

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34552 of 2012

Arising Out of PS.Case No. -87 Year- 2010 Thana –Benipatti District- MADHEPURA

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Shibu Mahto S/O Late Ramesh Mahto R/O Village - Dhakjari, P.S. Arer, District - Madhubani

.... Petitioner.

Versus

The State Of Bihar

.... Opposite Party.

with

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Criminal Miscellaneous No. 36573 of 2012

Arising Out of PS.Case No. -87 Year- 2010 Thana –Benipatti District- MADHEPURA

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1. Sheru Sah Son Of Ram Chandra Sah Resident Of Village Machharhata P.S. Danapur District Patna At Present Resident Of Behta Hat P.S. Benipatti District Madhubani.

2. Md. Faizullah Son Of Md. Ekramullah Resident Of Village Dhakjari P.S. Arer District Madhubani.

.... Petitioners.

Versus

The State Of Bihar.

.... Opposite Party.

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Appearance :

(In both cases) Manoj Kumar Jha,

For the Petitioner : Kumar Chandrashekhar (Advocates.)

For the State : Mr. Amit Kumar Rakesh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 31-08-2017

1. Both the above-said petitions arise out of the same
impugned order and hence, they are being heard and disposed off by
this common order.



2. Heard learned counsel for the petitioners and learned counsel appearing for the State.

3. Both these applications have been filed for quashing the order dated 03-02-2012 passed by learned Chief Judicial Magistrate, Madhubani in Benipatti P.S. Case No. 87 of 2010 by which, the learned Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima facie against the petitioners and took cognizance for the offence under Section-7 of the Essential Commodities Act.

4. It has been submitted on behalf of petitioners that there is no specific mention in the written report about the violation of Section-3 of Essential Commodities Act. Therefore, cognizance u/S 7 of Essential Commodities Act is not in accordance with law. Counsel for petitioners has further submitted that the seized rice was not control commodity. It was free sale commodity. The rice was purchased by Sheru Sah from M/S Shankar Udyog Bhandar, Pandaul, Madhubani and the same was transported by the vehicle bearing registration No. BR-7G/2272 which shows that Sheru Sah was a bona fide purchaser of the seized rice and the same was not the rice of FCI. It is alleged in the written report that Sheru Sah and the Faizullah disclosed before the police that rice loaded on the truck, belongs to FCI and they are bringing those rice from Shivu Mahto i.e. petitioner of Cr. Misc. No. 34552 of 2012.



5. Counsel for petitioners has referred to Annexure-3 which is the order dated 10-03-2011 passed by the court below by which seized rice has been released in favour of Sheru Sah on the ground that he was the bona fide purchaser of the rice from M/S Shankar Udyog Bhandar, Pandaul, Madhubani. There is allegation in the written report, filed by Block Supply Officer that the truck bearing registration No. BR-7G/2272 was intercepted and was found loaded with 70 bags of rice in the bag of FCI and two persons namely, Sheru Sah and Faizullah, i.e. driver of the vehicle, were apprehended and they disclosed that they are bringing those rice belonging to FCI from Shivu Mahto.

6. It is an admitted position that rice is not a control commodity. It is also apparent from Annexure-3 that the seized rice was released in favour of Sheru Sah by the learned Chief Judicial Magistrate, Madhubani by order dated 10-03-2011 on the ground that he is a bona fide purchaser of those rice.

7. Counsel for petitioners has relied on decisions of our own Hon'ble High Court reported in **2009(3) PLJR 822 (Hari Narain Mahto Vs State of Bihar)** and **2011 (3) PLJR 306 (Satrudhan Saha Vs State of Bihar & Anr.)**. The Hon'ble Court has held in both the judgments that Section-7 of the E.C. Act deals with the persons who contravene any order made under Section-3 of the E. C. Act thereof



but when the F.I.R. does not disclose which Order made under Section-3 of the E.C. Act has been contravened no prosecution lies.

8. In the instant case, there is no any specific proof that those rice were carried for the purpose of black marketing. The rice has been released by the court below in favour of Sheru Sah after treating him bona fide purchaser. There is no contravention of any order under Section-3 of the E.C. Act.

9. Therefore, the impugned order passed by the court below taking cognizance against the petitioners is not in accordance with law and continuance of the criminal proceeding against the petitioners will be abuse of the process of court.

10. Accordingly, the impugned order dated 03-02-2012 passed by learned Chief Judicial Magistrate, Madhubani in Benipatti P.S. Case No. 87 of 2010 as well as entire criminal proceeding against the petitioners is hereby quashed.

11. Both these Cr. Misc. Applications are allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	12-09-2017
Transmission Date	12-09-2017

