

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.246 of 2016**

Arising Out of PS.Case No. -null Year- null Thana -null District- KISANGANJ

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Bablu Kumar Das son of Anil Chandra Das Resident of Village- Tegharia, Police Station and District- Kishanganj.

.... .... Petitioner

Versus

1. The State of Bihar through D.M. Kishanganj.
2. The Superintendent of Police, Kishanganj.
3. The Station House Officer, Kishanganj P.S., District- Kishanganj.
4. The Block Development Officer cum Block Supply Officer, Block- Kishanganj, District- Kishanganj.

.... .... Respondents

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**Appearance :**

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|-----------------------|-----------------------------------------|
| For the Petitioner :  | Mr. Sajid Salim Khan, Advocate          |
| For the Respondents : | Mr. Rabindra Kumar Priyadarshi, S.C.-32 |
|                       | Mr. Kundan Kumar, A.C. to S.C.-32       |

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

ORAL JUDGMENT

**Date: 13-05-2016**

With the help of this petition made, under Article 226 of the Constitution, the petitioner, who is a betal shop owner, seeks issuance of direction to the respondents to release six Domestic L.P.G. Cylinders and Consumer pass book/card and original documents, which, according to the petitioner, belonged to the petitioner and members of his family, but were seized, on 18.01.2013, in connection with Kishanganj Police Station Case No. 24 of 2013, under Section 7 of the Essential Commodities Act.

**2.** On 18.01.2013, Block Development Officer-cum-Block Supply Officer, Kishanganj, lodged a written report and, treating the same as First Information Report, Kishanganj Police

Station Case No. 24 of 2013 came to be registered, under Section 7 of the Essential Commodities Act, not only against the petitioner but also against several other persons as accused. The case against them may, in brief, be described as under:

(i) On 18.01.2013, at about 12 noon, on the direction of Sub Divisional Officer, Kishanganj, Block Development Officer-cum-Block Supply Officer, Kishanganj, along with Inspector of Police, other Police Officer and Armed police force, jointly conducted a checking and/or raid at different places near Kaltex Chowk to curb the black-marketing of domestic L.P.G. cylinders;

(ii) In the said process, on receipt of a secret information and, on verification thereof, that one Bablu Kumar Das (i.e., the petitioner herein), who owes a betal shop near Kaltex Chowk, is involved in black-marketing of domestic L.P.G. cylinders, the betal shop of Bablu Kumar Das was raided and 11 LPG passbooks, one original consumer paper and two filled 14.2 kg cylinders were found. On enquiry, the said Bablu Kumar Das allegedly told that some other LPG cylinders, relating to the other passbooks, are kept in his house at Teghariya. He also told that against the said passbooks/cards, he, in collusion with the agencies, namely, Taj Enterprises and Jagdamba, used to purchase filled domestic gas cylinders at a higher price and sell them in black

market at a premium;

(iii) Thereafter, the raiding team seized the said all the 12 consumer cards issued in the names of different consumers, seven of Taj Enterprises and five of Jagdamba Gas Agency along with filled domestic gas cylinders and prepared a seizure list in this regard and proceeded, along with Bablu Kumar Das, to raid his house at Teghariya;

(iv) On raiding the house of Bablu Kumar Das, six domestic gas cylinders were recovered, which, too, were seized and a seizure list was prepared and Bablu Kumar Das was handed over to the police officer;

**3.** During the pendency of the investigation, an application was made, on 27.02.2013, in the Court of learned Chief Judicial Magistrate, Kishanganj, under Section 7 of the Essential Commodities Act, seeking release of LPG Cylinders, Consumer Book and Original Consumer Certificate issued by Hindustan Petroleum to the petitioner. The learned Sub-Divisional Judicial Magistrate, Kishanganj called for a report, by order, dated 29.04.2013, from the District Collector, Kishanganj, and the Station House Officer, Kishanganj, if any confiscation proceeding had been initiated or not. As the report has not been received and no order, as regards release of the seized articles has, yet, been made by the

learned Sub-divisional Judicial Magistrate, the petitioner as aggrieved person has filed the present petition, under Article 226 of the Constitution, seeking directions as indicated above.

4. Heard Mr. Sajid Salim Khan, learned Counsel for the petitioner, and Mr. Anjani Kumar, learned Additional Advocate General No.6, assisted by Mr. Rabindra Kumar Priyadarshi, learned Standing Counsel No.32, appearing for the respondents.

5. It has been very passionately contended by Mr. Sajid Salim Khan, learned Counsel for the petitioner, that since the District Collector has not yet made any order initiating a proceeding for confiscation of the seized cylinders, the Judicial Magistrate out to be treated as having acquired jurisdiction to direct release of the seized materials.

6. It is submitted, on behalf of the petitioner, that no report having been received by the learned Sub-divisional Judicial Magistrate, Kishanganj, indicating as to whether any confiscation proceeding has or has not been pending in respect of the *essential commodities* seized in the present case, the learned Sub-divisional Judicial Magistrate, Kishanganj, ought to have directed release of the seized article.

7. The above submission, made on behalf of the accused petitioner, is resisted by Mr. Anjani Kumar, learned Additional



Advocate General, appearing for the respondents, on the ground that the seizure having been made in exercise of power under Section 3 of the Essential Commodities Act, 1955, and the seizure having been reported to the District Collector, it is the District Collector, who has the power and authority to direct release of the seized commodity and not a Sub Divisional Judicial Magistrate or any Judicial Magistrate.

8. In support of his contention that the provisions, embodied in the Essential Commodities Act, 1955, with regard to the seizure and release of property, override the provisions embodied in Code of Criminal Procedure, learned Additional Advocate General relies on sub-Section (6) of Section 6-A, which reads as follows:

*“(6) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act no. II of 1974) when Collector or the appellate authority is seized with the matter under this section, no Court shall entertain any application in respect of essential commodities, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such commodities as far as its release, distribution, etc., is concerned and the jurisdiction of Collector or the appellate authority with regard to the disposal of the same shall be exclusive.”*

9. Is the Sub-divisional Judicial Magistrate empowered,

in the facts and attending circumstances of the present case, to direct release of the seized cylinders? This is the moot question, which arises for determination in the present case.

**10.** My search for an answer to the above question brings me to Section 6 of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act'), which states :

***“6. Effect of orders inconsistent with other enactments.- Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.”***

**11.** From a bare reading of Section 6 of the Act, it becomes apparent that any order, which has been made under Section 6 of the Essential Commodities Act, 1955, in exercise of power under Section 6 thereof, shall have overriding effect on the provisions of any enactment, which may be inconsistent with the provisions of the order made in exercise of power under Section 6 of the Act, meaning thereby that an order, made under Section 3 of the Act, will override the general law, such as, Code of Criminal Procedure, to the extent that the provisions, embodied in the Code, are inconsistent with the provisions of the Order, which may have been made.

**12.** Section 6-A of the Essential Commodities Act, 1955, which stands amended by Bihar Act 9 of 1978, is the one, which, now, falls for consideration in the present case. Sub-section (1) of Section 6-A, being relevant, is reproduced below:

**“6-A. Confiscation of foodgrains, edible oilseeds, edible oils etc.-** (1) *Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, it shall be reported without any unreasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied that there has been a contravention of the order, may order confiscation of –*

- (a) the essential commodity so seized;*
- (b) any package, covering or receptacle in which such essential commodity is found; and*
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity;*

*Provided that, without prejudice to any action which may be taken under any provision of this Act, no food grains or edible oil-seeds seized in pursuance of an order made under section 3 in relation thereto from producer shall, if the seized foodgrains or*

*edible oil-seeds have been produced by him, be confiscated under this section.”*

**13.** A close reading of Sub-section (1) of Section 6-A shows that when any *essential commodity* is seized pursuant to an order made under Section 3 of the Act, (such as, the case at hand), the seizure shall be reported, without unreasonable delay, to the Collector of the district, wherein the *essential commodities* have been seized.

**14.** Pausing here for a moment, I may point out that unlike the provisions embodied in Code, which requires a seizure made by a police officer to be reported to the Chief Judicial Magistrate or the jurisdictional Judicial Magistrate, Section 6-A warrants that the seizure of an *essential commodity*, pursuant to an Order made under Section 3 of the Act, be reported to the District Collector without unreasonable delay meaning thereby that no seizure of *essential commodities* is required to be reported to the Chief Judicial Magistrate or the jurisdictional Judicial Magistrate.

**15.** Obviously, therefore, it is the District Collector, who has to decide the question as regards the disposal of the seized *essential commodity* by way of confiscation or otherwise. The seizure having not been required to be reported to the jurisdictional Judicial Magistrate, a Judicial Magistrate cannot assume jurisdiction

and has, in fact, no jurisdiction to entertain an application seeking release of *essential commodity*, which has been seized pursuant to an Order made under Section 3 of the Act.

**16.** Can it, therefore, be said that if a District Collector does not make any order for a period of one week initiating a proceeding for confiscation of the seized commodity, a Magistrate automatically acquires jurisdiction?

**17.** Answer to the question, posed above, has to be an emphatic 'No' inasmuch as the District Collector, having not reached a decision in the matter, no Judicial Magistrate can direct not to confiscate the seized essential commodity or to release the *essential commodity*. In other words, unless the District Collector decides not to initiate confiscation proceeding in respect of seized *essential commodity*, a Judicial Magistrate does not derive the jurisdiction to direct release of the seized *essential commodity*.

**18.** Can it, therefore, be said that if a District Collector does not make any order for a period of one month or one year initiating a proceeding for *confiscation* of the seized commodity, a Magistrate automatically acquires jurisdiction? Answer has to be, again, in the negative inasmuch as no period has been specified for the purpose of inferring or presuming that a District Collector has declined to initiate a confiscation proceeding.



**19.** The answer to the various questions, which have been formulated above, throws light on the power of a Judicial Magistrate in matters of seizure of an *essential commodity* pursuant to an Order made under Section 3 of the Act. No judicial authority can exercise power on the basis of presumption of fact, because presumption of fact may be incorrect.

**20.** It cannot, therefore, be said that a Judicial Magistrate can assume jurisdiction, or can acquire jurisdiction, on lapse of a specified period of time from the date of seizure of the *essential commodity*, report whereof has been made to the District Collector. If the District Collector does not initiate any confiscation proceeding and does not also make any order declining to initiate confiscation proceeding, a Judicial Magistrate does not automatically acquire jurisdiction to direct release or disposal of the seized *essential commodity*. This does not mean, I must hasten to add, that criminal Courts have no jurisdiction in matters of seized *essential commodities* as regards disposal thereof. The question of giving direction by the Criminal Court of ordinary jurisdiction, in a case of present nature, would arise only when the District Collector decides not to resort to confiscation proceeding.

**21.** Since there is no time limit fixed under the Act, it necessarily follows that as long as no order is made by the District



Collector either initiating or refusing to initiate a confiscation proceeding, none other than the District Collector is the competent authority to direct release of such *essential commodity* and a Judicial Magistrate cannot, merely because of the fact that no order has been made, declining or initiating confiscation proceeding, direct release of the seized *essential commodity*.

**22.** From a careful reading of sub-Section (6) of Section 6-A, it becomes more than abundantly clear that as long as the District Collector remains in *seisin* of the seized *essential commodity*, no Court of Judicial Magistrate can entertain any application for release of such *essential commodity*.

**23.** If no order initiating a proceeding for confiscation is made, the person, whose *essential commodity* has been seized, is not debarred from making application to the District Collector to take a decision as to whether the seized *essential commodity* shall be confiscated or not and if the District Collector decides not to initiate any confiscation proceeding, then, he can be said to be not seized of the matter and, in such circumstances only a Judicial Magistrate, such as, Sub-divisional Judicial Magistrate, can exercise power directing release of the seized *essential commodity*.

**24.** In view of the fact that in the case at hand, no decision has been taken by the District Collector as regards the

confiscation of the seized *essential commodity*, no Judicial Magistrate can direct release of the said *essential commodity*. At the same time, the District Collector cannot indefinitely keep the matter pending without taking a decision in this regard.

**25.** In view of the above, this petition partly succeeds. The District Collector, Kishanganj, is hereby directed to take a decision in the matter in accordance with law within a week from the date of receipt of this order. If the seized *essential commodity* needs to be confiscated, then, the District Collector shall initiate a proceeding for confiscation and, depending upon the result of the proceeding, which may be so drawn, a decision as regards release or otherwise of the seized *essential commodity* may be taken. If the District Collector decides not to initiate any confiscation proceeding in respect of the seized commodity, he shall communicate his decision to the jurisdictional Judicial Magistrate, who would, thereafter, stand vested with the power to direct release of the seized commodity if the facts and circumstances of the case so warrant.

**26.** With the above observations and direction, this writ petition stands disposed of.

**(I. A. Ansari, ACJ)**

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