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

Pramod Kumar Nayak Vs. State of Orissa

Pramod Kumar Nayak Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/532011

Court : Orissa

Decided On : Mar-16-1989

Reported in : 1989CriLJ1041

Judge : L. Rath, J.

Appellant : Pramod Kumar Nayak

Respondent : State of Orissa

Judgement :
ORDER

L. Rath, J.

1. The petitioner having been made to face a charge under Section 7 of the Essential Commodities Act, 1955 and Section 407, I.P.C. has approached this Court for quashing of the charge and the cognizance taken against him under the sections, the same having been made without existence of any materials justifying either taking of cognizance or framing of the charge.

2. It is the prosecution case, as disclosed from the charge-sheet, that the petitioner had committed criminal breach of trust in respect of Government rice, wheat and sugar etc. all worth Rs. 2,19,379.93 and had contravened the order under Section 3 of the Essential Commodities Act, The order of the District Judge-cum-Special Judge on 7-9-88 shows the learned Judge to have been satisfied that there were

materials to show the petitioner having violated Clauses 3 to 7 of the Storage Agent Licence issued in his favour dealing in essential commodities like rice, wheat and sugar. The petitioner has challenged such statement contending that he was never a licensee under the Essential Commodities Act in respect of any of the goods and hence there could not be any prosecution against him for having violated the provisions of such licence. The position is not disputed by the learned Additional Standing Counsel who fairly conceded that the licences for violation of which the petitioner is purported to be prosecuted have not been filed and that there were no materials before the learned Special Judge for taking cognizance of the same, but he submitted that Since cognizance has been taken on 7-9-88, the prosecution should be granted a chance of producing the licences so as to sustain the charge. Since admittedly cognizance was taken and charge was framed under the provisions of Section 7 of the Essential Commodities Act, without there being any material for the same, the proceeding against the petitioner is liable to be quashed.

3. So far as the charge under Section 407, I.P.C. is concerned, there is absolutely no case of the petitioner having been entrusted with stock either as a carrier, wharfinger or warehouse-keeper and hence the section would have no application. The allegations against the petitioner regarding criminal breach of trust is as of an agent to the Civil Supplies Corporation and as such Section 407, I.P.C. has no application to the petitioner.

4. In the result, the application is allowed and the order dated 7-9-88 taking cognizance against the petitioner under Section 7 of the Essential Commodities Act and Section 407, I.P.C. is quashed and the case is remitted back to the learned Special Judge to reconsider as to whether on any materials to be furnished further by the prosecution by the time fixed by him, charge against the petitioner can be framed under the Essential Commodities Act and under the Penal Code.

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