

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30960 of 2013

Arising Out of PS.Case No. -293 Year- 2009 Thana -KOTWALI District- MUNGER

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1. Ajay Kumar Mishra S/O Late Rama Kant Mishra Resident Of Village-
Dumaria, P.S- Godda, District- Goddha (Jharkhand)

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Ms. Sushmita Mishra

For the Opposite Party/s Mr. Anil Kumar Singh-I(App)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

05/ 24.05.2017 Heard learned counsel for the petitioner as well as learned
Addl. Public Prosecutor for the State.

Petitioner has prayed for quashing the order dated 06.03.2013 passed by the Sub divisional Judicial Magistrate, Munger in Kotwali P.S. Case no. 293/2009 by which he took cognizance for the offences punishable under sections 467, 468, 471, 120B of the Indian Penal Code and section 7 of the Essential Commodities Act against the petitioner and others.

Petitioner was working as Block Supply Officer at the relevant time and SDO, Sadar, Munger lodged the above stated Kotwali P.S. Case no. 293/2009 against the petitioner and others making allegation that the petitioner in connivance with other accused made interpolation in the record and sold wheat in black market. Police after investigation submitted charge sheet against others whereas the petitioner was not sent up for trial as no case was found



against him by the police. However, learned court below, differed with the findings of the police and on the basis of materials came against the petitioner at paragraphs 5, 18, 21, 24, 28, 30, 43 and 55 of the case diary, took cognizance against him also passing the impugned order dated 06.03.2013.

Learned counsel appearing for the petitioner submits that the learned court below wrongly took cognizance against the petitioner because there was no material against the petitioner in the aforesaid paragraphs of the case diary. He further submits that so far as cognizance of the offence under Essential Commodities Act is concerned, learned court below has got no power to take cognizance without prior sanction. He refers to section 15A of the Essential Commodities Act, 1955 which says that if a person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no court shall take cognizance of offence except with the previous sanction of the Central Government as well as State Government as the case may be.

Learned counsel for the petitioner further submits that admittedly, at the time of passing of the impugned order, there was no previous sanction of the prosecution against the petitioner who was public servant at the relevant time and offence is alleged to have been committed in discharge of official duty.

No doubt, Section 15A of the Essential Commodities Act restricts the court to take cognizance without prior permission of sanction of the prosecution but now, it has already been set at rest in



several decisions that sanction order can be produced at any stage of the trial before pronouncement of the judgment. So far as materials collected against the petitioner in course of investigation are concerned, it is not proper stage to make any comment on the aforesaid materials on the basis of which the court below has taken cognizance of the offences and, in my view, the petitioner may raise the plea before the trial court at the time of framing of the charge.

On the basis of the aforesaid discussions, this quashing petition stands disposed of giving liberty to the petitioner to raise the above stated plea before the trial court at the time of framing of the charge and if the petitioner does so, learned trial court shall consider prayer of the petitioner on the basis of materials available on the case diary and shall pass appropriate order in accordance with law.

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(Hemant Kumar Srivastava,J)

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