

**Anandi Paswan Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Dec-14-2000

**Judge :** P.K. Sinha, J.

**Appeal No. :** Criminal Appeal No. 411 of 1989

**Appellant :** Anandi Paswan

**Respondent :** State of Bihar

**Disposition :** Appeal Allowed

**Judgement :**

**P.K. Sinha, J.**

1. On calls, no one has turned up on behalf of the appellant.
2. Heard the learned Additional Public Prosecutor Sri Ashwani Kumar Sinha and I myself perused the records including the lower Court records.
3. This appeal is directed against the judgment dated 30.9.1989 recorded by special Judge for Essential Commodities Act at Samastipur under which this appellant was found guilty for having violated provisions of Clause 3 of the Bihar Essential Articles (Display of Prices and Stock) Order and Clause 10 of Bihar Trade Articles (Licences Unification) Order, 1984, punishable under Sections 7(1)(a)(i) of the Essential Commodities Act, 1955 and sentenced him to undergo

rigorous imprisonment for six months.

4. On perusal of the record, I find that this judgment cannot be sustained. In the judgment itself, it has been mentioned that the learned Judge delivering judgment had come in the seisin of the case on 21.4.1989. However, it appears that the judgment in the case was delivered on the basis of evidence recording of which had concluded on 13.8.1989, i.e., by the predecessor of the Court delivering the judgment. Only part performed by the learned judge delivering the judgment was the examination of the accused under Section 313 of the Code of Criminal Procedure ('the Code', in short) which was done on 26.6.1989.

5. In this case, summary triable procedure was adopted as ordained under Clause of Sub-section (1) 'of Section 12AA of the E.C. Act. Section 326 of the Code, in Sub-section (1) provides that whenever any Judge or Magistrate, after leaving heard and recorded whole or any part of the evidence in an, inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself. This can be done also by a transferee Court, under Sub-section (2) of Section 326 of the Code. However, Sub-section (3) of Section 326 of the Code provides that nothing in this Section will apply to a summary trial.

6. In view of the aforesaid, in a case which has been tried summarily, the succeeding Court cannot act on the evidence recorded by his predecessor but has to record evidence de novo. In this regard, the decisions of this Court in the case of Nath Mal Kabra and Ors. v. State of Bihar 1990 (1) B.L.J.R. 477 as well in the case of Pramod Kumar Jhunjunwala v. State of Bihar 2000 (1) B.L.J.R. 336 may be referred to.

7. In view of the aforesaid, the judgment of the learned Special Court cannot be sustained. However, the next question that would arise is whether it would be desirable to remand the case for de novo, trial. From the lower Court record, it will appear that this case was initiated on a complaint-petition filed in the lower Court on 17.11.1985. This appellant appeared in the lower Court on 29.11.1985.

Therefore, it will appear that the appellant has already faced the proceedings in the case for the last 15 years. In such circumstance, it will not be desirable to have the case retried.

8. In the result, this appeal is allowed and' the judgment of conviction and sentence by the tower Court is hereby set aside. The appellant is ordered to be acquitted and is discharged from the liabilities of his bail-bond.

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