

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35168 of 2013

Arising Out of PS.Case No. -181 Year- 2008 Thana -ROSERA District- SAMASTIPUR

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Ashutosh Kumar Lakhotia @ Ashutosh Lakhotia S/O Late Gauri Shankar Lakhotia, Prop. of M/S Mahadev Memraj, Rosera Bazaar, P.S- Rosera, District- Samastipur.

.... Petitioner

Versus

1. The State of Bihar
2. Block Agriculture Officer- cum- Fertiliser Inspector, Rosera, P.S- Rosera, District- Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate

For the Opposite Party/s : Mr. Anil Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT

7 09-05-2017

This application under Section 482 Cr.P.C. has been filed for quashing the order dated 12.6.2013 passed by learned Additional Chief Judicial Magistrate, Rosera, Samastipur in Rosera P.S.Case No. 181 of 2008 by which cognizance of the offence has been taken under Section 7(1)(a)(i)(c) of the Essential Commodities Act, which is at present pending in the court of learned Sub-Divisional Judicial Magistrate, Rosera.

It appears that earlier petitioner had also moved this Court for quashing of First Information Report in this case, however the same was disposed of with certain observations.

Allegation as per FIR is that on 18.12.2008 while the authorities reached at the business premises of the petitioner, the petitioner, after locking his shop, fled away, as such, this caused



obstruction in inspection, which is in violation of Section 28(1)(c) of the Fertilizer Control Order, 1985.

Police after investigation submitted final form not finding case true against the petitioner. However, learned ACJM, Rosera, Samastipur has taken cognizance against the petitioner under Section 7(1)(a)(i)(c) of the Essential Commodities Act.

As the case diary and entire order-sheet of the court below are available, as such, this case is being disposed of at the admission stage itself.

The petitioner has challenged the aforesaid order firstly on the ground that no case is made out under E.C. Act against him and secondly, there is no such complaint under the E.C. Act, hence cognizance under the aforesaid section is bad in law.

However, in the present case, allegation against the petitioner is that when the authorities had reached at his shop for inspection he fled away locking his shop and Order 28(1)(a)(c) of the Fertilizer (Control) Order, 1985 clearly provides as follows :

“28. Powers of Inspectors.- (1) An inspector may, with a view to securing compliance with this Order,-

(a) require any manufacturer, importer, pool handling agency, wholesale dealer or retail dealer to give any information in his possession with respect to the manufacture, import, storage and disposal of any fertilizer manufactured or, in any manner handled by him.



(c) enter upon and search any premises where any fertilizer is manufactured or stored or exhibited for sale, if he has reason to believe that any fertilizer has been or is being manufactured, sold offered for sale, stored, exhibited for sale or distributed contrary to the provisions of this Order.”

Further Section 3 (2)(a) of the Essential Commodities Act, 1955 provides as follows :

“3. Power to control production, supply, distribution, etc. of essential commodities.- (2)

Without prejudice to the generally of the powers conferred by sub-section (1), an order made thereunder may provide : (a) for regulating, by licences, permits or otherwise, the production or manufacture of any essential commodity.”

“(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters.

(i) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order.”

Section 7 of E.C. Act provides for Penalties, which is as follows :

“S. 7. Penalties- (1) If any person contravenes any order made under section 3- (a) he shall be punishable- (i) in the case of an Order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and (ii) in the case of other Order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:



Provided that the Court may for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.”

No doubt, in the present case, cognizance has been taken under Section 7(1)(a)(i) and (c) of the E.C. Act and on perusal it appears that there is no section 7(1)(a)(i) and (c). However, it is established principle that cognizance of the offence is taken, not of the section and, as such, as stated above, in the present case there is clear violation of Order 28 (1)(a) and (c) of the Fertilizer (Control) Order, 1985 as well as Section 3(2)((h)(i) of the E.C.Act and, as such, there is no force in the argument of learned counsel for the petitioner that no offence is made out against him under the E.C. Act.

Submission of learned counsel for the petitioner is also that Block Development Officer was not empowered for search and seizure under the Fertilizer (Control) Order and in this connection he has drawn my attention towards Order 27A of the Fertilizer (Control) Order, 1985, which was inserted after amendment by Notification dated 16.4.1991, which provides Qualification for appointment of Fertilizer Inspector and Order 27B provides for Qualifications for appointment of Inspectors for Bio-fertilizer and Organic Fertilizer and it has been submitted that in terms of Order 27A and the proceeding initiated on the basis of



the aforesaid report is bad in law.

However, a Full Bench of this Court in the case of **Rajan Kumar vs. State of Bihar : 2016(4) PLJR 1098** has already set at rest the above point and it is held that cognizance can be taken on the basis of complaint by a public servant.

Submission has also been made on behalf of the petitioner that for violation of Section 3(2)(h)(i) and punishment under Section 7(i)(a)(i) of the E.C. Act is one year and, as such, order taking cognizance is hit by Section 468 of the Code of Criminal Procedure, hence bad in law.

Section 468 of the Code of Criminal Procedure provides as follows :

“S. 468. Bar to taking cognizance after lapse of the period of limitation.- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.”

Section 469 Cr.P.C. provides the commencement of the period of limitation, which reads as follows :

“S. 469- Commencement of the period of limitation.- (1) The period of limitation, in relation to an offender, shall commence.-

- (a) on the date of the offence; or
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such



- offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
- (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
- (2) In computing the said period, the day from which such period is to be computed shall be excluded.”

Section 470 Cr.P.C. provides for exclusion of time in certain cases and Section 472 Cr.P.C. provides for continuing offence. Section 473 Cr.P.C. provides for extension of period of limitation in certain cases.

On plain reading of the aforesaid sections it is clear that for the offence which is punishable for a maximum period of one year the limitation provided under Section 468 Cr.P.C. is one year though the law maker has provided for extension of period of limitation in certain cases on the court being satisfied of the facts and circumstances of the case that delay is properly explained and that is necessary to show the interest of justice but in the present case no application has been filed by police for extension of period of limitation nor any reason has been assigned by learned court below for not taking cognizance within a period of one year.

Admittedly, as per FIR, date of occurrence is 18.12.2008. Photo copy of order-sheet called for from the court below shows that the final form has been submitted on 4.7.2011 and cognizance



has been taken on 12.6.2013. As such, cognizance has been taken much after the period provided under Section 468 Cr.P.C. and the order taking cognizance has not assigned any reason for taking cognizance after statutory period provided under section 468 Cr.P.C.

Considering the discussions made above, I find force in the argument of learned counsel for the petitioner and so far order taking cognizance of learned ACJM is concerned, the same is hit by Section 468 Cr.P.C. and, as such, it is not sustainable in the eye of law.

Accordingly, this application is allowed. The order taking cognizance dated 12.6.2013 passed by learned ACJM, Rosera, Samastipur is quashed.

(Vinod Kumar Sinha, J)

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