

Johan Kujur Vs. State of Bihar

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Court : Jharkhand

Decided On : Jul-09-2001

Reported in : 2001(49)BLJR2078

Judge : D.N. Prasad, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7; Bihar Cement Control Order, 1972 - Article 10; Indian Penal Code (IPC) - Sections 414; Code of Criminal Procedure (CrPC) - Sections 100

Appeal No. : Cri. Appeal No. 96 of 1995 (R)

Appellant : Johan Kujur

Respondent : State of Bihar

Advocate for Def. : K.K. Jhunjunwala, APP

Advocate for Pet/Ap. : S.L. Agrawal and; Ashok Kumar Pandey, Advs.

Disposition : Appeal allowed

Judgement :

Deoki Nandan Prasad, J.

1. The criminal appeal is directed against the judgment dated 22.11.1995 passed by the Special Judge (B.C. Act) Ranchi, in Khelari P.S. Case No. 67 of 1983 (T.R.

No. 139 of 1985) whereby and whereunder, the learned Judge convicted the appellant under Section 7 of the Essential Commodities Act (hereinafter referred to as 'the E.C. Act') and sentenced him to undergo rigorous imprisonment for three months.

2. The prosecution case, as stated, is that the informant Nand Lal Ojha, the Security Guard, on 2.10.1983 while on duty checked Truck No. BRN 7641 and found several other articles with five bags of Cement. It was doubted that the Cement was carrying illegally, for which paper was required but the appellant failed to produce any kind of paper in respect of Cement and, as such, the first information report was lodged against the appellant for the offences under Section 7 of the E.C. Act and Section 414 of the Indian Penal Code. The informant being PW 1 was examined and after hearing both sides, the learned Judge convicted and sentenced the appellant in the manner as stated above.

3. The learned counsel appearing on behalf of the appellant at the very outset submitted that the whole judgment of the learned Judge is based upon the assumption which cannot take place of conviction as there is no where mention in the First Information Report that the said Cement was levy Cement and there was no any restriction in keeping non-levy Cement at the relevant time. It is also submitted that the seizure list was prepared which was concocted and afterthought as neither signature nor the left thumb-impression (LTI) of the appellant was obtained at the time of preparation of the same which itself falsified the story of seizure in the manner as alleged. It is further argued that there is nothing specific in the First Information Report to show that the appellant had violated any kind of order under Section 7 of the E.C. Act on the other hand, the learned Additional Public Prosecutor contended before me that there is no illegality in the impugned judgment.

4. Before appreciating the contention of both the parties, I would like to mention about the First Information Report itself and the written report on the basis of which, the First Information Report was lodged does not indicate that the said Cement was levy Cement. It is also apparent from the seizure list (Ext. 2) that it does not contain the signature of the appellant though it is alleged from the very

beginning that the said articles were seized in presence of the appellant. There was no reason as to why the signature of the appellant as required under Section 100 of the Code of Criminal Procedure was not obtained to substantiate the fact as regards the seizure.

5. It has been notified by the Bihar Government through G.S.R. 93, the 24th October, 1975, the following orders were passed through the said notification :--

'(1) All ration card holders in every district headquarter shall be entitled to purchase the Cement to the maximum limit of ten bags without permit on each ration card in every month.

(2) In flood affected areas, all ration card holders, and when there is no ration card, each family on family list, shall be entitled to purchase the maximum limit of five bags of Cement without permit in every month : Provided that the necessary entries of the same will be made in each ration card of family list so that the same ration card holder or the family shall not avail of this facility more than once in a month.'

6. It is also clear from Article 10 of the Bihar Cement Control Order, 1972. which runs as follows :--

'No person or institution requiring levy Cement for their use shall acquire levy Cement except under and in accordance with a permit issued by the Ancha) Ad-hikari/Assistant District Supply Officer/District Supply Officer/Special Officer incharge, Rationing.'

7. Thus, it is clear that there was no indication in the First Information Report that the said cement was actually the levy cement since non-levy Cement at the relevant time was outside the purview of the Bihar Cement Control Order, 1972.

8. In the case of Shyam Sunder Prasad Bhadanl and another v. The State of Bihar and others. (1984 PLJR 17), in which a Division Bench of the Patna High Court held that :--

The non-levy Cement has been completely released from the restrictions and control applicable earlier to the total production of cement. Only the levy cement is now affected by them. The power to earmark levy cement out of total production lies with the Central Government. The District Magistrate or the Food Commissioner or the State of Bihar does not have any authority to interfere with the same. The effect of seizing stock of non-levy cement and selling the same at the Controlled price is to disturb the proportion fixed in this regard by the Central Government. This is not permissible, The law as it stands does not permit any control of price of non-levy cement.'

9. The informant only has been examined in the case who was the Security Guard and there is no corroboration of his evidence as no any other witness though named in the seizure list has been examined in this case which also gives much suspicion about the whole prosecution case. It is evident that there is no indication specifically that it was actually the levy cement as well as there is nothing specific to show as to what Control Order was violated and, as such, I find that the prosecution has totally failed to establish the charge against the appellant beyond all reasonable doubts. The learned Judge committed error in convicting the appellant which is fit to be set aside.

10. In the result I find merit in the appeal which is accordingly allowed. The impugned judgment of conviction and sentence passed by the learned court below is set aside. The appellant is on bail. He is discharged from the liability of his bail bond.

11. Appeal allowed.