

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48118 of 2012

=====

Ajay Kumar @ Ajay Kumar Burnwal son of Nepali Prasad Burnwal @
Omkar Modi, resident of village - Purani Bazar, P.S. Jhajha, District -
Jamui

.... Petitioner/s

Versus

1. The State of Bihar
2. Kashi Ram son of Sri Ganga Ram, resident of village- Sadokhar, P.O.-
Sadokhar, District - Rohtas

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar No.1, Advocate
: Mr. C.S.S. Azad, Advocate
For the State : Mr. Matloob Rab, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 23-04-2015 The present application under section 482 of the Code of Criminal Procedure has been filed for quashing the first information report in Jhajha P.S. Case No.141 of 2012 registered under section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as “the E.C. Act, 1955”) on the ground that the allegations made therein do not constitute a cognizable offence or non-cognizable offence.

The prosecution case, in brief, is that on 3rd October, 2012 at 10.00 a.m. the informant lodged a written report with Jhajha police stating that on 3rd October, 2012 he got confidential information and, thereafter, at 8.40 a.m. he reached Gandhi Chowk, Jhajha and saw that some persons were keeping bags of



rice in a tempo. Upon seeing the police, the said persons started fleeing away in suspicious condition. They were caught and, on enquiry, they disclosed their names as Ajay Kumar Burnwal and Mahesh Kumar. The informant demanded licence and other papers from them relating to sale and purchase of rice. However, the accused persons failed to produce any paper in this regard. The informant suspected that the said persons were going to sale the rice in black market in an illegal manner. In presence of two witnesses, namely, Raju Yadav and Tinku Burnwal, sixteen bags of rice weighing about six quintals were seized and a seizure list of the same was prepared at about 9.15 a.m. on 03.10.2012 itself.

On the basis of the aforesaid written report made by one Kashi Ram, Block Supply Officer, Jhajha, the FIR in question was registered and the police have taken up investigation of the case.

Learned counsel for the petitioner has submitted that perusal of the FIR would show that even assuming the prosecution allegations to be true word by word, the same do not constitute any offence either under section 7 of the E.C. Act, 1955 or under any other provision of law, as rice is a free commodity and sale and purchase of rice is not an offence under any provision of law. He has submitted that the petitioner or the co-accused Mahesh Kumar are neither a PDS dealer nor they are public servant. As a

matter of fact, the petitioner has got a *Kirana* shop at Jhajha and the rice in question had been purchased by his father from M/S Laxmi Rice Mills, Naya Bazar, Lakhisarai.

Learned counsel for the petitioner has further contended that it is not the case of the prosecution that the rice belongs to the Government or the same has been issued by any agency of the Government under any scheme sponsored by the State. He contends that allowing the prosecution to continue in a case where the ingredients of the offence punishable under section 7 of the E.C.Act, 1955 are not attracted would amount to vexatious and malicious prosecution.

Mr. Matloob Rab, learned Additional Public Prosecutor has tried to defend the action of the State in launching the prosecution but after going through different provisions of the E.C. Act, 1955, he concedes that on the basis of allegations made in the FIR no cognizable offence is attracted.

Regard being had to the allegations made in the FIR, I find that there is no specific mention of violation of any Order in relation to seized bags of rice and, as such, the same would not amount to violation of law. On the facts and in the circumstances of the case, the institution of FIR and investigation being conducted by the police are held to be bad, as it is necessary for

the prosecution under Section 7 of the E.C.Act, 1955 that a clear case is made out. The prosecution cannot be launched only on the basis of witness and caprice of an official of the State. Accordingly, the first information report and the entire criminal prosecution arising out of Jhajha P.S. Case No. 141 of 2012 are quashed.

(Ashwani Kumar Singh, J)

Md.S./-

U		T	
---	--	---	--