

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11712 of 2014

Arising Out of P.S.Case No. -101 Year- 2010 Thana -SIDHWARA District- DARBHANGA

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Sripati Jha Son of Amar Nath Jha Resident of Village- Lalpur, P.S.- Singhwara,
Dist.- Darbhanga

.... Petitioner

Versus

1. The State Of Bihar
2. Anil Kumar Singh Son of Late Ambika Prasad Singh, Block Supply Officer,
Block- Singhwara, P.S.- Singhwara, District- Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioner : Mrs. Soni Srivastava, Advocate

For the Opposite Parties : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

Date: 27 -07-2017

Heard.

2. This application under Section 482 of the Cr.P.C. has been filed for quashing the order dated 28.01.2012/30.01.2012 passed by learned CJM, Darbhanga in Singhwara P.S.Case No.101 of 2010 whereby and whereunder the petitioner was summoned to face the trial for the offence under Section 7 of the Essential Commodities Act.

3. The informant happens to be Block Supply Officer, Singhwara. He lodged FIR with Singhwara P.S. alleging inter-alia that while he was on patrolling along with armed forces, saw two people in a shop exchanging something and on interrogation they disclosed their name. The petitioner was one of them who disclosed that the said shop belongs to him and he used to sell gas cylinder after taking from the godown of M/s Hnuman Gas Agency, Jajuar, Muzaffarpur for the



convenience of consumers. The informant demanded documents but none of them produced any paper. The informant seized 14 gas cylinders and 60 consumer cards and other articles from the said shop. The matter was investigated and police submitted chargesheet for the offence under Sections 379, 411 and 120B/34 of the IPC and Section 7 of the Essential Commodities Act (LPG Control Order 2000) against the petitioner and other co-accused. The learned CJM after going through the material on record dropped the proceeding against the owner of M/s Hnuman Gas Agency, Jajuar, Muzaffarpur and took cognizance of offence against this petitioner and other co-accused under Section 7 of the Essential Commodities Act.

4. It has been submitted that M/s Hnuman Gas Agency, Jajuar, Muzaffarpur is an authorized agency for distribution of gas cylinders. The father of this petitioner was authorized by the said agency, who delivered the gas cylinders to the consumers residing at far distance at the fare charge of Rs.18/- and for that purpose a no Objection Certificate was also obtained by the said agency from the Block Development Officer, Singhwara. The petitioner or his father has not violated any terms and conditions of LPG (Regulation of Supply and Distribution) Order, 2000. It was also submitted that the learned CJM had no authority to take cognizance and so the order is fit to be quashed.

5. The learned APP on the other hand opposed the submissions.

6. On perusal of record, I find that this case was registered on the basis of written report of Block Supply Officer wherein it has been alleged that the petitioner was found in illegal trade of supply of gas cylinders in violation of the control orders. In this regard, I find that there is a provision under LPG (Regulation of Supply and Distribution) Order, 2000 for carrying business of selling LPG under clause 6 of LPG (Regulation of Supply and Distribution) Order, 2000. According to said order no person other than a



Government Oil Company, a parallel marketeer or a distributor shall be engaged in the business of selling liquefied petroleum gas to the consumer. The petitioner has produced a no objectionable certificate from the BDO but it does not justify as to whether the BDO was competent to issue such certificate under the LPG regulatory order. The agreement between the oil company and distributor would be also relevant in determining as to whether the agency was competent to appoint any sub-distributors. In case diary, I find that the witnesses have supported the allegation of illegal distribution of gas cylinders by the petitioner. So far cognizance against this petitioner by CJM is concerned, I would like to quote the provision of Section 12-AA of the Essential Commodities Act which runs as follows:

“Section 12 AA- Offences Triable by Special Court notwithstanding anything contained in the code—“all offences under this Act shall be triable by the special Court constituted for the area in which the offence has been committed or where there are more special Courts than other for such area by such one of them as may be specified in this behalf by the High Court.”

7. Thus, from the perusal of sub-clause (e) of Clause (1) of Section 12-AA, it is evident that the power to take cognizance under the Act has been given to the Special Court. From the perusal of the provisions contained in sub-section (2) of Section 12-A and sub-section (e) of Clause (1) of Section 12-AA, there is no manner of doubt that the cognizance of the offence under the Act can be taken by a Judge of the Special Court appointed by the High Court in terms of sub-section (2) of Section 12-A of the Act.

8. Be that as it may, I find that in view of the above provision, the order dated 28.01.2012/30.01.2012 passed by CJM, Darbhanga in Singhwara P.S.Case No.101 of 2010 is not sustainable as there is nothing on record to show that the CJM was appointed in terms of sub-section 12-A of the Act.

9. In the result, this application is allowed and order dated 28.01.2012/30.01.2012 passed by CJM, Darbhanga in Singhwara P.S.Case



No.101 of 2010 is quashed and the case is remitted back where the court below shall proceed in accordance with law.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	31.07.2017
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