

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42286 of 2012

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1. Mritunjaya Kumar Ambastha @ Mrithunjaya Kumar S/O Sri Kalanand Prasad Lal @ Kamlanand Prasad Lal @ Kamlanand Prasad Lal Resident Of Village- Belwa, P.S.- Muffasil, District- Katihar

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate

For the Opposite Party/s : Mr. Md. Arif, (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 20-03-2015 Heard learned counsel for the petitioner as well as learned APP for the State.

2. Petitioner has prayed for quashing of order dated 29.09.2011 passed by Chief Judicial Magistrate, Katihar in Katihar Mufassil P.S. Case No. 102/2011 taking cognizance for an offence punishable under Section-7 of the E.C. Act as well as under Section 414 of the IPC and summoning the petitioner to face trial.

3. O/C, Katihar Mufassil P.S. after coming to know about storage of Kerosene Oil as well as urea fertilizers having kept concealed at the shop of petitioner, conducted raid, found and seized those items for which he recorded his self statement, the basis of registration of instant case.

4. Learned counsel for the petitioner challenged the

validity of the order impugned in the background of competency of informant regarding search and seizure coupled with institution of the case on account thereof.

5. Learned APP refuting the submission, submitted that the order impugned is in accordance with law and so it should not be interfered with.

6. As per Kerosene (Res. On Use & Fixation Of Ceiling Price) Order, 1993 under Rule-9 a procedure has been prescribed for search and seizure as well as for that purpose, competent authorities have also been identified. For better appreciation, Rule-9 is quoted hereinbelow:-

9. Power of entry, search and seizure.— (A)
An Officer of the Department of Food and Civil Supplies of the Government not below the rank of an Inspector authorised by such Government and notified by the Central Government or any officer authorised and notified by the Central Government or any officer not below the rank of a Sales Officer of a Government Oil Company authorised by the Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this order, with such assistance as may be required, for the purpose of satisfying himself that this order or any order made the rounder has been complied with:

i) Stop and search any vessel or vehicle or any other conveyance which the Officer has reason to believe, has been or is being or is about to be used in contravention of this order.

ii) enter or search any place with such said or assistance as may be necessary: and

iii) seize and remove with such aid or assistance as may be necessary, books, registers and other records

pertaining to kerosene business, alongwith vehicle, vessel or any other conveyance used for carrying such stock. If he has reason to believe that any provision of this Order has been or is being or is about to be contravened and thereafter take or authorise the taking of all measures necessary for securing the production of the kerosene at the Office of the Government Oil Company and the vehicle vessel or other conveyance so seized before the Collector having jurisdiction under the provisions of Essential Commodities Act, 1955 (10 of 1955) for their safe custody pending such procedures.

b) The provisions of section 100 of the Code of Criminal Procedure 1973 (2 of 1974) relating to search and seizure shall, so far as may be apply to searches and seizure under this Order.

7. Admittedly, the informant does not happen to be one of them and on account thereof, the conduction of raid followed with search and seizure is found inappropriate. Apart from this, Section 414 IPC is also not made out in the facts and circumstances of the case as the seized article is not stolen one.

8. Consequent thereupon, the prosecution of petitioner is found contrary to the spirit of law and on account thereof, the order dated 29.09.2011 does not survive. Thus, the same is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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