

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10096 of 2013

Arising Out of PS.Case No. -85 Year- 2012 Thana -KALUAHI District- -

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Nand Kishor Shyam @ Public Distribution System- Nand Kishor Shyam
..... Petitioner/s

Versus

The State of Bihar

..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Anil Kr. Singh 1 (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 3 02-07-2015 1. Heard the learned counsel, Mr. Ashok Kumar Karn, for the petitioner.
2. This application has been filed under Section 482 of the Code of Criminal Procedure for quashing the FIR bearing Kaluahi P.S. case No.85 of 2012 registered under Section 7 of the Essential Commodities Act lodged by the BDO-cum-Block Supply Officer, Kaluahi, Madhubani.
3. From perusal of the FIR, it appears that the BDO lodged the FIR alleging that the petitioner who is a proprietor of the fair price shops was black marketing the wheat and rice. While sending the wheat on truck, the truck was seized in presence of two chowkidar as witnesses. The rice and wheat loaded on the truck was handed over to Kaluahi police station.
4. The learned counsel for the petitioner submitted that none



of the consumers had ever complained against the petitioner that the petitioner had not distributed the grains regularly. The BDO has lodged the FIR. He should have taken permission from the SDO according to the circular of the State Government but the BDO without taking permission has lodged FIR. The learned counsel further submitted that according to the circular of the State Government, prior to lodging FIR, show cause notice should have been given to the petitioner but that was also not complied with by the BDO and the FIR has been lodged, therefore, if the prosecution is allowed to continue, it will be nothing but abuse of the process of Court. The learned counsel further submitted that the rice and wheat seized are not his foodgrains.

5. Perused the FIR, i.e., complaint made by the BDO. The allegation is that he was sending the rice and wheat for the purpose of black marketing. Now, therefore, from the allegation made in the FIR, it is clear that a cognizable offence has been alleged to have been committed by the petitioner.

6. The Hon'ble Supreme Court in the case of Rishipal Singh Vs. *State of U.P.* 2014 (7) SCC 215 has held that **'when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegation as made in the complaint prima facie establish the case**

and the High Court should not convert itself into a trial Court and dwell into disputed questions of fact. The object of Section 482 is to prevent abuse of process of Court and to secure ends of justice. If allegation leading to criminal prosecution prima facie do not disclose or constitute offence then power under Section 482 can be exercised. However, disputed question of fact cannot be decided like trial Court.'

7. In the present case as stated above, it cannot be said that no offence is disclosed in the FIR or the allegation do not constitute any offence. So far the submission of the learned counsel for the petitioner that permissions have not been taken or that the show cause notice was not given to the petitioner are concerned, these are the matters which can be considered at the time of trial but on these grounds, which is alleged to be violative of the circulars of the State Government providing the procedure will not be a ground for quashing the FIR itself at the initial stage.

8. In view of the above facts and circumstances of the case, I do not find any merit in this application. Accordingly, this Cr. Misc. application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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