

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37997 of 2012

Arising out of PS.Case No.-233 Year-2011 Thana-Kishanganj District- KISHANGANJ

Jamshed Alam, Son of Late Jamil Ahmad, Resident of Mohadipur, P.S. Kishanganj,
District Kishanganj.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

with

Criminal Miscellaneous No. 28808 of 2012

Arising out of PS.Case No.-233 Year-2011 Thana-Kishanganj District- KISHANGANJ

1. Jay Narayan Prasad Jaiswal, Son of Late Devilal Jaiswal, Resident of Ruidhasa, P.S. Kishanganj, District Kishanganj.
2. Dhananjay Prasad Jaiswal, Son of Ram Bahadur Prasad Jaiswal, Resident of Ruidhasa, P.S. Kishanganj, District Kishanganj.
3. Md. Ismait, Son of Abdul Salam, Resident of Daulatpur, P.S. Karandighi, District Uttardinajpur (W.B.).
4. Md. Anamul, Son of Late Samiruddin, P.S. Dalkaura, District Uttardinajpur (W.B.).
5. Gopal Prasad Sah, Son of Dhokha Lal Sah, Resident of Teli Basti, P.S. Kishanganj, District Kishanganj.
6. Md. Farooque, Son of Md. Usuf, Resident of Nechitpur, P.S. Simalia, District Uttardinajpur (W.B.).

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

Appearance :

(In Cr.Misc. No. 37997 of 2012)

For the Petitioner : Sri N.K. Agrawal, Sr. Advocate

For the Opposite Party: Jharkhandi Upadhyay, APP

(In Cr.Misc. No. 28808 of 2012)

For the Petitioners : Sri N.K. Agrawal, Sr. Advocate

For the Opposite Party: Jharkhandi Upadhyay, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 26-02-2015

The two petitions arise out of order dated 10.04.2012,

passed by the learned Sub-divisional Judicial Magistrate, Kishanganj



in G.R. No. 602 of 2011 (Kishanganj P.S. Case No. 233 of 2011) under Sections 420, 120B of the Indian Penal Code and Section 7 of the Essential Commodities Act by which the learned court, after perusing the police report held that there were sufficient grounds to proceed against the petitioners of the two petitions for committing offences under Sections 420, 120B of the Indian Penal Code and Section 7 of the Essential Commodities Act.

2. Short facts leading to the filing of the First Information Report may be noticed.

3. A truck bearing Registration No. WB 59A-5330 was seized which was loaded with 366 bags of wheat weighing 204 quintals and 30 Kgs. The driver was questioned and he revealed that the bags of wheat had been consigned by Dhananjay Prasad Jaiswal, one of the petitioners in the batch of two petitions and in league of another person who was called Mamaji. It was stated by the driver that the Chalan in behalf of the consignment had also been given by the said Mamaji in presence of petitioner Dhananjay Prasad Jaiswal and he proceeded with the consignment when he was stopped and the vehicle was seized along with the consignment.

4. In support of the allegations, the Chalan dated 03.06.2011 as also a letter said to be in the hand of Dhananjay Prasad Jaiswal were also annexed to the written report by the Officer-in-

Charge of Kishanganj Police Station to the Assistant District Supply Officer, Kishanganj.

5. The police investigated the case and reported the allegations true and this was how the order of cognizance and summoning dated 10.04.2012 was passed.

6. A solitary point was raised before me. It was contended that after enactment of Specified Foodstuffs Order, 2002, the Government of Bihar issued GSR No. 5 dated 26.10.2002 amending the Bihar Trade Articles (Licenses Unification) Order, 1984 by removing Part-A of Schedule-I and, thus, wheat was no longer a controlled item. As such, there could not be any fixed storage limit or carriage limit. In support of the contention, the copies of the relevant notification have been produced before the Court. Besides GSR No. 5, the attention of the Court has also further been drawn to GSR No. 1 dated 12.10.2002 which deleted the words "and" containing cereals from Schedule-I and thus has notified that there shall not be any storage limits further.

7. The violation of orders issued under Section 3 of the Essential Commodities Act has been made punishable under Section 7 of the said Act. If someone violates any condition of order issued under Section 3 of the Essential Commodities Act then only he can be said to have committed the offence. Before issuance the two



notifications, i.e., GSR No.-1 dated 12.10.2002 and GSR No.-5 dated 26.10.2002, the Bihar Trade Articles (Licenses Unification) Order, 1984 was invoked and as per Schedule-I Part-A, there were cereals, i.e., food grains, like, wheat, rice, paddy, barley etc. which were controlled articles. The State Government had classified cities and had also issued storage limits for storing those articles in different cities and areas. But, after coming into force of Specified Foodstuffs Order, 2002, the State Government has deleted that part of the Bihar Trade Articles (Licenses Unification) Order, 1984. Thus, what appears is that wheat or any other cereals which were earlier mentioned in Part-A of Schedule-I to the Bihar Trade Articles (Licenses Unification) Order, 1984, no longer were controlled articles and there could not be any storage limits fixed in respect thereto. It is very well mentioned in the notification issued by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs), New Delhi dated 15.02.2002 in SRO A-22/2003/G.S.R. 104(E) that persons shall be free to store or deal in or to stock, sale, distribute, dispose of the articles which are no longer controlled food stuffs. In view of the above notifications issued either by the Government of Bihar or by the Central Government, it appears that there was no order which could be said to be issued under Section 3 of the Essential Commodities Act and, as such, no offence under

Section 7 of the Essential Commodities Act was made out.

8. In the result, the two petitions succeed. The order summoning the petitioners of the two petitions is hereby quashed. The petitions are allowed.

(Dharnidhar Jha, J.)

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