

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45728 of 2013

**Arising Out of Ghorasahan Police station Case No. 161 of 2012
District- EASTCHAMPARAN(MOTIHARI)**

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Ricki Prasad Jaiswal S/O Sri Bindeshwar Prasad Resident Of Village- Jamunia,
P.S. - Jharokhar, District- East Champaran Proprietor Of M/S Choudhary Traders,
Sripur, Khas Ghorasahan, East Champaran Petitioner

Versus

The State Of Bihar Opposite Party

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Appearance :

For the Petitioner : Mr. Dhananjaya Nath Tiwari, Advocate

For the Opposite Party : Mr. Awadhesh Kr.Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 02-08-2017

Heard Sri Dhananjaya Nath Tiwari, learned counsel for the petitioner and Sri Awadhesh Kumar Sinha, learned Additional Public Prosecutor for the opposite party.

Petitioner, in the present case, is seeking quashing of the order dated 17.06.2013, passed in Ghorasahan Police station Case No. 161 of 2012 in which cognizance has been taken for the offence under section 7 of the Essential Commodities Act by the learned Sub Divisional Judicial Magistrate, Sikrahana (Motihari). A perusal of the First Information Report shows that the informant Block Agriculture Officer-cum-Fertilizer Inspector, Ghorasahan lodged the First Information Report alleging therein that on 13.09.2012 at about 3 PM he along with the Officer-in-charge of Ghorasahan Police Station and Block Development Officer, Ghorasahan conducted a



raid in the house of one Shambhu Sah, in village Sripur Khas, Block Ghorasahan and found urea, PPL and MOP fertilizer illegally stored there. The informant further alleged that on enquiry from the house he came to know that the said house was provided on rent to the present petitioner. There was also a Board in the name of M/S Chaudhary Traders, Sripur Khas, proprietor Rikki Prasad Jaysawal. Altogether 626 bags of fertilizers were seized and a case was lodged alleging that the petitioner was engaged in illegal business of sale of fertilizer which was in violation of the Fertilizer Control Order. Police conducted an enquiry and submitted as charge sheet against the petitioner, therefore the learned Sub Divisional Judicial Magistrate, has taken cognizance vide order dated 17.06.2013 and called upon the petitioner to appear. Being aggrieved by the order taking cognizance and issuance of summons, the petitioner has moved this Court invoking its inherent jurisdiction for setting aside the order taking cognizance.

Learned counsel for the petitioner submits that in fact the whole allegation of being engaged in illegal sale of fertilizer has no basis to stand. According to him, the petitioner is an authorized dealer in terms of Clause 8(3) of the Fertilizers Control Order, 1985. A certificate in Form-A2 has been enclosed as Annexure 2 to the present application to impress upon this Court that the



petitioner has an authorization to deal in the fertilizer.

It appears that while this case was taken up on 01.11.2013, a Co-ordinate Bench of this Court directed the learned Additional Public Prosecutor to file a counter affidavit and it was ordered that the learned Additional Public Prosecutor should verify the genuineness of the licence said to be issued by District Agriculture Officer, East Champaran, Motihari for which, the petitioner must furnish the copy of petition with annexures to the learned Additional Public Prosecutor. The further proceeding was stayed. At this belated stage though, a counter affidavit has come. An affidavit has been sworn by one Onkar Nath Singh, who is the opposite party as the District Agriculture Officer, East Champaran, Motihari. Paragraph 4 of the said affidavit reads as under:-

“That it is evident to mention here that Annexure 2 which is licence vide Authorization No. 256/2011-12 issued on 20.10.2011 issued by the District Agriculture Officer in favour of in the name and style of M/s Choudhary Traders is genuine and petitioner Ricki Prasad Jaishwal is proprietor of the said firm.”

It is further stated in the counter affidavit that the authorization has now been renewed till 31.03.2020. This Court



specifically called upon the learned Additional Public Prosecutor to point out as to whether there is any other material in the case diary which is available with him to controvert the stand taken by the District Agriculture Officer in the counter affidavit, the answer is in negative. Learned Additional Public Prosecutor submits that the charge sheet appears to have been submitted on the basis of some oral statements recorded in the case diary but the investigating agency has not taken any effort to find out as to whether or not this petitioner was authorized to deal in the fertilizer which were seized by the Block Agriculture Officer.

Having heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State and upon perusal of the records this Court is of the opinion that the very foundation of lodging the present case is not sustainable. The District Agriculture Officer has come out with an affidavit in support of Annexure 2 and therefore this Court can safely rely upon the said document in order to have a view that the petitioner was having due authorization to deal in the fertilizer. Therefore, the prosecution of the petitioner in the present case will only be an abuse of the process of the court.

In the aforesaid view of the matter, the application is



allowed. Order taking cognizance dated 17.06.2013 is hereby set aside.

(Rajeev Ranjan Prasad, J.)

Shashi.

AFR/NAFR	
CAV DATE	NA
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