

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36857 of 2012

Arising Out of PS.Case No. -90 Year- 2011 Thana - JALALGARH District- PURNIA

Rajenda Prasad Biswas @ Rajendra Biswas, S/O Late Parshuram Biswas, Resident Of Village Malharia, P.S. Baisi, District Purnea.

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

With

Criminal Miscellaneous No. 37920 of 2013

Arising Out of PS.Case No. -90 Year- 2011 Thana -JALALGARH District- PURNIA

Raj Kumar Chaudhary, Son of Ram Villas Chaudhary, Resident Of Village Harchanderpur, P.S. Jalalgarh, District Purnea.

.... Petitioner/s

Versus

1. State Of Bihar
2. Chandan Kumar Yadav Son of Ghutes Yadav, Resident of Harchanderpur, P.S. Jalalgarh, District-Purnea.

.... Opposite Party/s

Appearance :

(In Cr.Misc. No. 36857 of 2012)

For the Petitioner/s : Mr. Nadimul Hasan, Advocate

For the Opposite Party/s : Mr. Jagdhar Prasad, A.P.P.

(In Cr.Misc. No. 37920 of 2013)

For the Petitioner/s : Mr. N. K. Agrawal, Senior advocate

Mr. Shambhu Sharan Singh, Advocate

For the Opposite Party/s : Mr. B. N. Pandey, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-05-2015

Two persons, who are shown as accused in Jalalgarh Police Station Case No.90 of 2011, filed these two petitions under Section 482 of the Code of Criminal Procedure.

The Court of learned Sub-divisional Judicial Magistrate, Purnea took cognizance of the offence in relation to the FIR in G.R.



case No.2667 of 2011 through order dated 2.7.2012. While the Cr. Misc. No.37920 of 2013 is filed by accused no.1, (hereinafter referred to as 'the first petitioner') with a prayer to quash the FIR, Cr. Misc. No.36857 of 2012 is filed by accused no.2 (hereinafter referred to as 'the second petitioner'), with a prayer to quash the order dated 02.07.2012, through which the cognizance of the offences punishable under Sections 420, 409, 467/34, was taken.

The first petitioner is a dealer of Fair Price Shop at Harchandrapur Village of Purnea District. One Mr. Chandan Kumar Yadav submitted a complaint on 03.10.2011 in the Jalalgarh police station stating that when he was waiting near a centre of Thakurbari at about 9 P.M., the first petitioner was proceeding by with a plastic bag in his hand and was accompanied by the 2nd petitioner, and when the complainant and others wanted to know as to what the contents in the bags are, both the petitioners ran away by leaving the bag, and they found the coupons for essential commodities in the bag.

On the basis of the complaint, F.I.R. was registered. Thereafter, the learned Sub-Divisional Judicial Magistrate, Purnea has taken the cognizance.

Sri N. K. Agarwal, learned senior counsel for the petitioners, submits that there was absolutely no basis for the complainant, much less for registration of the FIR, or for that matter,



taking of cognizance of the case. He contends that even if the first petitioner is said to be holding some coupons, it is just an un-understandable as to how, a private individual can take exception to it, or file a complaint. He submits that running of a fair price shop is governed by various control orders passed under the Essential Commodities Act, and no officer of the Civil Supplies Department has pointed out any deviation on the part of the petitioner, and still, the Police Station as well as the learned S.D.J.M. has initiated the proceedings against the petitioners.

Sri B.N. Pandey, learned Additional Public Prosecutor, submits that the truth or otherwise of the allegations made against the petitioners needs to be considered in the trial and the F.I.R. or the order taking cognizance of the offence cannot be quashed at this stage.

Once the cognizance of the offence was taken by the concerned court, the prayer for quashing the F.I.R. has virtually become redundant. Therefore, it has to be seen as to whether there was any basis for the trial Court to take cognizance of the offence alleged against the petitioner. For this purpose, the contents of the complaint need to be taken on their face value.

The only allegation against the petitioners is that one of them was holding a plastic bag in which some coupons were found and the other was accompanying him. Firstly, the complaint was not by an



official of the police or Civil Supplies Departments. A Fair Price dealer is not answerable to each and every person in the society. If a private individual is of the view that any irregularities are taking place in the fair price shop, he has to complain the matter to the Civil Supplies Department, and if any official of the department finds that the shop is not being run properly, he can initiate proceedings under the relevant provisions of law. In a given case, a police officer can submit complaint, if the acts and omissions noticed on the part of the individual are prohibited by law.

Secondly, the coupons, that are said to have been found with the first petitioner, are not contraband materials. Being a fair price dealer, he was very much entitled to be in possession of the coupons. Neither any consumer, nor any official of the Civil Supplies Department made an allegation against the first petitioner about the distribution of the essential commodities. It would be a very dangerous trend, if the cases are to be registered in this manner, just at the instance of the private individuals, when the entire activities are governed by the control orders issued under the Essential Commodities Act. Further, a citizen is not answerable to another to explain what he possesses. It is only when an official, who is empowered in law, undertakes any check that the person in possession of any prohibited material would be under obligation to explain. Much would depend

upon the provision of law under which confers power on the officer.

Viewed from any angle, this Court does not find any basis for taking cognizance against the petitioners.

Therefore, both these petitions are allowed and the order dated 02.07.2012 passed by the learned Sub-Divisional Judicial Magistrate, Purnea, in G.R. Case No.2667 of 2011 (Jalalgarh P.S. Case No.90 of 2011) is set aside.

(L. Narasimha Reddy, CJ)

AFR

Sunil/-

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