

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30110 of 2012

Arising Out of PS.Case No. -23 Year- 2008 Thana -null District- JAMUI

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1. Santosh Mahto S/O Asharfi Mahto R/O Bheriharwa, Police Station - Mainatad, District - West Champaran
 2. Dharmendra Sah S/O Late Jaishree Sah R/O Bheriharwa, Police Station - Mainatad, District - West Champaran
 3. Asharfi Mahto S/O Deonandan Mahto R/O Bheriharwa, Police Station - Mainatad, District - West Champaran
 4. Arbind Patel S/O Bhikar Patel R/O Bheriharwa, Police Station - Mainatad, District - West Champaran
 5. Thag Sah S/O Moti Sah R/O Village - Parsa, Police Station - Purushotampur, District - West Champaran

.... Petitioners

Versus

1. The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Shiv Kumar Dwivedy, Advocate.

For the Opposite Party : Mr. Smt. Veena Rani Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 20-02-2015

Heard learned counsel for the petitioners and the learned A.P.P. for the State.

The instant application has been filed for quashing the order dated 26.10.2010 passed by the learned C.J.M. Bettiah, West Champaran in Trial No. 02 of 2011 arising out of Mainatad P.S. Case No. 23 of 2008, whereby and whereunder cognizance has been taken against the petitioners for committing the offence under section 7 of the Essential Commodity Act.

The short facts giving rise to the present application are that the informant, namely, Shankar Chandra Das, Commander, 27B Batalion of SSB lodged an information stating therein that on 09.05.2008 at about 20.50 hours he



along with other constable were on patrolling duty near the Bhariharwa Canal which is situated at Indo-Nepal boarder saw two loaded tractor trailers are going towards Bhariharwa village. He gave order to stop them, in the meantime one driver of the tractor run away towards Nepal along with tractor and left the trailer. On chase other tractor trailer along with three petitioners were caught and on enquiry it was found that one trailer was loaded with 46 bags of paddy and in another trailer 44 bags of paddy and 7 bags of wheat were loaded and it was suspected that both the loaded food-grains were carrying for smuggling towards Nepal. Accordingly, the apprehended persons were handed over to the Officer Incharge, Mainatad giving rise to Mainatad P.S. Case No. 23 of 2008. After completing investigation charge-sheet was submitted and accordingly the impugned order has been passed.

The first submission on behalf of the petitioners is that from bare perusal of the FIR. It does not reveal as to which order has been violated. Section 7 of the E.C. Act deals with a person who contravened any order made under section 3 of the E.C.Act, but if there is no contravention of any order then no criminal case can be launched against any person.

It is submitted that the food-grains were of petitioner no.3 and he was going to carry the same to his village but in the meantime he was made victim of the circumstances. The learned counsel for the petitioners has relied upon the decision of this Court in the matter of 'Umesh Prasad @Lichi Vs. The State of Bihar', reported in 2009 (3) PLJR 831. Further, it has been submitted that 1957 Food Grains Movement Control Order already rescinded much prior to the alleged date of seizure and the food-grains has been deleted from 1984 Unification Order vide Unification order dated 11.10.2002. There is no report that the food-grains were for PDS scheme or for any government supply. The



prosecution of the petitioners in this way shall be an abuse of process of the Court and for that reliance has been placed upon the case of 'Shriram Rai & Another Vs. The State of Bihar & Ors', reported in 2006 (1) PLJR 504. Further it has been submitted that on 16.11.2010 after lapse of more than two years the learned C.J.M. has passed the cognizance order without applying his judicial mind. All the petitioners are simple farmers and they have never indulged in smuggling. During course of investigation it has come that the said food-grains belong to Asharfi Mahto, petitioner no.3, who had purchased the same as there is no restriction for movement of rice and wheat in the State of Bihar and as such there cannot be any prosecution under section 7 of the E.C. Act.

The learned A.P.P. is not in a position to controvert the aforesaid submissions.

Considering the submissions urged at the bar, going through the record and noticing that from bare perusal of the FIR it does not reveal as to what order has been violated under the Essential Commodities Act. It is also manifest that the food-grains has been deleted from 1984 Unification Order vide order dated 11.10.2002 and as such seizure of paddy and wheat is illegal as it does not violate any unification order under Essential Commodities Act.

Section 7 of the E.C. Act deals with a person who contravened any order made under section 3 of the E.C. Act, but if there is no contravention of any order then no criminal case can be launched against any person. The first information report of the instant case does not show as to what order under section 3 of the E.C. Act has been contravened/violated rendering prosecution of the petitioners necessitate. Both the decisions relied upon by the learned counsel for the petitioners are fully applicable in the present case. The allegations that the petitioners indulged in black marketing are mere assumption without any basis.

The informant does not state or make any allegation against the petitioners in respect to indulging in black marketing and further it does not indicate as to any order made under section 3 of the E.C. Act has been violated and as such the submissions put forth by the learned counsel for the petitioners has got merit.

In view of the discussions made above, the intended prosecution of the petitioners is an abuse of the process of Court and has to be quashed. Accordingly, the application succeeds and the impugned order dated 26.10.2010 is hereby quashed.

(Jitendra Mohan Sharma, J)

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