

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.925 of 2011

Simanchal Acharya

.... *Petitioner*
Mr. S.K. Dalai, Advocate

-Versus-

State of Odisha and another

.... *Opp. Parties*
Mr. A.P. Das, ASC

CORAM:
JUSTICE R.K.PATTANAIK

ORDER
18.02.2022

Order No.

10. 1. An application under Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Cr.P.C.') is filed at the instance of the petitioner challenging the legality and judicial propriety of the order of cognizance dated 20th December, 2010 (Annexure-5) passed in G.R. Case No.891 of 2010 by the learned S.D.J.M., Berhampur under Section 7 of the Essential Commodities Act, 1955 (in short 'the E.C. Act') on the grounds inter alia that the alleged offence has been committed by the dealer accused and he is in no way involved as no prima facie case is made out against him and therefore, the same deserves to be quashed.
2. Briefly stated, as per the F.I.R., a Tanker bearing registration No.OR-05-Y-1285 was intercepted, while it was proceeding in opposite direction towards Girisola instead of Baliguda carrying blue dyed kerosene oil, which on enquiry, revealed that the alleged transportation to another destination found to contravene Clause-3 of Kerosene(Restriction on use and Fixation of Ceiling Price) Order, 1993 (in short 'the Control Order')

and accordingly, on receipt of it, G.R. Case No.891 of 2010 was registered and finally, the petitioner and other accused persons were charge sheeted for having committed an offence punishable under Section 7 of the E.C. Act which is currently under challenge on the ground that no prima facie case stands vis-à-vis the petitioner, who is not the dealer but alleged to have been looking after the business run by the dealer, namely, Narsingh Choudhury.

3. Heard Mr. S.K. Dalai, learned counsel for the petitioner and Mr. A.P. Das, learned Additional Standing Counsel for the State.

4. Mr. S.K. Dalai led the Court to go through Sections(s) 3 and 7 of the E.C. Act in order to highlight upon its necessary ingredients to contend that no offence under Section 7 of the E.C. Act is made out, inasmuch as, the petitioner alleged to have been implicated merely on the basis of statement of the driver of the vehicle in question. Furthermore, it is contended that the petitioner not being a dealer could not have been criminally prosecuted for an offence under Section 7 of the E.C. Act and therefore, the impugned order under Annexure-5 is bad in law.

5. Per contra, Mr. A.P. Das, learned counsel appearing for the State justified the order of cognizance i.e. Annexure-5 on the ground that Clause-3 of the Control Order was contravened since the petitioner and other accused persons allegedly transported the blue dyed kerosene oil not to its destination, rather, diverted the same which is all the more meant for public distribution and considering the contents of the F.I.R. and evidence collected during investigation, the learned court below rightly proceeded against all the accused persons for an offence under Section 7 of the E.C. Act and therefore, no interference is called for.

6. In fact, Section 3 of the E.C. Act prescribes the power to the Central Government to have orders in place for the purpose of regulating or prohibiting the production, supply and distribution of any essential commodity or for securing its equitable distribution and availability at fair prices to the consumers. The present Control Order is an outcome of such an exercise of the Central Government in accordance with Section 3 of the E.C. Act. In so far as Section 7 of the E.C. Act is concerned, it provides punishment under Clause (a) of sub-section (1) thereof, in case any person contravenes any order made under Section 3. On a proper reading of the above provisions, it conveys that a prosecution can be levied against any individual not alone a dealer for contravention of any of the order made under Section 3 which would be punishable under Section 7 of the E.C. Act. So, the contention of Mr. S.K. Dalai, learned counsel for the petitioner to the effect that only a dealer could be proceeded with under Section 7 of the E.C. Act and no one else must have to fail for the fact that it is not confined to a dealer only as the expression 'if any person contravenes any order made under Section 3' as appearing in Section 7 (1) is self-explanatory. In other words, any person responsible for violating the provisions of any order made under Section 3 shall be prosecuted under Section 7 of the E.C. Act.

7. It is further contended by Mr. S.K. Dalai that the allegation directed against the petitioner is primarily based on the statement of the driver of the alleged vehicle which was involved in transportation of blue dyed kerosene oil illegally not meant for its destination. Whether the dealer alone is responsible for the illicit transportation or all the accused persons combinedly and as to the truthfulness or falsity of the allegations made can only be examined during and in course of trial. However, considering the contents of

the F.I.R. i.e. Annexure-6 and evidence collected during investigation, prima facie, suggest that all the accused persons had the involvement in transporting the essential commodity illegally by diverting the same to another place. There is no denial to the fact that the allegation is also for contravening Clause-3 as well as 11(2)(b) of the Odisha Public Distribution System (Control) order 2008. Having said that, the Court reaches at a logical conclusion that the petitioner, who may be said as an offender along with others or involved as an abettor can be prosecuted since an attempt or abetment to breach any order made under Section 3 shall be deemed to have contravened that order in view of Section 8 of the E.C. Act.

8. In view of the above, it is concluded that the learned court below did not commit any error or illegality in taking cognizance of offence under Section 7 of the E.C. Act against the petitioner. In other words, the impugned order under Annexure-5 suffers from no legal infirmity.

9. Accordingly, it is ordered.

10. In the result, petition under Section 482, Cr.P.C. moved at the instance of the petitioner sans merit and resultantly, stands dismissed for the reasons discussed herein above. Consequently, the order of stay dated 19th September, 2011 stands vacated. A copy of the above order be sent to the learned court below forthwith in order to facilitate early disposal of G.R. Case No. 891 of 2010.

(R.K. Pattanaik)
Judge

KC Bisoi