

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28024 of 2014

Arising Out of PS.Case No. -185 Year- 2012 Thana -MAJORGANJ District- SITAMARHI

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Jai Prakash Agrawal, Son of Sitaram Prasad, resident of Village - Bajpatti, P.S.-
Bajpatti, District - Sitamarhi, proprietor of M/s Bihar Traders, Sitamarhi.

.... Petitioner.

Versus

1. The State of Bihar.
2. The Sub-divisional Agriculture Officer (General), Sitamarhi West, District
Sitamarhi. Opposite Parties.

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Appearance :

For the Petitioner : Mr. Vijay Anand, Advocate.
Mr. D.N. Tiwari, Advocate.

For the State : Mr. Nityanand Tiwari, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 19-07-2017

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 17.02.2014 passed by the learned C.J.M., Sitamarhi, whereby the learned Magistrate has taken cognizance under Section 7 of the Essential Commodities Act against the petitioner and others.

2. It has been submitted by learned counsel for the petitioner that the petitioner is a wholesale dealer of fertilizer and holds licence for dealing in fertilizer bearing licence no.9 F of 1984. It is valid up to 31.03.2014. In course of business he sold 600 bags of fertilizer vide two separate cash memos to M/s Kisan Khad Bhandar, Majorganj who is also holder of retail fertilizer licence bearing licence no.84P/2005, which is valid up to 20.11.2014. Though the licence of the petitioner was cancelled



by the authority but the same has been restored by the Joint Director, Agriculture on appeal. It has further been submitted by learned counsel for the petitioner that the aforesaid fertilizer was sent to the godown of the aforesaid purchaser by trucks. In the meantime, the same was apprehended and seized by the informant. The informant of the case, the Sub-divisional Agriculture Officer (General), Sitamarhi West, opposite party no.2 did not turn up, despite service of notice.

3. From perusal of the record, it appears that Majorganj P.S. Case No.185 of 2012 was instituted under Section 7 of the E.C. Act against the petitioner and others on the basis of the written report of the Sub-divisional Agriculture Officer (General), Sitamarhi West with the allegation in succinct that on tip off he inspected the two trucks parked in the Majorganj Bazar loading 600 bags of fertilizers. In course of check, the driver of the truck, namely, Bindeshwar Yadav divulged that the fertilizer was brought by Kisan Khad Bhandar, Majorganj and the same was being transported from Narayanpur Rack. On demand, the invoice of Bihar Traders, Sitamarhi, permit of the truck and document of transport agency was produced. The petitioner has filed the invoices of the aforesaid manure and licence of Kisan Khad Bhandar and M/s Bihar Traders in buttress of his case.



4. From perusal of the aforesaid documents, it appears that the licence in favour of M/s Bihar Traders was for dealing with the business of fertilizer, valid up to 31.03.2014. Likewise the licence of M/s Kisan Khad Bhandar for the said business was valid up to 20.11.2014, i.e. later to date of occurrence. The invoices filed by the petitioner indicate that the said Bihar Traders had sold out the aforesaid manure to Kisan Khad Bhandar.

5. Thus, from perusal of the aforesaid documents, it appears that the aforesaid manure was purchased by Kisan Khad Bhandar from the Bihar Traders, Sitamarhi and was being transported by the aforesaid truck. Hence, no case under Section 7 of the Essential Commodities Act appears to be made out against the petitioner so the impugned order of cognizance taken against the petitioner is quashed.

6. Accordingly, this application is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.07.2017
Transmission Date	21.07.2017

