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Court : Patna

Decided On : Jul-31-1997

Judge : Prasun Kumar Deb, J.

Appeal No. : Criminal Misc. No. 2531 of 1996 (R)

Appellant : Mohan Kumar Singh and anr.

Respondent : State of Bihar

Disposition : Application Allowed

Judgement :

Prasun Kumar Deb, J.

1. Entire criminal proceedings before the Special Judge, E.C. Act, Hazaribagh, in Markacho P.S. Case No. 41 of 1990 under Section 7 of the Essential Commodities Act (the Act) for the violation of the provisions of the Bihar Trade Articles (Licenses Unification) Order, 1984 (the Unification Order) has sought to be quashed in this petition under Section 482 of the Code of Criminal Procedure (the Code).

2. On 1.9.1990 Mr. M. Singh, Assistant Sub-Inspector of police intercepted two public carrier trucks bearing registration Nos. BPL 6261 and BPI 6252 loaded with Coal. On demand the driver produced invoices issued from the Eastern Coalfields Limited. Chitra, in favour of Dasrath Choudhary of Karamnasa and R.S.

Choudhary of Kajuna Bazar. For verification of the documents, the trucks were detained. On verification it was alleged that no person by name Daosrath Choudhary and R.S. Choudhary were residing at the respective places at Karamnasa and Kajuna Bazar and as such it was suspected that the accused persons including the owners of the trucks were carrying coal in conspiracy with other persons to sell in black market in violation of the provision of the Unification Order. Out of the same incident, two cases were registered one being Markacho P.S. Case No, 41 of 1990 under Section 7 of the Act while the other being Markacho P.S. Case No. 42 of 1990 under Sections 410/420/467/471/474 of the Indian Penal Code. Out of Markacho P.S. Case No. 42 of 1990, G.R. Case No. 544 of 1990 was registered in the Court of the Additional Chief Judicial Magistrate, Koderma and the same was tried by the Magistrate concerned under T.R. No. 135 of 1995. The present petitioners alongwith others were the accused persons in that case and all were acquitted of the charges as the prosecution side failed to bring any iota of evidence against the accused persons. Regarding the present case registered under Section 7 of the Act, it is the contention of the petitioners that the provisions of the Unification Order are not applicable or workable on trade articles, namely coal. During the relevant period, the State Government had made a notification regarding storage limit of coal but in that notification no separate storage limit was mentioned regarding the retail dealers and the wholesale dealers and as such when dealer was being mentioned in the notification, it was held by a Division Bench of the Court in C.W.J.C. No. 6231 of 1994 Sidheshwar Pandey and Anr. v. State of Bihar and Ors. that unless storage limit for a wholesale dealer and retail dealer is fixed, the Unification Order and violation of it will not be workable in relation to coal. In several cases afterwards relying on the said decision of the Division Bench, namely, Cr. Misc. No. 4824 of 1988 and Cr. Misc. No. 9919 of 1990 had been allowed, quashing the criminal proceedings holding that the Unification Order is not workable in respect of the coal. Thus, on this point, the petitioners have got a good case.

3. The next point has been urged to the effect that the coal was intercepted at the stage of transportation. Nowhere it has been stated either in the complaint or in any other papers or documents to show that the petitioners being the owners of the trucks were in any way dealing with the coal. As the question of storage limit

regarding coal vis-a-vis violation of the Unification Order is not applicable against the petitioners. The trucks in question were the public carriers. According to the petitioners, those have been given in to charge of the drivers for the purpose of public carriage and when the trucks being the public carrier were engaged by some person for the purpose of transportation of coal from one place to another, the petitioners who were not in any way connected with the transportation of the coal cannot be made liable alongwith others connected with the coal. It has further been submitted that when interception is made at the stage of transportation, then the storing of goods or the trade articles under the Unification Order cannot be there. Carrying of goods in vehicle that too public carrier per se be considered as storage only because the trade articles were found to be moving in trucks in excess of quantity permitted to be stored, it would not amount to storing of goods. Recently it has been held by the Supreme Court in *Bijaya Kumar Agarwala v. State of Orissa* : 1996 CriLJ3577 . Thus on this point also, the petitioners have a good case.

4. Lastly it has been submitted for and on behalf of the petitioners that the main allegation against the accused persons in the case is that the coal was being transported on the basis of vague and forged documents and as such it can reasonably be inferred that the coal were being carried for the purpose of selling in black market. So the main offence is with regard to forging for manufacturing of fake documents for the purpose of carrying of trade articles i.e. coal. Regarding violation of Unification Order and as such punishable under Section 7 of the Act is only an off shot of the main allegations of forging/manufacturing of documents but those charges could not be proved against the accused persons including the petitioners and hence they have been acquitted. In that view of the matter, it is the submission of the Learned Counsel for the petitioners that when the basic ingredients of the offence could not be proved and the petitioners including other accused persons had been acquitted of the charges after trial by a Criminal Court then the off shot of prosecution under Section 7 of the Act is not maintainable. In support of it, a Single Bench judgment of this Court in *Prem Kumar Keshri v. State of Bihar* (1996) 2 PLJR 766 has been referred to. In that case, the prosecution was lodged against the petitioner for the offences under Sections 276C and 277 of the Income-Tax Act for concealment of income and willful attempt to evade tax. The

basis of the complaint was that the petitioner submitted returns by concealment of his real income and the same was rejected but the appellate authority under the Income-Tax Act and set aside the findings of the Assessing Authority and as such it was held that the criminal case is bad in the eye of laws when the very basis of the offence became a nugatory. The view of the Single Judge of this Court has been drawn from the principle enunciated by the Apex Court in the same matter of concealment of tax as reported in *G.L. Didwania and Anr. v. Income Tax Officer and Anr.* 1995 Supp. (2) SCC 724.

5. It is true that the present case is on different context but the principle remains the same when the very basis of inference of black marketing on the basis of fake and forged documents could not be proved from the side of the prosecution and the accused persons including the petitioners had got acquittal after full-fledged trial then the off-shot for violation of the Unification Order cannot be sustainable. Because the purpose of putting of bar in storage etc., under the Unification Order is only with the sole purpose of protecting the society for being subjected to black mailing and black marketing. When the very basis of black marketing or black mailing had become non est due to the acquittal of the accused persons after trial then the prosecution for violation of the Unification Order for exceeding of storage limit is nothing but an abuse of the process of the Court. It has already been held that on the facts and in the circumstances of the case and on the basis of the decision of the Division Bench of this Court aforesaid, storage limit of coal was not there at the relevant time and, as such, there was no violation of the Unification Order and at the stage of transportation, storage limit loses its meaning as has been held by the Prem Kumar Keshri (supra), hence the whole prosecution initiated against the petitioners is held to be an abuse of the process of the Court.

6. In the result, this application is allowed and the entire criminal proceedings with respect of Markacho P.S. Case No. 41 of 1990 against the petitioners are hereby quashed.