

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41869 of 2012

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1. Yogendra Sah Son Of Sri Bindeshwari Sah Resident Of Village-
Triveniganj, P.S.- Triveniganj, Distt.- Supaul
 2. Mangen Yadav @ Mangan Yadav son of Ramadhin Yadav Resident Of
Village- Rampur Lahi, P.S.- Shankarpur, Distt.- Madhepura

.... Petitioners

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Anjit Sinha, Adv.

For the Opposite Party/s : Mr. Ajay Kumar – 1, APP

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CORAM: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL
ORAL ORDER

2 09-04-2015 The petitioners have challenged the order dated 28.10.2010 passed by the learned Chief Judicial Magistrate, Supaul by which the cognizance has been taken against them in Jadia P. S. Case No. 62 of 2008 (G. R. No. 862 of 2008) for the offence punishable under Section 7 of the Essential Commodities Act.

The Block Supply Officer, Triveniganj lodged a case to Jadia Police Station alleging therein that a loaded tractor with fertilizer was intercepted near Jadia High School and 170 bags of fertilizer were found loaded. The driver (petitioner no. 2) disclosed that the fertilizer was loaded on the truck at Gulabbagh within the district of Purnea and was being taken to M/s Shiv Traders, Triveniganj in the district of

Supaul.

It is submitted that the petitioner no. 1 is a retail dealer in the fertilizer and the fertilizer was not being taken for black marketing.

It is further submitted that there is no prohibition for movement of fertilizer within a State. It is also submitted that in pursuance to Section 3 of Fertilizer (Movement Control) Order, 1973, there is prohibition to export or attempt to export, or abet the export of, any fertilizer from any State. Purnea and Triveniganj (in the district of Supaul) are within the State of Bihar. In view of this provision, there is no violation of any control order, as such, the order of cognizance is illegal and without jurisdiction.

Learned counsel for the State could not controvert the contention of the petitioners.

It appears that 'export' has been defined in Section 2(a) of the Fertilizer (Movement Control) Order, 1973—“export means to take or cause to be taken out of any place within a State to any place outside that State”. Admittedly, Purnea and Triveniganj (in the district of Supaul) are within the territory of State of Bihar, as such, the provision of Fertilizer (Movement Control) Order, 1973 is not applicable

in the present case.

Considering the facts and circumstances, in my opinion, the impugned order is not in accordance with law and the same is hereby quashed. Accordingly, this application is allowed.

(Amaresh Kumar Lal, J)

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