

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21173 of 2014

Arising Out of PS.Case No. -135 Year- 2013 Thana -DIHRINAGAR District- SASARAM
(ROHTAS)

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Rajesh Kumar Jain

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari

For the Opposite Party/s : Mr. Sanjay Kumar Tiwary 1 (App)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

3 14-07-2017 Heard learned counsel for the petitioner and the State.

The petitioner has filed the instant application for quashing the order dated 10.2.2014 in Dehri (T) P.S. Case No. 135 of 2013 passed by the learned S.D.J.M., Dehri, Sasaram whereby learned S.D.J.M. took cognizance under section 7 of the E.C. Act and section 414 of the Indian Penal Code.

The counsel for the petitioner has raised two folds objection as to legality and validity of the order taking cognizance. He submits that section 7 of the E.C. Act is only attracted if there is any breach of licensing order. He submits with reference to the FIR that trade of rice and wheat is delicensed from the year 2002. At the relevant time there was no licence required for trading rice and wheat and as such Section 7 of the E.C. Act is not attracted in the instant case. He further submits that in order to attract offence



under section 414 of the Indian Penal Code the case under section 379 is a condition precedent unless there is theft, the question as to the application of under section 414 of the Indian Penal Code does not arise.

Since the order taking cognizance is 10.2.2014 and more than three years has lapsed, it would be appropriate, if the petitioner files an application for discharge before the court below raising the issues as to application of section 7 of the E.C. Act and section 141 of the Indian Penal Code. In the peculiar facts and circumstances of the case it is expected that the court below would address the issue for application of 7 E.C. Act and Section 414 of the Indian Penal Code, if the petitioners files such petition for discharge in the court below within a period of one month from today, the court below is directed to address all the issues which may raised by the petitioner in such application including the issues of application of sections 7 of the E.C. Act and 414 of the Indian Penal Code by speaking order within two months from the date of filing such application.

It goes without saying that if the condition precedent for application of sections 7 of the E.C. Act and 414 of the Indian Penal Code is lacking, the court below would discharge the petitioner.



With the aforesaid observation, the application stands disposed of.

(Anil Kumar Upadhyay, J)

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