

Hare Ram Prasad Vs. the State of Bihar

Hare Ram Prasad Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/140296

Court : Patna

Decided On : Feb-17-1998

Judge : N.K. Sinha, J.

Appeal No. : Criminal Misc. No. 14349 of 1992

Appellant : Hare Ram Prasad

Respondent : The State of Bihar

Disposition : Application Allowed

Judgement :

N.K. Sinha, J.

1. Heard learned Counsel for the parties.

2. In this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of his criminal prosecution instituted against him including the order dated 6.4.1991 by which the learned Special Judge, Arrah was pleased to take cognizance under Section 7 of the Essential Commodities Act, 1955 (for short, E.C. Act of the alleged contravention of the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984 (hereinafter referred to as Unification Order) in Case No. 53/90 arising out of Brahampur P.S. Case No. 61/90.

3. Only such of the facts as are necessary for disposal of this application need be stated. The Anchaladhikari of Brahampur Anchal, raided a godown alongwith some officials on 14.5.1990 said to belong to the petitioner and after search seized 36 quintals of sugar in 36 bags, 2 quintals of chana in two bags besides some weighing scale and weighing measurement and 9 litres of kerosene oil. A seizure list was prepared and on the basis of the written report addressed to the officer-in-charge by the Anchaladhikari, the police drew a first information report under Section 7 of the E.C. Act and after investigation, submitted charge-sheet. On the basis of the charge sheet, the learned Special Judge, took cognizance by the impugned order. The petitioner seeks quashing of his criminal prosecution including the impugned order taking cognizance on a number of grounds including one that the officer who made the search, and seizure, was not authorized in law to do so and hence, his criminal prosecution including the impugned order of taking cognizance, deserve to be quashed as they are an abuse of the process of the Court.

4. Learned Counsel for the petitioner submitted that although a number of grounds have been taken for quashing of the criminal prosecution in the application, he would confine his attack to only one ground; namely the lack of jurisdiction on the part of the officer making the search and seizure.

5. The argument, in short is that the Circle Officer who made the seizure on the basis of which the criminal prosecution was launched, had no authority to do so under the provisions of the Unification Order. Clause 30 of the Unification Order names a number of officers/authorities who have been authorized to exercise power of search and seizure etc. The list of such officers admittedly includes the Circle Officer. It was however argued that the State Government, in the department of Food, Supply and Commerce Department, by their order dated 19.6.1986, have taken away all the powers of the Circle Officers related to Food and Supply. A copy of the said letter has been annexed as Annexure-6.

6. The petitioner has filed a notification of the State Government of the same department dated 25th June, 1986 whereby the Marketing Officers were appointed and posted for the performance of the duties and responsibilities in respect of food

and supply. A copy of the said order has been filed as Annexure-8 to the supplementary affidavit filed by the petitioner. The order clearly mentions that these officers may discharge the duties and functions of the Anchaladhikari in respect of food and supply.

7. Learned Counsel for the State fairly concedes that the aforesaid orders have been issued by the Government and will have the effect that, henceforth the Circle Officer, within the meaning of Clause 30 of the Unification Order, could not be legally authorized to exercise the powers of doing search and seizure, (sic) the Circle Officer (Anchaladhikari) had no authority in law to make search and seizure of the godown of the petitioner and on the basis of such illegal search and seizure, the launching of the criminal prosecution including the order taking cognizance, would be nullity. The criminal prosecution of the petitioner is, thus, an abuse of the process of the Court and is quashing is necessary to secure the ends of justice.

8. I, therefore, allow this application. The criminal prosecution of the petitioner including the order taking cognizance against him are quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com