IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29587 of 2015

Arising Out of PS.Case No. -238 Year- 2013 Thana -WARSALIGANJ District- NAWADA

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Mahendra Bhagat, S/o Late Dinanath Bhagat, Resident of Village- Sangatpar, P.S.- Warisaliganj, Distt.- Nawada. .... Petitioner

Versus

1. The State of Bihar
2. Smt. Bimla Devi, W/o Ram Naresh Sharma, the Block Supply Officer Warisaliganj, Distt.- Nawada.

.... Opposite Parties

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Appearance :
For the Petitioner/s : Mr. Mahendra Thakur, Advocate
Mr. Vijay Kumar, Advocate
For the Opposite Party/s : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-02-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 09.12.2014 passed by the learned Chief Judicial Magistrate, Nawada in connection with Warisaliganj P.S. Case No. 238 of 2013 whereby and whereunder cognizance of the offence punishable under Section 7 of the Essential Commodities Act, 1955 (For short 'the E.C. Act') has been taken against the petitioner and others.

2. The persecution case, according to the Block Supply Officer, Warisaliganj, in short, is that on 09.10.2013 at about 10.30

a.m., he received a confidential information that certain quantity of subsidized rice was being unloaded form a tractor trailer and was being stored in the house of one Ajay Singh. On the basis of said information, a raid was conducted by the Law Enforcement Officers, who caught 5 men unloading 60 quintals of rice from a tractor-trailer bearing registration No. BR-27-9266. They were being stored in the courtyard of said Ajay Singh. At the time of raid, 113 bags filled with rice were already stored in the courtyard of the house. When the police made inquiry, said Ajay Singh did not turn up. His family members also failed to produce any documents relating to possession of the rice in question. On inquiry, the witnesses present at the time of raid disclosed that the rice in question belonged to the petitioner Mahendra Bhagat and at his behest, it was being unloaded and stored in the house of Ajay Singh. The five labourers who were engaged in carrying bags filled with rice were apprehended, but the driver some how managed to escape. Since neither Mahendra Bhagat nor Ajay Singh came forward to claim the ownership of the rice, it was suspected that the bags filled with rice were being stored for black-marketing.

3. On the basis of the above allegation made in the written report submitted before the Officer-in-charge, Warisaliganj P.S. Case No. 238 of 2013 was registered under Section 7 of the

E.C. Act against the aforesaid Mahendra Bhagat, Ajay Singh and five labourers caught by the raiding team, namely, Basudeo Yadav, Shivam Yadav, Nepali Yadav, J.P. Yadav and Rajendra Yadav. The police also seized the rice and the tractor - trailer and a seizure list was prepared in this regard.

4. The case was investigated by the police and on completion of investigation, a report under Section 173 of the Code of Criminal Procedure was submitted in the court pursuant to which, the learned Sub-Divisional Judicial Magistrate, Nawada took cognizance of the offence punishable under Section 7 of the E.C. Act against the petitioner and others vide order dated 09.12.2014. The said order dated 09.12.2014 is under challenge in the present application.

5. Learned counsel for the petitioner has submitted that even if the entire prosecution case is accepted on its face value, the offence under Section 7 of the E.C. Act would not be made out against the petitioner. He has contended that the rice is not a controlled item. The Central Government as well as the State Government have already deleted the above item from the schedule of the Bihar Trade Articles (Licenses Unification) Order, 1984 as well as Bihar Essential Articles (Display of Prices and Stocks) Order, 1977.

6. He has further contended that there is no storage limit; there is no price control and there is no requirement to maintain list of register, cash memo, etc. for sale and purchase of rice.

7. In support of his contention, learned counsel for the petitioner has placed reliance on the notification issued by the Central Government bearing Notification No. GSR-104(E) dated 15.2.2002, which reads as under : -

> "MINISTRY OF CONSUMER AFFAIRS,
> FOOD AND PUBLIC DISTRIBUTION
> (Department of Consumer Affairs)
> ORDER
> New Delhi, the 15th February, 2002
>
> G.S.R. 104(E) - Whereas the Central Government is of the opinion that it is necessary and expedient to do so for securing the availability of commodities specified in the Order at fair prices throughout the counter.
>
> Now, therefore, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order :-
>
> 1. Short Title, Extent and Commencement
>
> (a) This Order may be called the Removal of

(Licensing requirements, stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002.

(b) It extends to all the States and Union Territories of India.

(c) It shall come into force after thirty days from the date of publication in the Official Gazette.

2. Definitions

(i) "Dealer" means any person engaged in the business of purchase, movement, sale, supply, distribution or storage for sale of any of the commodities specified in clause 3 of this Order, directly or otherwise, whether as a wholesaler or retailer and whether or not in conjunction with any other business and his representative or agent.

(ii) "State Government" includes Administration of a Union territory.

3. With the coming into effect of this Order any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarsegrains, sugar, edible oilseeds and edible oils and shall not require a permit or license therefor under any order issue

under the Essential Commodities Act, 1955.

4. The provisions of this Order shall take effect notwithstanding anything to the contrary in any Order made by a State Government before the commencement of this Order except as respects anything done, or omitted to be done, thereunder before such commencement.

5. Issue of any order by the State Governments under powers delegated in GSR 452(E) dated the 25th October, 1972 issued by the Government of India in the then Ministry of Agriculture (Department of Food) and GSR 800 dated the 9th June, 1978 issued by the Government of India in the then Ministry of Agriculture and Irrigation (Department of Food) for regulating by licenses, permit or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any of the commodities specified in clause 3 shall require the prior concurrence of the Central Government.

6. Nothing contained in this Order shall affect the operation of the Public Distribution System

(Control) Order, 2001 issued by the Central Government and orders of the State Government issued in pursuance thereof."

(Underlining mine for emphasis)

8. He has contended that the State Government has also issued a notification vide Memo No. 2354 dated 17.7.2003 in consonance with the notification issued by the Central Government, which reads as under:-

> "Food Supply & Commerce Department, Memo No. 2354 आ. वा. dated 17.07.2003:- In exercise of the powers conferred by Section-3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) read with order dated 15.02.2002. G.S.R. 104 (E) of Ministry of Consumer Affairs, Food and Public Distribution Government of India, and with the prior concurrence of Central Government, the Governor of Bihar is pleased to make the following amendment in the Bihar Trade Articles (Licences Unification) Order 1984, namely :-
>
> Amendment
>
> The word and baraket "(Sugar, edible oil seeds and edible oils)" used in Schedule I of Bihar Trade Articles

(Licences Unification) Order, 1984, are hereby deleted. Nothing contained in this Notification will effect the operation of subsidized edible oil and Sugar meant for BPL families and purchase, sale as well as storage through Government A/c.

2. With the coming into effect of this Order, any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of Sugar, edible oil seeds and edible oils and shall not require a permit or licence therefore under any order issued under the Essential Commodities Act 1955. Wheat, paddy/rice & coarse grains will be effective in accordance with Notification G.S.R. 5 dated 26.10.02 of Food, Supply & Commerce Department and related previous Notifications shall not effect.

3. Nothing contained in this Notification shall effect the operation of the Public Distribution System (Control) Order 2001 issued by the Central Government and order/notification of Bihar Government issued in pursuance thereof."

(Underlining mine for emphasis)

9. He has further contended that the only allegation

against the petitioner is that the rice seized from the house of Ajay Singh was subsidized rice, but there is no material to support this contention. He has submitted that there is no other evidence to support that the bags filled with rice were being carried or stored in violation of any law.

10. It has further been contended that the petitioner is the owner of the seized rice which is not controlled by any unification order passed by the State. He has submitted that earlier rice was a controlled item and there was requirement of license; maintenance of stock register; issuance of cash memo; display of stocks; etc., but since the State Government has lifted the control order of food grains, no license is required to be maintained for dealing in business of food grains.

11. He has further contended that the petitioner is the proprietor of M/s. Shiv Shakti Bhandar and in his regular course of business, he used to purchase food grains from Nalanda Rice Mill, Bhikhanibigha, Asthawan, Nalanda and on 08.10.2013, he had purchased rice from the said mill. The said firm is duly registered under the VAT Act its TIN No. is 10231884087. It has also been contended that the statement of the mill owner of Nalanda Rice Mill has also been recorded under Section 161(3) of the CrPC by the investigating officer of the case while conducting investigation in

para 103 of the case diary. In his statement, the mill owner has stated that on the relevant date, the petitioner had purchased 180 bags of rice containing 50 kg each from his mill.

12. Lastly, it has been contended by the learned counsel for the petitioner that during the entire investigation, save and except a vague and wild allegation that the rice seized from the place of occurrence was subsidized rice, there is no other material to connect the petitioner with the alleged offence.

13. On the other hand, Dr. Mayanand Jha, learned APP for the State has submitted that on receipt of confidential information the informant of the case informed the local police, who stumbled into a black-marketing of subsidized rice when they caught five men unloading 60 quintals of rice from a tractor-trailer. He, however, concedes that apart from the ocular allegations made in the FIR, there is no other material to support the allegation that bags filled with rice were subsidized rice. He also concedes that the statement of one Ranjeet Kumar, owner of Nalanda Rice Mill, was recorded under Section 161(3) of the CrPC in para 103 of the case diary, in which he has categorically stated that on 08.10.2013 he had sold 180 bags of custom milled rice to the petitioner and had issued invoice in that regard.

14. I have heard respective counsel for the parties and

carefully perused the materials available on record.

15. I find sufficient merit in the contention raised by the learned counsel for the petitioner. Merely because, some trade articles were being carried on a tractor-trailer, it cannot be inferred that they were being carried for sale in the black- market. Further, in absence of any licensing order for carrying business of rice, it cannot be inferred that the bags filled with rice were being carried and stored for sale in the black-market. Moreover, if on the date of search and seizure, no license order for carrying on business of the above trade article was required; no storage limit was fixed; no movement restrictions were applicable; and no fixation of price was applicable, the very initiation of criminal proceeding cannot be justified. Though, it is the case of the prosecution that the bags filled with rice were subsidized trade articles covered by Public Distribution System (Control) Order, 2001 issued by the Central Government and Orders/Notifications of the Bihar Government issued in pursuance thereof, I find that apart from a hypothetical presumption and wild suspicion made against the petitioner in the FIR, there is total lack of any evidence in this regard during investigation. On the contrary, there is evidence in the case diary that the petitioner was a bona fide purchaser of the seized bags fill with rice from a rice miller.

16. In view of the discussions made, hereinabove, allowing the prosecution to continue would amount to an abuse of the process of the court. Accordingly, the impugned order dated 09.12.2014 passed by the learned Chief Judicial Magistrate, Nawada in connection with Warisaliganj P.S. Case No. 238 of 2013, is hereby quashed.

17. The application stands allowed.

(Ashwani Kumar Singh, J.)

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