

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 763 of 2012

1. Mahesh Kumar @ Mahesh Sao son of Lakhan Saw
2. Naresh Saw, son of Madan Saw
3. Shyam Sunder Thakur son of Babulal Thakur

(Deleted vide order dated 16.11.2021)

All residents of Gandhi Nagar, P.O.- Dhanbad, P.S.- Dhansar,
District- Dhanbad **Petitioners**

-Versus-

The State of Jharkhand **Opp. Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Mrs. Jasvindar Mazumdar, Advocate
Mr. Srikant Swaroop, Advocate

For the Opp. Party : Mr. P.D. Agawal, A.P.P.

Through: Video Conferencing

08/10.01.2022

1. Heard Mrs. Jasvindar Mazumdar, learned counsel appearing on behalf of the Petitioner Nos. 1 and 2 alongwith Mr. Srikant Swaroop, Advocate.
2. Heard Mr. P.D. Agarwal, learned A.P.P. appearing on behalf of the Opposite Party-State.
3. The present criminal revision application is directed against the **Judgment dated 04.08.2012 passed** by the learned Addl. Sessions Judge-I-cum-Special Judge, C.B.I., Dhanbad in Criminal Appeal No. 135/2012, whereby and whereunder the learned **appellate court confirmed the Judgment of conviction and the order of sentence passed by the learned trial court and dismissed the criminal appeal preferred by the petitioners.**
4. The learned trial court vide Judgment of conviction and the order of sentence dated 23.03.2012 passed by the learned Sub-Divisional Magistrate, Dhanbad in G.R. No. 991 of 2008(A) / T.R. No. 142/2012 [arising out of Govindpur (Barwadda) P.S. Case No. 106/2008 dated 08.04.2008] had convicted the petitioners under **Section 7 of the Essential Commodities Act** and had sentenced them to undergo Rigorous Imprisonment

for one year and fine of Rs.1,000/- each and in default of payment of fine, to further undergo Simple Imprisonment for one month each. The period undergone in judicial custody by the convicts during trial was directed to be set off.

Arguments on behalf of the petitioners

5. Learned counsel appearing for the Petitioner Nos. 1 and 2 submitted that vide order dated 20.08.2008, cognizance of the offence was taken under Section 414 of the Indian Penal Code and Section 7 of the Essential Commodities Act, but vide order dated 31.07.2009, the trial for the offence under Section 414 of IPC was separated and the present case is related to the trial under Section 7 of the Essential Commodities Act only.

6. The learned counsel submitted that the punishment under Section 7 of the Essential Commodities Act is consequent upon violation of one or the other Order issued under Section 3 of the Essential Commodities Act, but there is no material on record to indicate as to which Order issued under Section 3 of the Essential Commodities Act was violated by the accused persons. She further submitted that the condition precedent for convicting the petitioners under Section 7 of the Essential Commodities Act has not been brought on record and therefore, the impugned judgment of conviction of the petitioners cannot be sustained in the eyes of law and calls for interference in revisional jurisdiction. She referred to a judgment passed by this Court reported in **2012 (1) East Cr C 367 (Jhr) in the case of Susharma Singh Munda -vs- State of Jharkhand** and submitted that even an F.I.R. was quashed by this Court on the ground that there was no disclosure in the F.I.R. as to which Order issued under Section 3 of the Essential Commodities Act, 1955 was violated. She submitted that neither in the F.I.R., nor during investigation, nor during the evidence of any of the witnesses, it has been substantiated as to

which provision / Order issued under Section 3 of the Essential Commodities Act, 1955 has been violated and therefore, the conviction cannot be sustained.

Arguments on behalf of the Opposite Party-State

7. Learned A.P.P. appearing on behalf of the Opposite Party-State did not dispute the fact that the records of the case do not indicate as to which Order issued under Section 3 of the Essential Commodities Act, 1955 has been violated. He submitted that appropriate order may be passed considering the materials available on the records of the case.

Findings of this Court

8. The prosecution case is based on the written report dated 08.04.2008 lodged by the Informant, namely, A.S.I. Naresh Paswan, O/c, Barwadda P.S., Dhanbad alleging inter-alia that on the basis of confidential information received during evening patrolling regarding transportation of Kerosene Oil in a Tempo, the Informant alongwith other police officials proceeded for raid and verification and reached at Ajabdih near Saurabh Hard Coke Bhatta at about 22.10 hours where they were informed that five minutes ago, a Tempo loaded with drum had proceeded towards Hot Mixed Plant situated near Saurabh Bhatta. When the police party entered into the Hot Mixed Plant, a Tempo was found within its premises and on seeing the police, two persons started fleeing away, but both were apprehended on chase who disclosed their identity as Mahesh Kumar and Shyam Sundar Thakur. On verification, it was found that the Tempo bearing Registration No. JH10F-0923 belonged to Naresh Saw. One drum containing 150 litres of Kerosene Oil and 7 bags of Kutti loaded in the Tempo and near the Temp, two more drums each containing 150 litres of Kerosene Oil on each side, one hand machine, one pipe of blue colour and one pipe of green colour were recovered within the

premises of the Hot Mixed Plant. No authentic documents were produced regarding the Kerosene Oil and the other articles. Thereafter, the recovered articles were seized and a seizure list was prepared in presence of independent witnesses.

9. On the basis of the written report, Govindpur (Barwadda) P.S. Case No. 106/2008 dated 08.04.2008 was registered against the petitioners and after completion of investigation, the charge-sheet was submitted and vide order dated 20.08.2008, cognizance of the offence was taken under Section 414 of the Indian Penal Code and Section 7 of the Essential Commodities Act. Thereafter, pursuant to order dated 31.07.2009, the case for the offence under Section 7 of the Essential Commodities Act was separated and a separate case record was opened as G.R. No. 991 of 2008(A) and the substance of accusation for the offence under Section 7 of the Essential Commodities Act was read over and explained to the petitioners in Hindi to which they pleaded not guilty and claimed to be tried.

10. In course of trial, the prosecution examined altogether 08 witnesses to prove its case. P.W.-1 is Diwakar Ram, P.W.-2 is Rawan Tudu, P.W.-3 is Sunil Kumr Singh, P.W.- 4 is Shyam Ravidas, P.W.- 5 is Nageshwar Rao, P.W.-6 is Naresh Paswan, P.W.-7 is Gulab Pandey and P.W.-8 is Tarkeshwar Pandey. The prosecution exhibited the seizure list as Exhibit-1 and the written report as Exhibit-2. P.W-1 to 4 were members of the raiding party and P.W- 6 was the informant of the case. After conclusion of prosecution evidence, the statements of the petitioners were recorded under Section 313 of Cr.P.C., wherein they denied the incriminating evidences put to them and claimed to be innocent. The petitioners did not adduce any oral or documentary evidence in their defence.

11. The learned trial court considered the materials on record and summarised its findings in Para-13 of the judgment and recorded that on 07.04.2008 in course of evening patrolling, the

Informant alongwith the patrolling party reached at the Hot Mixed Plant situated near the Shaurabh Bhatta where the Tempo No. JH10F-0923 was found standing in the plant and on seeing the police party, the persons started fleeing, but two persons were apprehended. On enquiry, they disclosed their identity and in course of the raid, three drums containing 150 litres of kerosene oil in each drum and the Tempo were recovered and the owner of the Tempo was disclosed as Naresh Saw. The aforesaid facts have been fully supported by the prosecution witnesses. The learned trial court further recorded that in such situation, the prosecution has been able to prove its case under Section 7 of the Essential Commodities Act against the accused persons. **The learned trial court convicted the petitioners under Section 7 of the Essential Commodities Act and sentenced them as mentioned above.**

12. The appellate court also considered the materials on record and recorded in Para-7 that from the evidences of the prosecution witnesses, it is clear that three drums of kerosene oil i.e. about 450 litres was seized by the P.W.-6 and all these witnesses, P.Ws. - 1, 2, 3 and 4 were present at the time of the seizure and the seizure of the kerosene oil was also not denied. Therefore, the prosecution has been able to prove its case beyond all reasonable doubts. **The learned appellate court confirmed the Judgment of conviction and the order of sentence passed by the learned trial court and dismissed the criminal appeal.**

13. After hearing the parties and going through the records of the case, this Court finds that in the present case, 450 litres of kerosene oil in total were recovered from the place of occurrence and the Petitioner No.1 and 3 were apprehended at the spot and the Petitioner No.2 was the owner of the Tempo No. JH10F-0923 which was found to be loaded with two drums of kerosene oil. On demand, no authentic document was

produced by the petitioners for the recovered kerosene Oil.

14. From the entire records of the case right from the FIR, materials produced during evidence and the impugned Judgements passed by the learned courts below, it has not come on record, as to which Order issued under Section 3 of the Essential Commodities Act, 1955, has been violated by the petitioners calling for their involvement in any offence under Section 7 of the Essential Commodities Act, 1955. Section 7 of the Essential Commodities Act, 1955 provides for penalties for contravention of any order made under Section 3 of the Essential Commodities Act, 1955. In view of the fact that neither any Order issued under Section 3 of the Essential Commodities Act has been brought on record at any stage of the proceedings nor the impugned judgements refer to violation of any Order issued under Section 3 of the Essential Commodities Act, the condition precedent for imposition of penalty under Section 7 of the Essential Commodities Act has not been satisfied from the side of the prosecution in the present case.

15. Learned counsel for the petitioners has rightly relied upon a judgment passed by this Court in the case reported in *2012 (1) East Cr C 367 (Jhr) (Susharma Singh Munda -vs- State of Jharkhand)*, wherein the FIR instituted under Section 7 of the Essential Commodities Act, 1955 was quashed on the ground that it did not disclose under what provisions of Section 3 of the Act, the offence has been committed by the petitioner. Vide para 5 of the aforesaid judgment, a copy of the judgement was sent to the Law Secretary, Government of Jharkhand, who was directed to place the same before the appropriate Secretary of the Department, so that in future, proper care is taken while lodging the FIR under the provisions of Essential Commodities Act, 1955 by the officers and the guilty persons may not be spared because of the lapses on the part of the officers. In the

present case also, the entire case record does not disclose as to which provision/Order under Section 3 of the essential commodities Act has been violated calling for conviction under Section 7 of the Essential Commodities Act, 1955.

16. Considering the aforesaid facts and circumstances in the present case, the impugned judgments passed by the learned courts below cannot be sustained in the eyes of law and calls for interference under the revisional jurisdiction of this court in order to prevent the miscarriage of justice. Accordingly, the impugned judgments passed by the learned courts below are set-aside.

17. It is made clear that this judgement will have no bearing whatsoever on the separated trial of the petitioners under Section 414 of the Indian Penal Code.

18. This petition is accordingly allowed with aforesaid observation.

19. Pending interlocutory application, if any, is closed.

20. Let the lower court records be immediately sent back to the court concerned.

21. Let a copy of this Judgment be communicated to the learned court below through e-mail/FAX.