It may be that the lower appellate Court has not given as much weight to this discrepancy as the appellant before the lower appellate Court would have wished that Court to do, but that is a matter for the Court of fact to decide and if the final Court of fact has come to the conclusion on a consideration of the entire evidence in the record that it was the petitioner who really had sold the sugar in question to the first informant, this Court cannot interfere in revision with that finding.

4. As regards the third submission, it is enough to say that the question as to which firm it was to which the sugar belonged is wholly immaterial. The only question with which the Court had to deal was whether or not the petitioner had sold the sugar at a price higher than that he could legally have charged. The finding of both the Courts is very strong on that point namely that it was the petitioner who sold the sugar at a price which he was not entitled to charge under the law.

5. That being the position, in my opinion, there is no merit in this application which is accordingly dismissed.