

Deep Kumar @ Deepak Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-02-2004

Judge : Chandramauli Kumar Prasad, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7; Bihar Trade Articles (Licences Unification) Order, 1984; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 379 and 420

Appeal No. : CWJC No. 5427 of 2004

Appellant : Deep Kumar @ Deepak Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : Bhupendra Kumar JC to SC VI

Advocate for Pet/Ap. : N.K. Agarwal, Senior Adv. and D.N. Tiwary, Adv.

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. Although in the writ application prayer of the petitioner is for issuance of a writ in the nature of mandamus commanding the respondents particularly, respondent No. 2 to release 519 bags of rice, 996 bags of wheat and 132 bags of paddy each

bag containing 50 kgs. of respective foodgrains seized from the mill of the petitioner, but when the matter is taken up, Mr. N.K. Agarwal, Senior Advocate, appearing on behalf of the petitioner states that the petitioner's prayer is confined to the quashing of the order dated 23.3.2004 passed by the District Magistrate, Buxar in case No. 1 of 2004 whereby he had directed for confiscation of 492 bags of wheat. Certified copy of the said order has been filed which may be kept on record.

2. Short facts giving rise to the present application are that on the basis of a report given by the Incharge, Assistant District Supply Officer to the Police, Dumraon PS case No. 34 of 2004 was registered under Sections 420, 379 and 120B, of the Indian Penal Code and Section 7 of the Essential Commodities Act. According to the report, in front of the Rice Mill of the petitioner, a truck was standing in which rice and wheat were loaded in bags. As the bags contained the stamp of Food Corporation of India and stiched by machine the informant suspected that the foodgrains belonged to the Food Corporation of India. A proceeding for confiscation of 519 bags of rice, 996 bags of wheat and 132 bags of paddy was initiated. The District Magistrate, in purported exercise of his power under Section 6 of the Essential Commodities Act, directed for confiscation of 492 bags of wheat.

3. Mr. Agrawal, contends that in view of the Central Government notification, abolishing the storage limit on wheat and rice, the provisions of the Bihar Trade Article (Licenses Unification). Order, 1984, is not workable and no proceeding for confiscation or prosecution of the petitioner for possessing wheat under Section 7 of the Essential Commodities Act, can be initiated. In support of his submission, he has placed reliance on an unreported decision of this Court dated 5.4.2004 passed in Cr. WJC No. 735 of 1998, Bindeshwar Prasad Sah @ Bindeshwar Sah v. The State of Bihar and Ors., and my attention has been drawn to the following passage from the said order.

'Learned counsel for the petitioners submits that in view of the Central Government notification abolishing the storage limit on wheat and rice, the provision of the Unification order is not workable and thus no prosecution of the petitioners for possessing wheat and rice in question can be initiated. Learned

counsel for the petitioners draws my attention to Annexure-6, of the present application, wherein the order dated 31.3.1999 passed by this Court in Cr. WJC No. 735 of 1998 in similar circumstances is appended. In the said case also, the prosecution for possessing rice and wheat was quashed on the fair contention of the learned Government Advocate that there was no limit regarding storage of wheat and rice. In the aforesaid circumstances the prosecution of the petitioners is not sustainable. It appears that confiscation proceeding has also been initiated against the petitioners.

Considering the aforesaid facts and circumstances of the present case, this application is allowed. Criminal prosecution launched against the petitioners under Section 7 of the E.C. Act, is quashed and consequently the confiscation proceedings launched against the petitioners also stands quashed.'

(Underlining mine)

4. I find substance in the submission of Mr. Agarwal and the decision relied on supports his submission. The petitioner can not be said to have violated any order made under Section 3 of the Essential Commodities Act, hence the order passed by the District Magistrate directing for confiscation of the wheat, cannot be allowed to stand.

5. However, this order shall not be construed to mean that the act alleged does not constitute an offence under Section 420, 379 and 120 of the Indian Penal Code and the Investigating Officer of the case shall be free to come to its conclusion in regard thereto. Further setting aside the order of the District Magistrate, directing for confiscation of the wheat, shall not entitle the petitioner to get it released and for that purpose, the petitioner will have to take recourse to remedy before the criminal Court.

6. In the result, this writ application is allowed. The order dated 28.5.2004 passed by the District Magistrate in case No. 1 of 2004 is set aside with the observation aforesaid.