

Ramesh Kumar Kejariwal Vs. State of Bihar

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Court : Patna

Decided On : Jul-10-1997

Judge : P.K. Deb, J.

Appeal No. : Criminal Misc. No. 3732 of 1996 (R)

Appellant : Ramesh Kumar Kejariwal

Respondent : State of Bihar

Disposition : Petition Allowed

Prior history : P.K. Deb, J. 1. This petition under Section 482 of the Code of Criminal Procedure (the Code) has been filed by the abovementioned petitioner for quashing the entire criminal proceedings including the order explaining substance of acquisition dated 29.4.1994 passed by the Special Judge, E.C. Act, Chaibasa, in connection with Chakradharpur P.S. Case No. 86 of 1991 (G.R. Case No. 20 of 1991) under Section 7 of the Essential Commodities Act (the Act). 2. The brief facts are as follows: The Supply

Judgement :

P.K. Deb, J.

1. This petition under Section 482 of the Code of Criminal Procedure (the Code) has been filed by the abovementioned petitioner for quashing the entire criminal

proceedings including the order explaining substance of acquisition dated 29.4.1994 passed by the Special Judge, E.C. Act, Chaibasa, in connection with Chakradharpur P.S. Case No. 86 of 1991 (G.R. Case No. 20 of 1991) under Section 7 of the Essential Commodities Act (the Act).

2. The brief facts are as follows:

The Supply Inspector visited the business premises of the petitioner on 17.7.1991 and in course of inspection, he found 58 tins of edible oils weighing 8 quintals 70 Kgs. were in stock which according to the Supply Inspector was against the prescribed limit of 8 quintals and as such offence report has been submitted for violation of the Bihar Trade Articles (Licenses Unification Order, 1984 (for short 'the Unification Order') for prosecution under Section 7 of the Act. During the course of inspection, the Inspecting Officer with the permission of the Special Judge sent the sample of the seized articles to the Director of Regional Forensic Laboratory to settle that the seized 58 tins which are said to be non-edible oils is true or not. The Special Judge was pleased to send the same to the Forensic Science Laboratory on 7.1.1992. The Director, Regional Forensic Science Laboratory recorded his opinion and sent it to the effect that the oils seized were non-edible oils.

3. A short point that has been raised in this case with regard to the storage limit. The Unification Order came into force in the year 1984 and as per Storage Limits Notification of the State of Bihar vide G.S.P. No. 49 dated 17th October, 1985, storage of edible oil within the permissible limit is 10 quintals but prior to that there was a Central Government's Order, namely, Pulses, Edible Oil Seeds and Edible Oils (Storage Control) Order, 1977, wherein edible oils stock limit of the wholeseller is mentioned as 8 quintals. While promulgating the State Order on 17th October, 1985, in the preamble, it has been stated that with prior concurrence of the Central Government the Governor of Bihar is pleased to fix the stock limits of the Trade Articles under Clause 3 of the Unification Order.

4. It is submitted by Mr. S.L. Agrawal, appearing for and on behalf of the petitioner that the prosecution lodged against the petitioner for violating the Unification Order is not maintainable on the face of it as Clause 3 of the Unification Order had given

permissible limit to the whole-seller like that of the petitioner to store up to the limit of 10 quintals of edible oil. But from the prosecution report it appears that the storage limit was considered as 8 quintals only as per the Central Government Order of 1977 and such violation had been alleged against the petitioner for keeping 70 Kgs. more than the permissible limit.

5. Mr. S.L. Agrawal submits that the Central Government Order of 1977 can have no application when the State Order of 1985 had fixed the storage limit up to 10 quintals and the said State Order had been made with prior concurrence of the Central Government.

6. Mr. P.D. Agrawal, appearing on behalf of the State opposite party submits that the State Order of 1985 as mentioned above have not mentioned specifically that the same had superseded the Central Order of 1977 but although specifically it has not stated about the suppression of the Central Order but by legal implication, it must so, when in the preamble of the Order of 1985, it mentioned that the storage limit had been made by the State Government with prior concurrence of the Central Government.

7. According to Mr. S.L. Agrawal, in the States when with prior concurrence of the Central Government, Storage limits have been fixed then the Central Order can at best be in vogue in the Union Territories only and not the States, Moreover violation had been alleged in respect of the Unification Order which had come in force in the year 1984 and the storage limit of the State Government had been fixed with reference to Clause 3 of the Unification Order. So the application of the Central Order becomes non est after the promulgation of the State Order on the basis of the Unification Order of 1984. Thus, I find much force in the submission of Mr. S.L. Agrawal. Only because the Supply Officials mentioned about the violation of the Central Order, it would not constitute an offence under the Act as violation of the Unification Order should be directly related to the State Order as per discussions made above. If the State Order is taken into consideration which should be in the circumstances of the case then there is no offence committed by the petitioner as there was no violation of the State Order as the petitioner was within the limit of 10 quintals in making the stock of edible oils.

8. Another point has been raised from the side of the petitioner to the effect that the oil stored was not edible oil and the said contention of the petitioner gets some support from the report of the Forensic Science Laboratory. At least 30 Kgs. figured within the storage limit could be considered as Tisi Oil then the only storage limit exceed 40 Kgs. even if the Central Order is considered to be in vogue at the relevant time. According to Mr. Agrawal, this is only the marginal excess in the storage limit even if Central Order is taken to be in force at the relevant time and such marginal excess in the storage limit may not constitute an offence in view of Section 95 of the Indian Penal Code because such slight excess in ordinary sense may not be considered as harm to the society when permissible limit is by quintals to the tune of 8 quintals as per the Central Order.

9. In view of the above discussions, I find that this petition has got much force and the criminal prosecution against the petitioner is bad and an abuse of the process of law.

10. In the result, this petition is allowed and the entire criminal proceedings against the petitioner in Chakradharpur P.S. Case No. 86 of 1991 G.R. Case No. 20/91 under Section 7 of the E.C. Act, before the Special Judge, E.C. Act, Chaibasa is hereby quashed.