

Muchhu Sao Vs. State of Bihar

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Court : Patna

Decided On : Aug-02-1999

Judge : S.K. Katriar, J.

Appeal No. : Criminal Misc. No. 2821 of 1994

Appellant : Muchhu Sao

Respondent : State of Bihar

Prior history : S.K. Katriar, J. 1. This application under Section 482 of the Code of Criminal Procedure, 1973, is directed against the impugned order of cognizance dated 27-7-93 passed by the Special Judge, Nalanda, Bihar Sharif, in Bihar Sharif PS Case No. 251/93 State of Bihar v. Muchhu Sao, whereby cognizance has been taken of the alleged offences under Section 7 of the Essential Commodities Act read with provision of Clause (3) of the Bihar Trade Articles (Licences Unification) Order, 1984, and the petiti

Judgement :

S.K. Katriar, J.

1. This application under Section 482 of the Code of Criminal Procedure, 1973, is directed against the impugned order of cognizance dated 27-7-93 passed by the Special Judge, Nalanda, Bihar Sharif, in Bihar Sharif PS Case No. 251/93 State of Bihar v. Muchhu Sao, whereby cognizance has been taken of the alleged offences

under Section 7 of the Essential Commodities Act read with provision of Clause (3) of the Bihar Trade Articles (Licences Unification) Order, 1984, and the petitioner has been summoned to stand his trial.

2. The Supply Inspector, Biharsharif, lodged an FIR with the Biharsharif Police Station alleging therein that somebody was driving a bullock-cart with mustard oil (6 qntls. & 15 kgs.), packed in 41 tins, were loaded on the bullock-cart. On being intercepted and questioned, the bullock-cart driver allegedly informed the informant that the good belonged to the petitioner herein. Accordingly, the informant visited the place of the petitioner where, according to the FIR, he met the old mother and the daughter of the petitioner, but he himself was not there. The place did not have the semblance of a shop nor any articles were found therein. The informant was not able to seize any licence issued under the Unification Order either. With these allegations, Biharsharif P.S. Case No. 251/93 was registered. The police investigated the allegation and submitted its charge-sheet on the basis of which the aforesaid order of cognizance was passed, and impugned herein.

3. While assailing the validity of the impugned order of cognizance, learned Counsel for the petitioner invited by attention to the Notification bearing No. GSR 49, dated 17-10-85, issued by the State Government, Clauses 5 and 14 of which are relevant in the present context and are set out hereinbelow for the facility of quick reference:

5. (a) The wholesale dealer of edible oils in ~B' class cities means a person who at any time holds stocks of any one or all edible oils taken together including hydrogenated oils for purchase, sale or storage for purposes other than personal consumption in a quantity exceeding 15 (fifteen) quintals, but not exceeding 500 (five hundred) quintals.

(b) The wholesale dealer of edible oils in 'C' class cities, towns and rural areas means a person who at any time holds stock of any one or all edible oils taken together including hydrogenated vegetable oil for purchase, sale or storage for purposes other than personal consumption in a quantity exceeding 10 (ten) quintals but not exceeding 300 (three hundred) quintals.

14. The term 'B' class cities shall, for the purposes of this order exclude the provisions relating to pulses, edible oil-seeds and edible oils include the cities of Hazaribagh, Gaya, Bhagalpur, Saharsa, Dumka, Darbhanga, Muzaffarpur, Chapra, Monghyr, Purnea, Samastipur, Begusarai, Arrah, Sasaram, Motihari, Bettiah, Katihar and Siwan and Patna, Ranchi, Dhanbad, Jamshedpur or cities having population of 3 lakhs and more but less than 10 lakh as determined in 1981 census.

In his submission, the Unification Order no longer applies to edible oil with respect to 'B' & 'C' class cities. He next invited my attention to the judgment of a learned Single Judge of this Court reported in 1992 (1) PLJR 605 Vijay Kumar v. State of Bihar, as well as an unreported judgment of a Division Bench of this Court dated 24-6-96, in Cr. Misc. No. 1045 of 1987, Shankar Kumar v. State of Bihar, wherein it has been held that the Unification Order is unworkable for the reason that 'B' & 'C' class cities have not been defined in the Unification Order or the said notification. It is relevant to mention that the reported judgment cited above has taken note of the aforesaid notification.

4. Mr. Ram Krishna Prasad, learned APP, appearing for the State of Bihar, opposed the application, and submitted that no case has been made out for quashing the impugned order of cognizance,

5. Having considered the rival submissions, I am of the view that this application has to be allowed. In view of the aforesaid notification relevant portions of which are set out hereinabove and duly taken note of in the aforesaid two judgments, I hereby quash the impugned order of cognizance dated 27-7-93. The prosecution started against the petitioner is hereby quashed.