

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35272 of 2015

Arising Out of PS.Case No. -178 Year- 2011 Thana -ROSERA District- SAMASTIPUR

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Ashwani Pangiar, S/o Late Ram Narayan Pangiar, Resident of Village - Rosera Bazar, P.S. - Rosera, District - Samastipur.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. D.N. Tiwari, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-01-2018

Heard Mr. D.N. Tiwari, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned counsel for the State.

2. By invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr. P.C.'), the petitioner seeks quashing of the order dated 23.03.2014/24.03.2014 passed by the learned Sub Divisional Judicial Magistrate, Rosera, Samastipur in Rosera P.S. Case No.178 of 2011/Tr. No.3388 of 2015/Tr. No.713 of 2015 by which he has taken cognizance of the offence punishable under



Section 7(1)(a)(i)(c) of the Essential Commodities Act (for short 'E.C. Act') against the petitioner.

3. The prosecution case, in brief, inter alia, according to the written report of the Block Agriculture Officer, Rosera is that on 20.10.2011, the Block Development Officer, Rosera, Circle Officer, Rosera and the informant inspected the fertilizer shop of the petitioner and found irregularity in the stock register, cash memo, distribution register and display board and, thereafter, the shop of the petitioner was sealed.

4. In view of the aforesaid allegations made, an FIR was instituted under Section 7(1)(a)(i)(c) of the E.C. Act against the petitioner and investigation was taken up.

5. On completion of investigation, the police submitted their report under Section 173 of the Cr. P.C. vide charge-sheet No.9/12 dated 30.01.2012 holding the prosecution case to be true against the petitioner under Section 7(1)(a)(i)(c) of the E.C. Act vide order dated 23.03.2014/24.03.2014.

6. Assailing the aforesaid order dated 23.03.2014/24.03.2014, learned counsel for the petitioner submitted that the first information report itself was recorded under a wrong provision of law and even the charge sheet was submitted under the same provision. The said does not find place under the E.C. Act. He



submitted that even the learned Magistrate failed to appreciate this fact at the time of taking cognizance of the offence and he mechanically took cognizance of the offence under a wrong provision of law i.e. 7(1)(a)(i)(c) of the E.C. Act. He submitted that from perusal of the FIR, it would be manifest that the allegation levelled against the petitioner is that the books of account and/or display board were not maintained properly i.e. there was difference in the fertilizer found on physical verification and stock mentioned in the stock register and/ or display board. The further allegation against the petitioner is that the cash memo was not maintained up-to-date. He submitted that even if it is accepted that the books of account was not maintained up-to-date by the petitioner, no *mens rea* can be attributed on the part of the petitioner. Even if the allegations made in the FIR are taken to be true on their value for non-maintenance of books of account, the offence would be punishable under Section 7(1)(a)(i) and the maximum punishment prescribed for violation of Section 3(2)(h)(i) of the E.C. Act would be one year. He submitted that as the offence alleged occurred on 20.10.2011 and the cognizance has been taken on 23.03.2014/24.03.2014, the order of cognizance is barred by law of limitation in terms of Section 468 of the Cr. P.C.

7. In support of his submission, he has placed



reliance on the decisions of this Court in **Jhopri Sah vs. State of Bihar [1980 BLJR 143]** and **Ram Babu Prasad vs. State of Bihar [(2017) 4 PLJR 856]**.

8. Mr. Jharkhandi Upadhyay, learned counsel for the State admitted that the present case is squarely covered by the judgments of this Court in **Jhopri Sah** (supra) and **Ram Babu Prasad** (supra)

9. I have heard learned counsel for the parties and perused the record.

10. Learned counsel for the petitioner has rightly contended that the police registered the FIR and submitted charge-sheet under wrong provision of law i.e. Section 7(1)(a)(i)(c) and even the learned Magistrate mechanically took cognizance of the offence under the said provision, which does not find mention in the statute.

11. The offence alleged would attract Section 7(1)(a)(i) of the E.C. Act, which reads as under:-

“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”.

12. Section 3(2)(h) (i) reads as under:-

“3(2). Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide:

(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 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.”

13. The maintenance of account books and their production for inspection are squarely covered by the provisions (h) & (i) of Sub-section 2 of Section 3 of the E.C. Act. For a breach of the provisions of Section 3 sub-section (2) Clause (h) and (i), the license holder is punishable under Section 7(1)(a)(i) of the E.C. Act with imprisonment for a term which may extend to one year.

14. Admittedly, the offence alleged took place on



20.10.2011 and the cognizance has been taken on 23.03.2014/24.03.2014 after expiry of two years and, as such, the order taking cognizance is clearly barred by law of limitation as enumerated in Section 468(2) of the Cr. P.C.

15. This aspect of the matter was considered by this Court in **Jhopri Sah** (supra) and **Ram Babu Prasad** (supra). The principles laid down in case of **Jhopri Sah** (supra) and **Ram Babu Prasad** (supra) applies with full force in the present case.

16. Accordingly, the entire proceedings of Rosera P.S. Case No.178 of 2011 including the impugned order dated 23.03.2014/24.03.2014 passed by the learned Sub Divisional Judicial Magistrate, Rosera, Samastipur is set aside.

17. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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