

Damodar Jha Vs. State of Bihar

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Court : Patna

Decided On : Mar-05-1997

Judge : D.S. Dhaliwal, J.

Appeal No. : Criminal Appeal No. 147 of 1987

Appellant : Damodar Jha

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

D.S. Dhaliwal, J.

1. This appeal is directed against the judgment and order dated the 20th of May, 1987 passed by the Special Judge (E.C. Act), Purnea, where under he has convicted the appellant under Section 7 of the Essential Commodities Act, 1995 (hereinafter to be called as 'the Act') for violation of the provisions of the Bihar Kerosene Oil Dealers' Licensing Order,, 1965 and sentenced him to under go rigorous imprisonment for three months.

2. The prosecution case against the appellant in brief is that the appellant was a licensed retail dealer of Kerosene oil. His business premises was inspected by Sri Janardan Paswan, Supply Inspector (P.W.3), as a result of which he found that

although the stock register indicated a sale of 100 liters of Kerosene oil on 27.9.1983, but in the sale register there were entries only in respect of the sale of 69 litres of Kerosene oil. The learned Special Judge tried the appellant by way of summary trial as envisaged by Section 12AA of the Act and convicted and sentenced him as indicated earlier.

3. I have heard the learned Counsel for the appellant as well as the learned A.P.P for the State and have also perused the entire evidence on record.

4. The learned Counsel for the appellant has rightly contended that the conviction and sentence imposed against the appellant cannot be sustained, as the evidence upon which the conviction has been based, was recorded by another Special Judge and not by the Special Judge rendering the judgment and order of conviction dated the 20th of May, 1987.

5. As a general rule of law only a Judge or a Magistrate, who has taken evidence, can decide the case with the evidence recorded by him. Section 326 of the Code of Criminal Procedure, 1973 (hereinafter to be called as 'the Code' for short) provides an exception to the aforesaid general rule by laying down that where a Judge or a Magistrate having heard and recorded the whole or any part of the evidence in an enquiry or trial, ceases to exercise the jurisdiction therein and is succeeded by another Judge or Magistrate exercising competent jurisdiction, the succeeding Judge or Magistrate may act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself. However, Sub-section (3) of the aforesaid section clearly lays down that nothing contained in this section shall apply to summary trials or to the cases in which proceedings have been stayed under Section 322 of the Code or in which proceedings have been submitted to a superior Magistrate under Section 325 of the Code.

6. Admittedly the appellant has been tried by way of summary proceedings. A perusal of the records of the trial Court indicates that in all four prosecution witnesses were examined in the Court below. Their evidence was recorded by another Special Judge who was predecessor-in-office of the Special Judge convicting and sentencing the appellant. Therefore, at the time the conviction was

recorded, there was no evidence before the Special Judge recorded by him to base a finding of conviction. Consequently, the conviction and sentence passed against the appellant cannot be sustained.

7. In the result, this appeal is allowed and the conviction recorded against and the sentence passed upon the appellant are hereby set aside. The bail bonds furnished by the appellant are, accordingly, discharged.

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