

(1988) 10 PAT CK 0009

Patna High Court

Case No: Criminal Revision No. 700/85

Smt. Geeta Devi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Oct. 14, 1988

Acts Referred:

- Essential Commodities Act, 1955 - Section 2, 7

Citation: (1989) 37 BLJR 77 : (1989) PLJR 552

Hon'ble Judges: Ram Nandan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ram Nandan Prasad, J.

This application has been filed for setting aside and quashing the order of cognizance against the petitioner passed by the Special Judge, Patna on 28-6-1985 in Special Case No. 88/84 u/s 7 of the Essential Commodities Act.

2. The admitted position is that the petitioner had a license for storing coal in a depo and selling the same to consumers. Although the licence (licence No. 28/82) stood in the name of the petitioner Geeta Devi, the business was looked after and being run by her husband Bhuvneshwar Prasad.

3. The prosecution case is that in the evening of 10-8-84 the Supply Inspector Food Intelligence Branch along with other officers of the supply department made inspection of the business premises of the petitioner and on stock verification found that there was 21885 kg. of coal at the spot and which tallied with the entry in the stock register as such there was prima facie irregularity regarding stock position on 10-8-84. The prosecution case further is that on 26-7-1984 the stock register indicated purchase of 14750 kilos of coal in respect of which receipt obtained from a transport firm showing weighment of the aforesaid amount of coal was produced. The Supply Inspector submitted a written report on 11-8-1984 at Chowk P.S. alleging

therein that in accordance with the terms of the licence issued under Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as the Unification Order), the dealer in coal had to disclose the source from which the coal had been obtained and that mere production of a receipt showing the weighment of the amount of coal was not sufficient compliance with the terms of the licence. The Supply Inspector had found in course of his visit that it was the petitioner's husband Bhuvneshwar Prasad who was looking after the depot and running the business and on questioning he intimated the Supply Inspector that the licence had been submitted in the supply office for renewal. The police after investigation submitted charge sheet and thereafter the impugned order of cognizance was passed.

4. It has been submitted on behalf of the petitioner firstly that since it is not disputed that though the licence stands in her name the business was completely being looked after and run by her husband, hence even if some alleged irregularity be found, the petitioner being not aware of it and having no knowledge of the same cannot be made liable for it. It has been submitted that the element of mens rea is totally absent as regards the petitioner. The second arguments submitted on behalf of the petitioner is that as the State Government had not yet issued any notification fixing the storage limit of coal for a retail dealer, the Unification Order has no application and as such there could be no violation of any provision of the Unification Order giving rise to any offence u/s 7 of the E.C. Act.

5. It could not be denied by the learned Counsel for the State that at the relevant time there was no order of the State Government fixing the storage limit of coal for licenced dealers in this commodity. Coal has been defined in Clause (b) of Section 2 of the Unification Order and "retail dealer" has been defined in Clause (p) of the same Section. Under Clause 2(p) definition of retail dealer is as follows:--

"Retail dealer" means a person engaged in the business of purchase, sale or storage of any article for purpose other than personal consumption within the storage limit fixed by the Government from time to time.

This definition itself indicates that the dealer is required to store the article in question within the limits fixed by the Government from time to time. If no storage limit has been fixed by the Government, obviously he will not come within the purview of the provisions of the Unification Order. This has been clearly laid down by this Court in *Rajesh Trading Co. v. The State of Bihar and Ors.* reported in 1988 PLJR 463. That case related to the case of edible seeds (pulses) but the principle is the same and Their Lordships held that the Unification Order does not apply where no notification fixing the storage limit has been issued. This decision of this Court was upheld by the Hon'ble Supreme Court in the case reported in 1988 PLJR 44. Thus, there is no doubt about the legal position that if there has been failure on the part of the State Government to issue a notification fixing the storage limit in respect of any article sought to be covered by the Unification Order, then such failure would mean that the Unification Order has no application. Hence, on this

score alone the petitioner is entitled to succeed and the order of cognizance against her is liable to be quashed because the entire proceeding is unsustainable.

6. It was submitted on behalf of the petitioner that except for the fact that the licence stood in her name, she had no other concern with the business and that it was entirely being managed by her husband has not been challenged. The argument is that under such circumstances the petitioner could not possibly be presumed to be aware of any alleged violation of the provisions of the Unification Order, in other words the element of mens rea is totally lacking in the case so far as the petitioner is concerned. It was argued that in the absence of mens rea which is an essential ingredient of all criminal offences unless expressly excluded by statute, no liability could be fixed on the petitioner for any alleged violation of the provisions of the Unification Order. In support the case decided by the Apex Court and reported in *Nathu Lal v. The State of Madhya Pradesh* AIR 1988 SC 48 was cited. It was held in this case that mens rea is an essential ingredient also for an offence u/s 7 of the Essential Commodities Act. The prosecution (opposite party), however, placed reliance on the case reported in *Indira Devi and Ors. v. The State of Bihar* 197 BLJR 436 in which it has been held that after amendment introduced by 1987 in Section 7(1) of the Essential Commodities Act and the Bihar Coal Control Order, the element of mens rea is no longer essential. It is also argued on behalf of the petitioner that there is nothing to show that the petitioner had in any way abetted the alleged contravention of any provision of the Unification Order and as such no liability on any account whatsoever can be fastened on her. It is not necessary to go into this question and pass any order in respect thereof. As already observed, the prosecution is illegal and unsustainable on account of the fact that the Unification Order has no application as no storage limit was prescribed and consequently, the launching of the prosecution itself was illegal ab initio.

7. In the light of the above discussion, I find that the cognizance against the petitioner and her prosecution are illegal. Accordingly, the impugned order of cognizance is set aside.

8. The revision thus stands allowed.