

ORISSA HIGH COURT CUTTACK

GOVERNMENT APPEAL NO. 34 OF 1990

From an order dated 10.4.1990 passed by Sri S.K.Behera, Sessions Judge-cum-Special Judge, Berhampur in G.R.Case No.3 of 1989(V) (T.R. No.9 of 1989).

State of Orissa Appellant

Versus

Mahendra Kumar Sahu
and another Respondents

For appellant : Addl. Standing Counsel

For respondents : N o n e

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 23.11.2006

PRADIP MOHANTY, J. This appeal is directed against the judgment and order dated 10.04.1990 passed by the learned Sessions Judge-cum-Special Judge, Ganjam, Berhampur in G.R. Case No.3 of 1989(V) (T.R. No.9 of 1989) acquitting the respondents of the charge under Section 7 of the Essential Commodities Act for contravention of Clause 3 of the Orissa Rice and Paddy Control Order, 1965 (hereinafter referred to as the "Control Order"), Clauses 3, 7(3) and 8 of the Orissa Rice and Paddy Procurement (Levy) and Restriction on Sale and Movement Control Order, 1982(hereinafter referred to as the "Levy Order") and Sections 5 and 6 of the Rice Milling Industries (Regulation) Act, 1958.

2. Shorn of unnecessary details, the case of the prosecution is that P.W.2, the Sub-Inspector of Vigilance in the establishment of the Superintendent of Police (Vig.), Berhampur Division, visited the mill premises of M/s Trinath Rice Mill at village Hugulapata, belonging to accused-respondent no.1. He found the mill running under the supervision of accused-respondent no.2 with stacking and storing of 295.55 quintals of paddy and 64.9 quintals of rice within the mill premises at different places. Accused-respondent no.2, on being asked to produce the registers and records of the mill for inspection, produced the registers, Exts.4 and 5, and on finding the records to have not been updated beyond 16.12.1988, P.W.2 seized the same under the seizure list, Ext.6, took weight of the available rice and paddy in presence of P.W.1, the Revenue Inspector, and thereafter seized the same under the seizure list, Ext.2 and kept the seized stock in the zima of accused-respondent no.1 on execution of zimanama, Ext.3. The said accused also produced Ext.7, the licence for running the mill, but not the authority to hold the seized stock of paddy and rice. Thereafter, P.W.3, the Inspector of Vigilance, took up investigation and after completion of the same submitted charge sheet against both the accused-respondents.

3. The plea of the respondents was that they had not been storing, purchasing or selling rice or paddy but just splitting rice in their mill to the orders of the local cultivators and that the entire seized stock had been given to them by the cultivators for milling purpose only. Their further plea was that the Vigilance Officer had no right to prosecute them under the Rice Milling Industries Regulations Act, 1958, since prosecution thereunder lay only at the instance of the licensing authority or any person duly authorized by the Central or State Government or the Licensing Officer in this behalf by virtue of the provision of Section 15 of the said Act and in the instant case prosecution has not proved that such authority had been secured by P.W.3 or any other Officer of the Vigilance Department.

4. In order to prove its case, prosecution examined three witnesses and relied on ten documents. The defence, in order to substantiate

its plea though not examined any witness, proved in evidence photostat copies of certificates granted by R.I.(P.W.1) to the cultivators marked Exts.A to W. The learned Special Judge, who tried the case, by his judgment dated 10.04.1990 acquitted the respondents of all the above charges with the findings that Section 15 of the Rice Milling Industries (Regulation) Act supports the plea of the defence and, therefore, the charge under sections 5 and 6 of the said Act has to fail. So far as the Contravention of clause 3 of the Control Order, the trial court observed that one becomes a dealer in case he stores, purchases or sells rice or paddy or both to the extent of more than 10 quintals a day. But, such evidence was not collected by P.W.3 before submission of charge sheet. As to contravention of different clauses of the Levy Order, the trial court found that no evidence had been led by the prosecution in court nor had it been mentioned in the charge-sheet to substantiate the same.

5. Mr. Das, learned Addl. Standing Counsel submits that the trial court has committed serious error of fact and law in holding that the Vigilance Officer had no power to investigate the case and that the prosecution could be initiated only by the licensing authority. He further contends that the accused-respondents themselves having admitted the seizure of the rice and paddy from the mill, burden shifts to them to explain the same.

6. Perused the impugned judgment, depositions of the witnesses and other materials available on record. Section 15 of the Rice-Milling Industry (Regulation) Act, 1958 provides as follows :

“No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by the licensing officer or any person duly authorized by the Central Government or the licensing officer in this behalf.”

From the above, it emanates that it is the licensing authority or any person duly authorized by him or the Central Government who can launch

prosecution. In the instant case, prosecution has been launched by P.W.3, the Vigilance Inspector, But he has not produced any authorization in that behalf, although in his evidence he has admitted that the S.D.O., Berhampur was the licensing authority. Therefore, the trial court has rightly acquitted the accused-respondents of the charge under Sections 5 and 6 of the Rice-Milling Industries (Regulation) Act, 1958.

7. It was the respondents' case that they were not trading, purchasing or selling rice or paddy but just splitting rice in their mill to the orders of the local cultivators and the entire seized stock had been given to them by the cultivators for milling purpose. P.W.1, the local Revenue Inspector, in his cross-examination admitted that the business of the accused-respondents was just to mill paddy in their respective mills to the orders of their customers, the local cultivators. On being approached, he had issued some certificates in favour of the cultivators. He proved those certificates as Ext.A to W. No evidence whatsoever was adduced by the prosecution to prove that the accused-respondents had stacked and stored the paddy and purchased the same from local market for the purpose of sale. In other words, the prosecution has failed to prove the contravention of Clause 3 of the Control Order and Clauses 3, 7(3) and 8 of the Levy Order. Therefore, the trial court has rightly appreciated the evidence and has not committed any error of law in acquitting the accused-respondents of the charge under section 7 of the Essential Commodities Act.

8. In view of the above analysis, this Court is not inclined to interfere with the impugned judgment. The appeal is accordingly dismissed.

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PRADIP MOHANTY, J.