

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35190 of 2013

Arising Out of PS.Case No. -24 Year- 2008 Thana -PIYAR District- MUZAFFARPUR

- =====
1. Chandeshwar Thakur son of Late Mushan Thakur, resident of village + P.S- Piyar, District- Muzaffarpur.
 2. Sadhu Rai son of Saryug Rai, resident of village - Hatha, P.S- Piyar, District- Muzaffarpur.
 3. Satrugan Choudhary son of Gajadhar Prasad Choudhary, resident of village – Bandra, P.S- Piyar, District- Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Bela Singh, Advocate
: Mr. Rajeev Ranjan, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-08-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short ‘the CrPC’), the petitioners seek quashing of the order dated 5th July, 2013 passed by the learned Sub Divisional Judicial Magistrate, East Muzaffarpur in G.R. No.86 of 2008 corresponding to Trial No.1402 of 2013 arising out of Piyar P.S. Case No.24 of 2008 dated 29.3.2008 by which the application preferred under Section 258 of the CrPC to stop the proceedings as against the petitioners has been dismissed.

2. It is contended by the learned counsel for the petitioners that the petitioners are not named in the case registered under Section



7 of the Essential Commodities Act, 1955 and no cogent material could be collected against them during investigation on the basis of which they could be tried under the offence alleged. It is submitted that recovery of 70 quintals of rice and 90.5 quintals of wheat from possession of Akhilesh Thakur and Rajan Thakur respectively who are named in the FIR has got no connection with the business of the petitioners. The petitioners are PDS shop dealers of different Panchayats and nothing could transpire during investigation that the wheat and rice supplied to the dealers from the SFC godown were handed over either to the accused Akhilesh Thakur or Rajan Thakur. Even on verification, no discrepancy was found in the stock of the dealers. She has submitted that the impugned order by which the court below has refused to stop the proceedings is bad in law.

3. On the other hand, learned counsel for the State has submitted that the impugned order would make it evident that in course of investigation witnesses have come forward to say that the petitioners were also involved in the alleged illegal transaction of foodgrains. He has submitted that the power under Section 258 of the CrPC is discretionary in nature and if the court was not satisfied that it is a case where the proceedings should be stopped, no illegality can be found with the impugned order dated 5th July, 2013.

4. I have heard respective learned counsel for the parties

and perused the records.

5. Section 258 of the CrPC reads as under:

“S. 258. In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

6. From a reading of Section 258 of the CrPC it would be evident that in an appropriate case, the Magistrate is empowered to stop the proceedings, at any stage, without pronouncing judgment. If stoppage of proceedings is effected after recording of the evidence of the principal witnesses, the Magistrate has to pronounce a judgment of acquittal and in any other case the Magistrate can release the accused, and such release has an effect of discharging the accused. It is rightly submitted by the learned counsel for the State that the power to stop proceedings under this Section is discretionary. Such power ought to be exercised judicially only in very special and compelling

circumstances.

7. It would be evident from the impugned order that till the date of passing of the order the trial had not begun and the witnesses were not examined. In that view of the matter, if the Magistrate has not found the case to be fit one on the basis of evidence collected during investigation wherein proceedings ought to have been stopped, no fault could be found with the impugned order.

8. Regard being had to the facts and circumstances of the case, I am not inclined to interfere with the order which was passed by the court below as back as on 5th July, 2013.

9. The application is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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