

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39553 of 2012

Arising Out of PS.Case No. -151 Year- 2011 Thana -Kursakanta District- ARRARIA

Vijay Kumar Gupta @ Vijay Chand Gupta, S/O Late Bindeshwari Prasad Gupta,
Resident Of Village- Kursakanta, P.S- Kursakanta, District- Araria.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Vagisha Pragya Vacaknavi, Advocate
Mr. Binod Kumar Singh, Advocate

For the Opposite Party/s : None

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 30-04-2015

This petition under Section 482 of the Code of Criminal Procedure is filed with a prayer to quash the order dated 18.06.2012 passed by the learned Chief Judicial Magistrate, Araria in Kursakanta P.S. Case No.151 of 2011, taking cognizance of offences punishable under Sections 420 and 286 of the Indian Penal Code, Section 7 of the Essential Commodities Act and Clauses 6 and 7 of Liquefied Petroleum Gas (Regulation of Supply & Distribution) Order, 2000 (for short, the LPG Order).

The petitioner is a dealer of L.P.G of Indian Oil Corporation at Kursakanta of district- Araria. The premises were inspected by the Assistant Sub-Inspector of Police of Kursakanta Police Station on 08.12.2011. On noticing that there was some discrepancy as to the stock of cylinders, Assistant Sub-Inspector of

Police submitted a complaint and based upon that a case was registered. Though several provisions were invoked in the F.I.R., the Chief Judicial Magistrate took cognizance of the offences referable to the provisions of Sections 420 and 286 of the Indian Penal and Section 7 of the Essential Commodities Act and Clauses 6 and 7 of the LPG Order.

Ms. Vagisha Pragya Vacaknavi, learned counsel for the petitioner submits that Clause 13 of the LPG Order empowers only an officer, not below the rank of Inspector that can conduct search and seizure and in the instant case, the so-called search was conducted by the Assistant Sub-Inspector of Police. It is argued that the trial Court did not take note of that and took cognizance of the offences mentioned above. Reliance is placed upon the order dated 27.01.2012 passed by the learned Single Judge of this Court in Criminal Writ No.764 of 2005.

None appeared for the respondent.

The LPG Order prescribes the manner in which the dealer must conduct its affairs. Since the LPG happens to an explosive substance, every precaution required is to be taken. Certain authorities are conferred with the power to effect search and, if necessary, seizure, in case violations are noticed.

Clause 13 of the LPG Order reads as under:



13. POWER OF ENTRY, SEARCH AND SEIZURE.-(1) Any officer of the Central or the State Government not below the rank of Inspector duly authorized by a general or a special order, by the Central Government or the State Government, as the case may be, or any officer of a Government oil company not below the rank of Sales Officer, authorized by the Central Government, may, with a view to securing due compliance of this Order or any other order made thereunder:

(a) stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product,

(b) enter and search any place,

(c) seize stocks of liquefied petroleum gas alongwith container and/or equipments, such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this Order has been, or is being, or is about to be made.

. (2) The sales officer of a Government oil company shall be authorized to secure compliance of this Order by the distributor appointed under the public distribution system and/or by the consumer registered by them.

From this it is evident that it is only an officer not below the rank of Inspector of the State Government, that is

conferred with the power to enter, search and seize the products from a dealer. In the instant case, admittedly, the search was conducted by the Assistant Sub-Inspector of Police. He is not at all authorized to effect such search under Clause 13 of the LPG Order.

Therefore, the petition is allowed and the order dated 18.06.2012 passed by the learned Chief Judicial Magistrate, Araria in Kursakanta P.S. Case No.151 of 2011 taking cognizance of the offence is quashed.

(L. Narasimha Reddy, CJ)

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