

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA No.344 of 1994

Narayan Panda

....

Petitioner

versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

25.08.2022

Order
No.

07.

1. This matter is taken up through hybrid mode.
2. This Criminal Appeal has been filed by the Petitioner with a prayer to set aside the judgment dated 30th July, 1994 passed by the Special Judge, Dhenkanal in Special Court Case No.1 of 1992 wherein he has been convicted and sentenced to undergo R.I. for six months with fine of Rs.1,000/-, in default, to undergo R.I. for one month more, for commission of offence under Section 7 of the Essential Commodities Act.
3. Heard Ms. A.K. Dei, learned counsel appearing for the Appellant and Mr. Prem Kumar Pattnaik,

learned Additional Standing Counsel appearing for the State-Respondent.

4. The prosecution case, in brief, is that Sri Ajaya Kumar Singh, the then O.I.C. of Handapa Police Station while checking the vehicles along with his staff on National Highway No.42 found the Petitioner to be coming from Sambalpur side driving of a Mini Truck bearing No.ORW-1244 loaded with 17 bags of rice. He detained the said truck and as the Petitioner could not produce any licence to carry those rice bags, the said commodities were seized which on weighment were found to be 16 quintals and 96 Kilo Grams. Thereafter, he examined the witnesses and submitted the charge sheet under Section 7 of the Essential Commodities Act against the Petitioner.

5. In the context, a reference may be made to the case of ***Bijaya Kumar Agarwala v. State of Orissa, reported in (1996) 5 SCC 1***, wherein the Apex Court taking two conflicting views of this Court, one in the case of ***Balabhadra Raja Guru Mohapatra vrs.***

State, reported in AIR 1954 Orissa 95 and the other in the case of **Prem Bahadur vrs. The State of Orissa**, reported in AIR 1978 CrL.L.J. 683, and having regard to the general rule of penal statutes regarding strict construction, held as under:-

“Both the appellants before us were merely found moving in trucks with paddy in excess of the quantity permitted to be ‘stored’. Nothing more was proved. That by itself cannot amount to ‘storing’ of goods and hence they cannot be said to have contravened any of the provisions of the Order. Therefore, they are not liable to be convicted or sentenced under Section 7 of the Act. The appeals are allowed.”

6. In the case at hand, the charge said to have been proved against the appellant is that he was found moving in the truck loaded with paddy in excess of the quantity permitted to be ‘stored’, nothing more having been proved against the appellant, it could not have been held that he contravened the Order. To put in other words, he could not be held to be the dealer without license or to have contravened the Order or any provisions of the Act.

7. In the facts and circumstances as above, and for the authoritative pronouncement referred to, this Court is of the view that the impugned judgment and order of conviction is not sustainable in the eye of law.

8. Accordingly, the Criminal Appeal is allowed. Consequently, the impugned judgment and order of conviction is set aside.

9. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

DA/MRS