

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17592 of 2015

Arising Out of PS.Case No. -64 Year- 2013 Thana -AJAMNAGAR District- KATIHAR

1. Paras Jain @ Paras Kumar Jain son of Late Ganeshi Lal Jain resident of village - Sonali, P.S. - Kadwa, Distt. - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.N.K. Agrawal, Senior Advocate
Mr. D.N. Tiwary, Advocate
For the State : Mr. Jharkhandi Upadhaya(App)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 21-07-2015 Heard learned counsel for the petitioner and learned counsel for the Addl. P.P.

A tractor- trailer having laden with 123 bags of Urea fertilizer, each bag containing 50 Kgs, were seized and during course thereof, the driver Md. Aziz @ Munna had disclosed the name, Paras Jain @ Paras Kumar Jain, the petitioner, to be the owner of the aforesaid seized fertilizer. Because of the fact that seized fertilizer was not explained at the instance of the petitioner, on account there of, Azamnagar P.S. Case No. 64/2013 was registered on the written report of Block Agriculture Officer, Azamnagar under Section 414/34 of I.P.C. as well as 7 of the E.C.



Act whereupon investigation commenced and concluded by way of filing of charge sheet and learned C.J.M., Katihar accede with the aforesaid finding of the I.O. whereupon took cognizance of an offence, punishable under Section 414 of the I.P.C. as well as 7 of the E.C. Act. Vide order dated 21.07.2014, the order impugned. It has been submitted on behalf of the petitioner that neither he happens to be dealer, nor stockiest. In likewise manner, it has also been submitted that alleged recovery was not made from his premises. Further, it has also been submitted that even during course of investigation, nothing more has been collected by the I.O., save and except, uncorroborated narration of allegation made by the Informant that driver had disclosed petitioner's status to be owner of the seized fertilizer.

It has also been submitted that in terms of notification No. 5/F- 45-90-8970 dated 17-10-1992, no license is required for possession of fertilizer to the extent to 10 (Ten) Metric Tones. The seized fertilizer is found duly covered with the aforesaid notification, on account of seizure of fertilizer weighting less than 10 M.T. On account thereof, order of cognizance taken by the learned lower Court is fit to be set aside.

The learned Additional P.P. though opposes the submission raised on behalf of the petitioner. However, fairly

concedes regarding prevalence of aforesaid notification.

Possession of fertilizer in contravention of fertilizer control orders appears to be punitive and on account thereof, application of Section 414 of the I.P.C. would not justify its application. So far application of Section 7 of the E.C. Act, is concerned, as seized fertilizer happens to be within limit so prescribed under notification 5/F- 45-90-8970 dated 17-10-1992. On account thereof, the order impugned did not justify its validity. Consequent there upon, the same is set aside to the extent of petitioners only.

Accordingly, this application is allowed.

(Aditya Kumar Trivedi, J)

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