

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17631 of 2014

Arising Out of PS.Case No. -120 Year- 2007 Thana -RAXAUL District-
EASTCHAMPARAN(MOTIHARI)

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1. Shree Khad Stores Through Proprietor Govind Sikaria, Bank Road, Raxaul.
2. Govind Sikaria @ Govind Kumar Sikaria S/o Late Purshottam Lal Sikaria R/o
Village + P.O. + P.S. Bank Road, Raxaul, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunil Kumar Panka, District Agriculture Officer-cum-Fertilizer Inspector,
Motihari, East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhuvneshwar Prasad, Adv.
For the State : Mr. A.H.M. Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-10-2017

1. Heard learned counsel for the petitioners and the State.

2. This petition has been filed for quashing the impugned order dated
27-04-2012 passed by learned Sub Divisional Judicial Magistrate, Raxaul at
Motihari in Raxaul P.S. Case No. 120 of 2007 by which and whereunder, the
learned Magistrate after holding inquiry, found prima facie case against the
petitioners under Section-7 of E.C. Act.

3. It has been submitted that cognizance order is bad in law. The
court below has not given any reason for differing with the final form submitted
by police. It has further been submitted that Section-11 of the E.C. Act lays down
that no court shall take cognizance of any offence punishable under Section-7 of
E.C. Act except on a report in writing of the facts, constituting an offence, made
by a person who is a public servant, as defined in Section-21 of the Indian Penal



Code. Counsel for the petitioner has relied upon a decision of this Hon’ble Court reported *in 2015(3) PLJR 62 (Girijesh Kumar Vs. The State of Bihar)*.

4. It has further been submitted that allegation has been made that the petitioner was not holding any valid licence for fertilizer shop but after inquiry, the District Agriculture Officer submitted a report and in that report, he has held that no irregularities have been found in the fertilizer shop of the petitioner. The police has after investigation on the basis of aforesaid report, submitted final form in the case vide Annexure-7.

5. From the impugned order, it appears that the court below has without assigning any reason differing with the final form submitted by the police found prima facie case u/S 7 of Essential Commodities Act against the petitioners.

6. In this manner, from perusal of the impugned order, this court finds that no reason has been assigned by the court below for differing with the final form. Moreover Section 11 of the Act clearly lays down that no court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

7. Therefore, the impugned order dated 27-04-2012 passed by learned Sub Divisional Judicial Magistrate, Raxaul at Motihari in Raxaul P.S. Case No. 120 of 2007 along with entire proceeding against the petitioners is hereby quashed.

8. Accordingly, this Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	17-10-2017
Transmission Date	17-10-2017

