

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44912 of 2015

Arising Out of PS.Case No. -86 Year- 2010 Thana -CHAURADANO District-
EASTCHAMPARAN(MOTIHARI)

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Ram Babu Prasad son of Late Ram Eqbal Prasad, resident of Mohalla- Chaura
Dano, P.S.- Chaura Dano, District- Motihari (East Champaran).

..... Petitioner/s

Versus

1. The State of Bihar.
2. The Sub-Divisional Agricultural Officer, Sikrahana, East Champaran.

..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. D.N.Tiwary, Advocate.

For the State : None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing the order dated 07.12.2012 passed by the learned Sub Divisional Judicial Magistrate, Raxaul, Motihari in Trial No.3163 of 2015 arising out of Chaura Dano P.S. Case No.86 of 2010 by which the Sub Divisional Judicial Magistrate has summoned the petitioner to face trial under section 7 of the Essential Commodities Act, 1955 (for short 'the E.C.Act').

2. According to the prosecution case, an inspecting team



under the supervision of the Joint Director, Agriculture and Additional Secretary, Agriculture Department inspected the premises of the petitioner, who is a retail dealer of fertilizer on 24.12.2010. On demand, he failed to produce the documents relating to stock of fertilizer and disappeared after closing the shop.

3. On the basis of the aforesaid allegations made in the written report submitted by the Sub Divisional Agriculture Officer, Sikrahana to the Officer-in-Charge, Chaura Dano Police Station, the informant opined that the petitioner had violated the provisions of Section 7 (1)(a)(i) of the E.C. Act, 1955 and Clause 28 of the Fertilizer (Control) Order. On the basis of the aforesaid written report Chaura Dano P.S. Case No.86 of 2010 dated 24.12.2010 was registered and investigation was taken up.

4. On completion of investigation, the police submitted final form under Section 173(2) of the CrPC on 12.02.2011 showing lack of evidence against the petitioner during investigation. However, the learned Sub Divisional Judicial Magistrate, Raxaul, differing with the final report submitted by the investigating officer of the case, took cognizance of the offence punishable under Section 7 of the E.C.Act and summoned the petitioner to face trial, vide order dated 07.12.2012.

5. It has been submitted by the learned counsel for the



petitioner that impugned order dated 07.12.2012 is bad in law in view of the ratio laid down by this Court in the matter of **Jhopari Sao vs. The State of Bihar** since reported in **1980 BLJR 143** and **unreported judgment of this court passed on 13.05.2014** in the matter of **Bimal Kumar vs. State of Bihar (Cr. Misc. No.20276 of 2013)**. He has contended that the alleged offence is said to have been committed on 24.12.2010 and the cognizance of the offence has been taken on 07.12.2012, i.e. more than a year, after the date of offence, which was barred by time.

6. He has submitted that maintenance of books of accounts and their production for inspection are squarely covered by the provisions prescribed under Clauses (h) and (i) of sub-section (2) of Section 3 of the E.C.Act. For breach of such provisions, a license holder is punishable under Section 7(1)(a)(i) of the E.C. Act with imprisonment for a term, which may extend to one year and shall also be liable to fine. Hence, limitation for taking cognizance of such offence would be one year only.

7. Despite repeated calls, no body appears on behalf of the State.

8. I have heard learned counsel for the petitioner and perused the record.

9. I am inclined to agree with the submissions made by the



learned counsel for the petitioner. The case in hand is squarely covered by the judgment of this Court in the case of **Jhopari Sao** (supra). As there is no dispute in respect of the offence, which would be attracted in the facts and circumstances of the case, it is not necessary to go in detail about that aspect. Suffice it to say that in the FIR itself the informant has alleged that the alleged act of the petitioner is violative of clause 28 of the Fertilizer (Control) Order, 1985 and Section 7(1)(a)(i) of the E.C.Act.

10. Non-furnishing of any document required by an Inspector under the Fertilizer (Control) Order, 1985 would be violative of the provisions prescribed under clause 28(1)(a) of the Fertilizer (Control) Order, 1985, which reads as under :

“28. Powers of Inspectors.- (1) An Inspector may, with a view to securing compliance with this order,-

(a) require any manufacturer, importer, pool handling agency, wholesale dealer or retail dealer to give any information in his possession with respect to the manufacture, import, storage and disposal of any fertilizer manufactured or, in any manner handled by him.”

11. From perusal of clause 28(1)(a) of the Fertilizer



(Control) Order, 1985, it would be evident that it empowers an Inspector to demand the information regarding arrival and sell for fertilizer. The offence alleged in the present case is in respect of non-furnishing of the records relating to availability of fertilizer in the licensed shop of the petitioner.

12. From perusal of Section 3(2)(h)(i) of the E.C. Act, it would further be evident that maintenance of books and accounts and their production for inspection are squarely covered by the provisions (h) and (i) of Sub Section (2) of Section 3 of the E.C. Act. For breach of provisions of Section 3 Sub Section (2) Clauses (h) and (i) of the E.C. Act, a license holder would be punishable under Section 7(1)(a)(i) of the E.C. Act with imprisonment which may extend to one year.

13. Section 468 of the CrPC deals with delay in taking cognizance after lapse of the period of limitation. Section 468(2)(b) of the CrPC prescribes that no court shall take cognizance of an offence after one year if the offence is punishable with imprisonment for a term not exceeding one year.

14. As discussed, hereinabove, the punishment prescribed for the offence punishable under Section 7(1)(a)(i) of the E.C. Act may extend to one year and the court may also award fine. The period of limitation in terms of Section 468(2)(b) of the CrPC would be one



year. That being so, the Sub Divisional Judicial Magistrate could not have taken cognizance of the offence after expiry of one year from the date of alleged offence.

15. In that view of the matter, the impugned order dated 07.12.2012 is hit by limitation. Accordingly, the entire proceedings of Trial No.3163 of 2015 arising out of Chaura Dano P.S. Case No.86 of 2010 including the order dated 07.12.2012 is set aside.

16. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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