(2003) 1 PLJR 162

Patna High Court

Case No: Criminal Appeal (SJ) No. 199 of 1991

Bir Bahadur Rai	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision: Sept. 26, 2002

Acts Referred:

- Essential Commodities Act, 1955 - Section 7

Citation: (2003) 1 PLJR 162

Hon'ble Judges: B.N.P. Singh, J

Bench: Single Bench

Advocate: Dileep Kumar Jha, Amicus Curiae, for the Appellant; B.P. Gupta, for the Respondent

Judgement

B.N.P. Singh, J.
The Appellant suffered conviction u/s 7 of the Essential Commodities Act on being tried by Special Judge, Sitamarhi in G.R. No. 516 of 1989 and was sentenced to suffer rigorous imprisonment for a term of six months.

2. The factual matrix are that Sri Ram Autar Mishra (P.W. 1) on receipt of confidential information about sale of 4 quintals levy sugar and 414 litres (sic) oil in black market in Nepal by the Appellant who happened to be fair price shop dealer under Public Distribution System, led a trap in his business premises in company of other officials. It was alleged that barring 30 litres of kerosene oil, there was no stock of essential commodities in the shop. The Appellant allegedly on his own volition, rendered a confessional statement acknowledging his guilt, pursuant to which a police case on such accusations was registered and investigation commenced, on conclusion of which the police laid chargesheet before the Court. In the eventual trial that commenced, the State examined altogether seven witnesses including Reporting Officer, Block Marketing Officer, Karamchari and also seizure list witnesses.

3. The defence of the Appellant had been denial of the complicity attributed to him. The trial Court, however, on appreciation of evidences negativing the plea of innocence, recorded finding of guilt and sentenced the Appellant in the manner stated above.

4. Two fold contentions were raised by Mr. Dileep Kumar Jha for the Appellant who has been appointed as Amicus Curiae and before I give them due consideration, I consider it proper to discuss first, the evidences placed on the record. Ramawatar Mishra P.W. 1 who happened to be the Reporting Officer, while reiterating his earliest version states about inspection of business premises of the Appellant on 23rd June, 1989 in the company of other officials, when against supply of 4 quintals of levy sugar and 414 litres of kerosene oil, there had been no stock in the business premises, as the same were allegedly sold in the jurisdiction of Nepal territory by the Appellant. The witness would state that the Appellant even on demand, at the time of inspection, did not produce sale register, stock register, cash memo etc. and even though a display board was found on the business premises, stock and price were not mentioned therein. The narrations almost in similar vain and terms were made by Shri M.K. Verma who happened to be the Anchal Adhikari about there being no stock of essential commodities in the business premises and also non-production of documents by the Appellant. Jafarul Hassan Khan P.W. 3 made narration in similar terms about there being no stock of essential commodities in the business premises of the Appellant during inspection, also states about concessional statement of the Appellant before inspecting authorities. Ram Prakash Sah P.W. 4 though admits his signature on the confessional statement rendered by the Appellant, turned volte face about confessional statement rendered by the Appellant before him, and states that his signature was obtained on coercion by the inspecting authority. Anand Roy P.W. 5 would state about inspection of the business premises of the Appellant on 23rd June, 1989 and would also state about seizure of stock register, sale register, display board on which he stated to have appended his signature. Sri P.N. Roy P.W. 6 though states about inspection of business premises of the Appellant, frustrates the State, about allegation of disposal of essential commodities by the Appellant in black market, and the last witness was Sri N.P. Singh P.W. 7 who was the Investigating Officer. This is all the evidence that has been adduced on behalf of the State.

5. The finding recorded by the Court below was sought to be assailed on the premises that though Appellant on receipt confidential information had been sad(sic)ed with allegation of sale of 414 litres of kerosene oil and 4 quintals of levy sugar in black market, neither such confidential information about disposal of essential commodities in black market by the Appellant had been confirmed, nor customer had ever complained before the Inspecting authority either about non receipt of ration by them or mal distribution thereof by the Appellant, and the Appellant to negate these allegations had brought on the record the documents which are Exts. A, B and C and on strength of these documents it is urged that they would not demonstrate either about mal-distribution on part of the Appellant or failure on his part in distributing essential commodities among the

customers. Regard being had to paucity of evidence about disposal of essential commodities by the Appellant in Nepal and also documents placed on the record on behalf of the Appellant, rightly no conclusion can be drawn about disposal of either sugar or kerosene oil in black market by the Appellant, and that apart, there had been no document on the record suggesting receipt of articles in question by the Appellant.

6. Other accusation attributed to the Appellant was his failure to produce some documents for inspection by the Inspecting authority and on this score, learned Counsel Mr. Dileep Kumar Jha appearing as Amicus Curiae for the Appellant would state that though other witnesses had been stating about non-production of the documents in question by the Appellant, Anand Roy P.W. 5 would state about production of documents and also seizure thereof by Inspecting authorities. So far confessional statement said to have been rendered by the Appellant on his own volition is concerned, admittedly Ext. 3/3 which is said to be confessional statement of the Appellant does not persuade one to treat it confessional statement, that being acknowledgment of guilt.

7. Having given my anxious and deepest consideration to the evidences placed on the record and also contentions raised at bar, I find that the finding recorded by Court below could not be sustained and in that view of the matter, while setting aside the finding, the Appellant is acquitted of the charges levelled against him and he is also discharged from the liability of bail bonds. The appeal accordingly succeeds.

8. Sri Dileep Kumar Jha who has been appointed as Amicus Curiae shall be eligible to receive remuneration from Patna High Court Legal Aid Committee. A copy of the first and last page of the judgment shall be made available to the learned Counsel.