

Angada Naik Vs. State

Angada Naik Vs. State

SooperKanoon Citation : sooperkanoon.com/526743

Court : Orissa

Decided On : Mar-28-2007

Reported in : 2007CriLJ2531; 2007(I)OLR642

Judge : I.M. Quddusi, J.

Appellant : Angada Naik

Respondent : State

Disposition : Appeal allowed

Judgement :

I.M. Quddusi, J.

1. This Criminal Appeal has been filed against the judgment and order dated 21st June, 1989 passed by the learned Special Judge (E.C. Act), Koraput, Jeypore in T.R. Case No. 51 of 1986 convicting the appellant under Section 7(1)(a)(ii) of the Essential Commodities Act holding him guilty for contravening Clause 14(2) of the Orissa Cement Control Order, 1973 and sentencing him for 3 months rigorous imprisonment and a fine of Rs. 300/- and in default to pay the fine, to undergo 1 month further rigorous imprisonment.

2. The brief facts of the case are that one Loknath Satpathy was engaged as a contractor by the NALCO authorities for Civil Construction of NALCO project within

the area Damanjodi Town. On 31.6.1986 Loknath Satpathy was issued 200 bags of levy cement by the NALCO authorities from their store for the use at the work site. The levy cement was loaded in truck bearing registration No. OSX-1310 at the Stores Department. The truck was being driven by the appellant Angada Nayak. The contractor Loknath Satpathy also travelled in the truck up to some distance, but got down on the way. Thereafter P.W. No. 4 Dinabandhu Nayak, A.S.I. of Police, Damanjodi Police Station stopped the said truck at Marichamala and detected 200 bags of cement inside the truck issued by the EIL, NALCO in favour of Loknath Satpathy of M/s. Mangal Industries to its work site located at temporary town ship. The ASI seized the cement in the presence of witnesses and prepared a seizure memo, Ext. 2. He also seized the carbon copy of the Gate pass, which was in favour of the appellant. Thereafter an F.I.R. was drawn up by him, which was submitted before the O.I.C. of Damanjodi Police Station who forwarded the same to Officer-in-charge, Semiliguda Police Station for registration of a case.

Consequently thereafter cognizance was taken under Section 7 of the Essential Commodities Act for alleged contravention of Clause 14 of the Orissa Cement Control Order (hereinafter referred to as 'O.C.C.O') by the appellant Angada Nayak as well as Loknath Satpathy, the Contractor. But during the trial, accused Loknath Satpathy absconded. Consequently the case against him was separated.

3. The prosecution examined only four witnesses, namely, P.W. No. 1, Bhagirathi Mohapatra, who was then posted as an Executive Assistant under the NALCO Project, Damanjodi, P.W. No. 2, Laxmi Narayan Checka, who was working as the Senior Stores Officer under E.I.L. at Damanjodi, P.W. No. 3, Aruna Kumar Naik, who was a stone supplier to Railways who boarded that truck for coming to his village on the way and P.W. No. 4, Dinabandhu Nayak, who was the A.S.I. of Police, Damanjodi Police Station. The appellant-accused had not produced any witness in his defence.

4. P.W. No. 1, Bhagirathi Mohapatra proved that 200 bags of Government levy cement were issued to be carried in truck No.OSX-1310 from the store to the work site in Damanjodi town. He proved the carbon copy of the gate pass for the

movement of the cement and also that on getting information he had gone to Marichamal, which was at about 6 kms. away from Damanjodi on Damanjodi-Semiliguda road and found the truck along with cement was being detained by the Police. He figured as a witness of the seized articles in the seizure list. But in his cross examination he stated that he was not in charge of the store section and had no personal knowledge regarding issue of cement and he was present when the truck was stopped by the Police at Marichamal. He further stated that accused L.N, Satpathy was a Site Supervisor and not the main contractor of the Mangalam Industry, which worked under the NALCO. On query by the Court, he stated that after passing the main gate the truck was to go to the Damanjodi township to the construction site and after the main gate the other connected road leads'towards Semiliguda and the truck travelled on that road. P.W. No. 2, Laxminarayan Checka proved Ext.3, the stock card of E.I.L. and Ext. 3/1, the entry dated 13.6.86 relating to issuance of ten tons of cement equivalent to 260 bags, which was shown to have been issued in favour of Mangalam Industries. Accused L.N. Satpathy being the authorized representative of Mangalam Industries, received 260 bags of cement on 13.6.86 and carried the stock in the truck OSX 1310. P.W. No. 3, Arun Kumar Nayak, the stone supplier to Railways stated in his statement that while he was waiting for his transport, the truck in question driven by the appellant came and accused Loknath Satpathy was sitting in that truck and the cement was loaded in the dala. He boarded that truck to come to his village Mania. On the way at Bhejaput accused Loknath Satpathy got down and at that time he asked the appellant to collect the key. But this witness could not know why the term 'key' was referred to by the accused persons at the time of that conversation. The truck further proceeded and at Marichamala police stopped the vehicle and conducted checking. He denied to have known any conversation between both the accused and also denied the suggestion that in his statement before Police he had stated that he heard the conversation between both the accused persons and heard accused Loknath Satpathy instructing the appellant (driver) to unload the cement in the house of one Rout Babu at Semiiiguda and if anybody checked the truck, the appellant was explained to say that he was going Semiiiguda to bring a key. Further in the cross-examination he stated that he had seen the work site, but did not know whether there was any road to that work site from Bhejaput. P.W. No. 4,

Dinabandhu Nayak, A.S.I. of Police, Damanjodi P.S. who had lodged the F.I.R. at a different Police Station i.e. P.S. Semiiiguda, conducted the investigation of the case himself, though the charge sheet was filed by the O.I.C., Semiiiguda P.S. stated in his statement that he was directed by the Officer-in-Charge to investigate into the case in the absence of O.I.C. and during investigation, he examined witnesses. He proved the seizure and the seizure list. He had also stated in his statement that the vehicle was stopped on the signal of the witness. He denied the suggestion of the defence that the truck was going to the work site of the Mangalam Industries. But he stated that he did not know the exact place at which the Mangalam Industries was having its operation on the date of detection. He also stated that there was no mention of the specified route in the seized Gate Pass. The learned Special Judge under Essential Commodities Act found the appellant guilty of having committed offence punishable under Section 7(1)(a)(ii) of the Essential Commodities Act for contravening Clause 14(2) of the Control Order and convicted and sentenced him as already mentioned above.

5. Before proceeding further, it is necessary to peruse Sub-clauses (1), (2) and (3) of Clause 14 of the Control Order which are quoted as under:

(1) No person shall acquire or hold stock of cement in excess of immediate requirement for works of construction or repairs of property belonging to him.

(2) Cement obtained, acquired or possessed otherwise than a permit issued in accordance with Sub-clause (b) of Clause 3 or under an authorization made under Clause 13 or an authorization made by Government of India shall be considered as illegal acquisition in violation of this Order.

(3) No person shall move or cause to be moved any stock of cement from one place to another inside the State except under a general or specific direction from the Controller or any other officer authorized by him.

6. A perusal of Sub-clause (2) of Clause 14 would show that the cement obtained, acquired or possessed otherwise and under a permit issued in accordance with Sub-clause (b) of Clause 3 should be considered illegal acquisition in violation of the Control Order. Sub-clause (b) of Clause-3 provides a Form-I, which is a format

for granting a permit by the Permit Issuing Authority. The appellant was not a permit holder, rather he could be said to be an agent of the permit holder. The permit holder was NALCO, which issued the levy cement bags to the contractor, which were being transported by the truck in question, driver of which was the appellant. Therefore, only it has to be seen as to whether the appellant was an authorized person to carry the cement bags in that truck with him or not or whether he was possessing the bags of cement in violation of the conditions imposed in authorization letter for transporting the bags of cement. In this regard, the relevant document is the Gate-Pass dated 13.6.1986 issued in favour of Shri L.N. Satapathy of M/s. Mangal Industries. This Gate-Pass is Ext. 1. The relevant portion of the Gate-Pass is quoted as under:

Contractor

ENGINEERS INDIA LIMITED

CLIENT: M/S. NATIONAL ALUMINIUM COMPANY LIMITED

DAMANJODI

GATE PASS

No.B2219

Date; 13.6.86

Job No.:.....

Please allow Shri : L.N. Satapathy of M/s. Mangala Industries to take out the following materials to site from BP-I by Vehicle No OSX-1310 against reference No...dt..._____

No.	Description	Quantity
Remarks_____		
Bags		
200_____		

By Store Keeper Authorizing Officer.... ..Checked by Security Materials Received

7. A perusal of the Gate-Pass shows that nowhere therein it is mentioned as to by which route the bags of cement would be sent. It was the sole responsibility of the pass holder to see that the bags of cement reach at the site properly. It has come in the evidence of p.w.3 that Mr. L.N. Satapathy accompanied the appellant in the truck up to some distance and got down from the truck at Bhejaput and asked the appellant to collect the key. The vehicle containing bags of cement was stopped by the ASI of Damanjodi Police Station near village Marichamala. Therefore, it cannot be said that the truck was standing and there was any preparation to take out the cement bags off the truck before reaching at the destination. In the absence of any route prescribed for the vehicle to reach at the site and at the time of checking of the vehicle, it was in running position and the cement bags were found intact inside the vehicle which had valid Gate-Pass and had to go to a particular place, no violation of the control order can be said to have been done in such a situation and, therefore, in my opinion no offence is made out under the Essential Commodities Act.

8. In view of the above mentioned facts and circumstances, the impugned judgment and order dated 21.6.1989 passed by the Special Judge, Koraput, Jeypore in T.R. No. 51 of 1986 convicting & sentencing the appellant under Section 7 of the Essential Commodities Act is set aside and the appellant is acquitted of the charges. He is on bail. He need not surrender. His bail bonds are discharged.

The appeal is accordingly allowed.