

GAHC010209382015



2024:GAU-AS:12807

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./505/2015

SMTI KUSUM DEVI BIHANI and ANR
W/O SRI SITARAM BIHANI

2: SRI SITARAM BIHANI
S/O SATYANARAIN BIHANI BOTH ARE RESIDENTS OF T.R.P. ROAD
RADHARANI MARKET
FANCY BAZAR
GUWAHATI
DIST. KAMURP M
ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS

2:SRI BIPIN CHANDRA CHAKRAVARTY
INSPECTOR OF FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BI EO ASSAM
GUWAHATI- 781032
DIST. KAMRUP M
ASSAM.

3:SRI JUGANANDA CHANGMAI
INSPECTOR OF FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BI EO ASSAM
GUWAHATI- 781032
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR.O P BHATI, MR.P SARMA,MR.S KHAN,MR.T C DAS

Advocate for the Respondent : , PP, ASSAM,,

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 17-12-2024

1. Heard Mr. O.P Bhatti, learned counsel for the petitioners. Also heard Mr. B Sarma, learned Addl. PP, Assam.
2. The present application is filed under section 482 Cr.P.C for quashing of BI(EO) PS Case No.17/2015 under sections 120(B)/420/406/426 IPC.
3. The fundamental allegation as discernible from the FIR is to the effect that on the basis of a tip off, the BI(EO) had conducted an enquiry in the business premises of the petitioners and another wholesaler at Radha Rani market on getting a report of speculative malpractice of trade articles in organized manner by not following the provisions of prevailing control orders as well as by violating terms and conditions of trade licenses granted for the business and from such report, the BI(EO) had reason to believe that the dealers are involved with abnormal price hike of pulses in the market.
4. It is also alleged that in the stock register the quality, make, as well as source of receipt were not disclosed. However, it was found that excess food grains/materials were received by the accused dealers.
5. The fundamental allegation is that in terms of the verification of sale records, it was found that higher prices were

charged. Finally on the basis of the materials collected by the BI(EO), it was alleged that the accused dealers were maintaining incorrect books of accounts are involved with speculative malpractice violating the provisions of Assam Trade Article (Licensing & Control) Order, 1982 (hereinafter referred to Order, 1982). According to the BI(EO), as stated in the FIR, it is believed that the accused deserved to be punished for criminal breach of trust and mischief etc, apart from provisions of the Essential Commodities Act, 1955.

6. From the aforesaid, it is seen that the fundamental allegation is violation of the Order, 1982. When the allegation is of violation of the Order 1982, which mandates disclosure of price and stocks and also mandates to sell goods on the price already fixed under the control order, any allegation of violation of the same will be an offence under section 7 of the Essential Commodities Act, 1955.

7. The aforesaid Order, 1982 was put to challenge in ***Premier Roller Flour Mill Vs. State of Assam And Ors*** reported in ***(2013) 1 GLR 927***. After elaborately dealing with the issue, this court declared the Order, 1982 is ultra vires of the Removal of (licensing, requirement, stock limits and movement restrictions) on Specified Food Stuffs Order, 2002.

8. In view of the aforesaid the allegation made in the FIR to the effect that the accused petitioners has violated the provisions of Order 1982, shall not be sustainable as on date.

9. If that being the position, the other allegation of commission of offence under the Indian Penal Code are being relatable and arises

out of the offences under section 7 of the Essential Commodities Act shall also not been sustainable.

10. In view of the aforesaid, the present petition stands allowed by setting aside and quashing the FIR dated 05.06.2015 in BI(EO) PS Case No.17/2015, Srimantapur, Guwahati, under sections 120(B)/420/406/426 IPC.

JUDGE

Comparing Assistant