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Court : Patna

Decided On : Aug-30-1996

Judge : Loknath Prasad, J.

Appeal No. : Criminal Misc. No. 4627 of 1995 (R)

Appellant : Arun Kumar Singh

Respondent : State of Bihar

Disposition : Application Allowed

Judgement :

Loknath Prasad, J.

1. This is an application under Section 482 of the Code of Criminal Procedure for quashing the entire criminal prosecution relates to Jaridih P.S. Case No. 7/85 under Section 7 of the E.C. Act and pending before the Special Judge, E.C. Act, Bokaro.

2. The fact in short for the purpose of this application is that no 8.2.1985 the Sub-Inspector attached to Jaridih P.S. found truck bearing Registration No. BHK 6591 loaded with coal. The driver disclosed the name of the petitioner to be the owner of the truck and no document regarding coal was produced then the Sub-Inspector submitted a written report and after investigation submitted charge-sheet under

Section 379/411 of the Indian Penal Code and also under Section 7 of the E.C. Act. The trial Judge that is Special Judge (E.C. Act), Giridih only took cognizance of the offence under Section 7 of the E.C. Act for violation of the Provisions of Bihar Trade Articles (Licences Unification) Order, 1984 and it was also observed by the learned Judge that the prosecution can file an appropriate case before the appropriate forum so far as Section 379/411 of the Indian Penal Code is concerned.

3. So this case is only under Section 7 of the E.C. Act for violation of the Unification Order that is the petitioner was found in possession of the coal without any licence. The only plea taken before me that at the relevant time that is on 9.2.1985 Bihar Trade Articles (Licences Unification) Order, 1984 was not workable because no Notification under Clause 3 and 18 of the Unification Order was issued by the State Government. Clause 3 indicates that every dealer has to take licence for carrying business for sale or storage of trade article but there is a proviso that no licence shall be required for a dealer who stores for sale at any one time the trade articles, in quantities not exceeding the limits as may be prescribed by the State Government with prior concurrence of the Central Government. Similarly under Clause 18 no person shall either by himself or by any person on his behalf, store or have in his possession at any time any trade article mentioned in Schedule I and Schedule II in quantity exceeding the limits. Thus, it was contended that the State Government is required to issue a notification at least under Clause 3 to indicate the storage limit beyond that licence is required and this notification was made only on that means after the alleged occurrence through which the State Government prescribed the storage limit of coal. Thus it was intended that only after 17.10.1985 storage for coal requires licence and the case in hand in prior to 17.10.1985 when there was no such notification and as such the Unification Order was not workable. Thus, prosecution is misuse of the process of the court. In support of this contention learned Counsel for the petitioner relied upon some authorities of our own court reported in 1994 (2) Eastern Indian Criminal Case page 219, Mamashish Prasad v. State of Bihar. The Division Bench of this Court in C.W.J. No. 6231/92 (R) by order dated 9.8.1994 also took similar view that unless there is a notification prescribing the storage that the Unification Order is not workable.

4. On the other hand learned Counsel Shri S.N. Rajgarhia appearing for the State tried his best to substantiate his submission that in fact proviso to Clause 3 is not a mandatory subject to taking of the licence rather it is an enabling Clause empowering the State Government to issue Notification authorising the person concerned to store trade articles up to certain limit for that no licence is necessary. In support of his contention he relied upon a decision of this Hon'ble Court reported in 1989 B.L.J. 165, Murli Manohar v. State of Bihar.

5. Though this submission has some force but in view of the language used under the proviso to Clause 3 of the Unification Order and also in view of the principle laid down by the Division Bench of this Court, I am inclined to hold that at least some notification is necessary under Clause 3 of the said Order proscribing the storage limit. 9.2.1985 and the Notification issued by the State Government proscribing the storage limit under Clause 3 of the Order only on 17.10.1985. So after 17.10.1985 certainly the submission of the learned Counsel for the State holds good but in the instant case the occurrence is prior to the issuance of notification. In that view of the matter, the prosecution of the petitioner for violation of the Unification Order is not maintainable.

6. Accordingly, this application is allowed and the entire criminal proceeding relates to Jaridih P.S. Case No. 7 of 1985 pending in the court of Special Judge, E.C. Act, Bokaro is hereby quashed.

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