

Md. Ayub Alam Vs. the State of Bihar

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Court : Patna

Decided On : Jul-23-2002

Judge : B.N. P. Singh, J.

Appeal No. : Criminal Appeal No. 298 of 1991

Appellant : Md. Ayub Alam

Respondent : The State of Bihar

Disposition : Appeal Allowed

Prior history : B.N.P. Singh, J. 1. The appellant suffered conviction under Section 7 of the Essential Commodities Act for alleged violation of condition No. 9 of the licence issued to the appellant under Bihar Trade Articles (Licences Unification) Order, 1984. 2. At the outset I may briefly refer to some of the salient features of the prosecution case centering round the incident in question. The factual matrix are that the business premises of the appellant, who holds a licence to deal in sugar and kerosene

Judgement :

B.N.P. Singh, J.

1. The appellant suffered conviction under Section 7 of the Essential Commodities Act for alleged violation of condition No. 9 of the licence issued to the appellant

under Bihar Trade Articles (Licences Unification) Order, 1984.

2. At the outset I may briefly refer to some of the salient features of the prosecution case centering round the incident in question. The factual matrix are that the business premises of the appellant, who holds a licence to deal in sugar and kerosene oil under the public distribution system was inspected by officials of the Supply Department on 30th November, 1986 when stock of kerosene oil and sugar was found completely exhausted and when the Inspecting authorities asked the appellant to make available stock register, sale register and cash memos, he failed to produce then on premises that these documents had been made available to the Mukhiya on 28th November, 1986. The business premises of the appellant was again inspected on 6th January, 1987 when appellant filed a written statement, though there was no stock of sugar in the shop and none of those documents which were demanded earlier were made available to them. The other accusation against the appellant was that he was supplying sugar and kerosene oil in excess to the rates prescribed by the Government. After prosecution was launched against the appellant on behest of Supply Inspector, Jokihat, the investigation commenced and on conclusion of investigation police laid charge-sheet against him.

3. The defence of the appellant was that of total innocence and his false implication due to oblique motive. At trial, the State examined two witnesses and brought on the record a number of documents including written statement of the appellant which was rendered before the Inspecting authorities, and also statement of some witnesses recorded by them during inspection of the shop. The defence too examined one witness and the trial Court while rejecting plea of innocence, recorded finding of guilt and sentenced the appellant in the manner stated above.

4. Contentions were raised at bar that apart from other infirmities that have crept in the evidence about there being no evidence for any rate prescribed by the Government for sale of sugar and kerosene oil to the fair price crop holder, there are yet other infirmities in the prosecution case which would render finding of guilt recorded by the Court below not sustainable in law. It is urged that though the

finding of guilt was recorded by Sri Bhagwan Prasad Singh, the evidence of P.W. 1 was not recorded by him and on these premises it is urged that since the finding of guilt was recorded by Sri Singh on strength of evidence partly recorded by his predecessor, the trial of the appellant in the Court below was ab initio void hence the sentence passed thereunder was not maintainable. It would seem from the evidences placed on the record that as the trial Judge who rendered verdict of guilt had not recorded the entire evidence, the case having been registered under Essential Commodities Act which was summarily tried under the provisions of Section 326(2) of the Code of Criminal Procedure the successor Judge was not competent to use the evidence recorded by his predecessor and no finding could have been recorded without recall of the witnesses. A catena of decisions of this Court were placed on the record by the learned Counsel appearing for the appellant and it is no longer res Integra that in these circumstances, the successor Court was not competent to use the evidence recorded by his predecessor unless the witness was recalled by him. Since the finding recorded by the Court below cannot be sustained on this ground alone, I do not consider it necessary to delve upon other arguments canvassed by learned Counsel for the appellant.

5. Having taken into consideration the finding recorded by the trial Court based on evidence partly recorded by the predecessor Judge, I find that the conviction of the appellant and sentence imposed on him cannot be sustained in the eye of law which is, accordingly, set aside, and the appellant is acquitted of the charges. He is also discharged from the liability of the bail bonds. The appeal, thus, succeeds. -