
(2011) 01 PAT CK 0095

Patna High Court

Case No: Criminal Miscellaneous No. 15893 of 1999

Praduman Sao and
Nand Kishore Prasad
Sao

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Jan. 13, 2011

Final Decision: Allowed

Judgement

Rakesh Kumar, J.

Two Petitioners, who are accused in Aurangabad (T) P.S. Case No. 382 of 1996 (G.R. No. 11 of 1996), have prayed for quashing of an order dated 7.2.1997 passed by learned Special Judge, Aurangabad in Aurangabad (T) P.S. Case No. 382 of 1996, whereby the learned Special Judge, Aurangabad has taken cognizance of the offence u/s 7 of the Essential Commodities Act (hereinafter referred to as the "E.C. Act").

2. Short fact of the case is that on 19.10.1996 on secret information, a raid was conducted in the house of Petitioner No. 1 and from the house of Petitioner No. 1 about 45 Quintals of Tishi was recovered. On demand, as per the F.I.R., no paper was produced by the Petitioners. However, on enquiry, Petitioner No. 1 informed the police that the said articles were of Nand Kishore Prasad (Petitioner No. 2). On account of non-production of any paper 50 bags of Tishi, weighing 45 Quintals were seized by the Supply Inspector, Aurangabad and handed over on the Jimenama (custody) to one Amresh Prasad Keshri. On the basis of written report submitted by the Supply Inspector to the Officer Incharge of Aurangabad Town Police Station, an F.I.R. vide Aurangabad (T) P.S. Case No. 382 of 1996 was registered for the offence u/s 7 of the E.C. Act. After registering the F.I.R., investigation was conducted and thereafter chargesheet was submitted. By the impugned order, i.e. order dated 7.2.1997, the learned Special Judge, Aurangabad took cognizance of the offence u/s 7 of the E.C. Act.

3. Aggrieved with the order of cognizance, the Petitioner approached this Court by filing the present petition, which was admitted on 8.9.1999. While admitting, it was directed that

during the pendency of this application, further proceeding in the court below shall remain stayed. The order of stay is still continuing.

4. Sri N.K. Agrawal, learned Senior Counsel appearing on behalf of both the Petitioners, while challenging the order of cognizance as well as the entire proceeding in Aurangabad (T) P.S. Case No. 382 of 1996, at the very outset submits that neither in the impugned order of cognizance nor in the F.I.R. there is any whisper as to which provision/instruction was violated for attracting Section 7 of the E.C. Act. It was submitted that storage of Tishi was not an offence due to the reason that by any instruction or notification storage of Tishi in residential premises was not prohibited. It was argued that there was no price control on sale/purchase of the oil seeds and, as such, it cannot be said that storage of seized articles was for illegal motive. Even at the time of search and seizure, no weights and measures were recovered from the premises of Petitioner No. 1 and, as such, it cannot be said that the seized articles were kept for the purposes of black-marketing or its sale. Learned Senior Counsel appearing on behalf of the Petitioners on the point of storage has relied upon a judgment reported in ([Manipur Administration Vs. M. Nila Chandra Singh](#),) and it was argued that mere storage does not make out a case under the provision of the E.C. Act.

5. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor on behalf of the State has opposed the prayer of the Petitioners. It was submitted by Smt. Pandey, learned Addl. Public Prosecutor that the storage of such huge quantity of Tishi was itself indicative of the fact that the same was stored for the purposes of illegal activity. It was further submitted that the case was at the stage of cognizance only and, as such, this Court may not interfere with the order of cognizance at this stage.

6. Be that as it may, the fact remains that the alleged raid and seizure was conducted in the month of January, 1996 and Criminal Proceeding was directed to remain stayed at the time of admission of the present petition and since long the stay order is operative. Moreover, neither in the First Information Report nor in the impugned order of cognizance, it has been whispered as to which provision of the E.C. Act or instruction or Rules or order was violated by the Petitioners, while keeping the seized articles in the residential premises.

7. Accordingly, the Court is of the opinion that it is a fit case for interfering with the order of cognizance and, as such, the order dated 7.2.1997 passed by the learned Special Judge (E.C. Act), Aurangabad as well as entire criminal proceeding in Aurangabad (T) P.S. Case No.382 of 1996 are hereby set aside and the petition stands allowed.