

Abu Bakar Siddique Vs. State of Bihar

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Court : Patna

Decided On : Mar-07-2002

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

Appeal No. : Criminal Appeal No. 59 of 1991 (SJ)

Appellant : Abu Bakar Siddique

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

B.N.P. Singh, J.

1. The appellant suffered conviction under Section 7 of the Essential Commodities Act for alleged violation of the terms and conditions of the licence issued under the Bihar Trade Articles (Licences Unification) Order, 1984 and was sentenced to rigorous imprisonment for one year.

2. The factual matrix-the fair price shop of the appellant, established under the Public Distribution System was allegedly inspected by Md. Asfaque, the then Marketing Officer, Sikty, in the company of other officials and certain irregularities and discrepancies in maintenance of stock were noticed. The stock position was found not displayed on a conspicuous place of the business premises. A police

case was registered on behest of the Marketing Officer and investigation commenced on conclusion of which the Police laid charge-sheet and the appellant was eventually put on trial. In the trial that commenced, the State examined altogether four witnesses including the Reporting Officer and the trial Court on critical analysis of the evidence, finding the appellant guilty under Section 7 of the E.C. Act, sentenced him in the manner stated above.

3. The impugned judgment is sought to be assailed on the premises that apart from other infirmities that have crept in the evidence, the finding recorded by the trial Court was not sustainable in law for the reasons that this being a summary proceeding, the trial Judge who rendered the verdict of guilt and had not recorded the evidence of the witnesses, was not competent to evaluate them, and render a finding thereon. Contentions were raised that as Shri B.K. Thakur, Special Judge, Purnea, empowered for trial of cases registered under the Essential Commodities Act at Purnea, who recorded the evidence of some witnesses, was succeeded by Shri B.P. Singh, Special Judge, Purnea, who eventually rendered the finding on strength of evidence partly recorded by Shri B.K. Thakur, the trial of the appellant in the Court below was void abinitio and, hence, the sentence passed thereunder was not maintainable and hence, the same is fit to be set aside. Though the provisions enjoined under Sub-section (1) of Section 326 of the Code of Criminal Procedure empowers the Judge/Magistrate to record a finding on the strength of the evidence of the witnesses recorded by his predecessor, the said provision was not applicable in case of summary proceeding unless the witnesses were re-summoned and their statements were recorded by the Judge/Magistrate. The legal position about incompetency of the trial Judge, who did not record the entire evidence in the summary proceeding to render a finding had been well crystallised in a number of decisions of this Court. Through with the aid of the evidence of D.W. 1 it is sought to be urged on behalf of the appellant that no discrepancy in the stock can be made out. I find that since the trial of the appellant, due to legal infirmity that have crept in, is found without jurisdiction. I do not consider it expedient to comment on other arguments placed on behalf of the appellant.

3. Regard being had to the circumstances that the findings recorded by the trial Court was based on evidence partly recorded by the predecessor of the trial Judge

who recorded the finding of guilt. I find that the conviction of the appellant and sentence imposed on him was not sustainable in law which is accordingly set aside and the appellant is acquitted of charges. He is discharged from the liability of the bail bonds. The appeal accordingly succeeds and is allowed.

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