IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37172 of 2016

Arising Out of PS.Case No. -135 Year- 2005 Thana -BIBHUTIPUR District- SAMASTIPUR

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Ashok Kumar Poddar Son of Sri Yogendra Podar, Proprietor of M/S A.K. Corpooration, Singhia Ghat, Resident of Singhia Ghat, P.S- Bibhutipur, District- Samastipur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Surendra Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-05-2018

Heard Mr. Sanjeet Kumar, learned counsel for the petitioner and Mr. Surendra Prasad Singh, learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing of the order dated 12.02.2014 passed by the learned Sub-Divisional Judicial Magistrate, Rosera in Bibhutipur P.S.Case No. 135 of 2005 by which cognizance has been taken for the offences punishable under Sections 409, 420 of the Indian Penal Code (for short 'IPC') and Section 7 of the Essential Commodities Act (for short 'E.C.Act') and the petitioner has been summoned to face trial.

3. The prosecution case in brief, according to the written

report dated 20.07.2005 submitted by one Laxmi Ram, District Agriculture Officer, Samastipur, is that on the direction of the District Magistrate, Samastipur a search was made by the Sub-Divisional Agriculture Officer, Rosera and Block Supply Officer, Khanpur in the shop of the petitioner, which was running in the name and style of M/s A.K. Corporation, Singhia Ghat, Bibhutipur, and at that time his younger brother Bansal Kumar was present there. In course of search, it transpired that the display board was not up-to-date and cash memo was not shown to the inspecting team. The physical verification of the stock with the stock register made available to the inspecting team by the younger brother of the petitioner suggested that there was discrepancy in the stock register and the quantity of the fertilizer kept in the shop. On the basis of these allegations, the informant opined that there is clear violation of Fertilizer Control Order, 1985 and accordingly a request was made to institute an FIR and investigate the same under the provisions of the Fertilizer Control Order, 1985.

4. In view of the aforestated written report submitted by the informant Laxmi Ram, Bibhutipur P.S.Case No. 135 of 2005 was registered under Sections 409, 420 of the IPC and Section 7 of the E.C. Act and investigation was taken up. On completion of investigation a report under Section 173(2) of the Cr.P.C. was submitted before the court of Magistrate holding therein that the case

was registered due to ‘mistake of fact’ vide final report no.222/06 dated 28.08.2006. However, differing with the police report, learned Sub-Divisional Judicial Magistrate, Rosera vide impugned order dated 12.02.2014 took cognizance of the offences under Sections 409, 420 of the IPC and Section 7 of the E.C. Act and summoned the petitioner to face trial.

5. It is submitted by the learned counsel for the petitioner that even if the entire allegations made in the FIR are believed to be true, none of the ingredients of the offences punishable under Sections 409 and 420 of the IPC would be attracted. It is submitted that the allegations leveled against the petitioner are that books of accounts and/or display board were not maintained properly and there was discrepancy in the fertilizer found on physical verification of stock mentioned in the stock register. It is submitted that even if it is accepted that the books of accounts were not maintained up-to-date by the petitioner, no mens rea can be attributed on the part of the petitioner. The allegations made in the FIR for non-maintenance of books of accounts would constitute offence punishable under Section 7(1)(a)(i) of the E.C. Act and the maximum punishment prescribed for violation of the said offence would be one year. It is submitted that the alleged occurrence of offence took place on 20.07.2005 whereas cognizance has been taken on 12.02.2014 i.e., much beyond

the period of limitation prescribed under Section 468 of the Cr.P.C. In support of his submission, he has placed reliance on the decisions of this Court in ***Jhopari Sao vs. State of Bihar [1980 BLJR 143]*** and ***Ram Babu Prasad vs. State of Bihar [(2017) 4 PLJR 856]***.

6. Mr. Surendra Prasad Singh, learned Additional Public Prosecutor appearing for the State submitted that it is true that there is delay in taking cognizance of the offence, however, the same would be of no consequence as the learned Magistrate has not only taken cognizance of the offence punishable under Section 7 of the E.C. Act but also for the offences punishable under Sections 409 and 420 of the IPC. According to him, Section 409 of the IPC prescribes punishment with imprisonment for life and for such offence no limitation is prescribed for taking cognizance.

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

8. It is not a case in which the petitioner was entrusted with any property by the informant or the State. In absence of any entrustment with property there cannot be a case of criminal breach of trust. It is well settled in law that in order to attract the ingredients of Section 409 of the IPC, there must be entrustment with property of which the accused is duty bound to account for and committal of criminal breach of trust. In absence of the aforesaid ingredients,

cognizance could not have been taken for the offence under Section 409 of the IPC. Similarly, there is no allegation of cheating and thereby dishonestly inducing a person deceived to deliver any property. In absence of any fraudulent or dishonest inducement of a person to deliver any property, the learned Magistrate could not have been cognizance of the offence punishable under Section 420 of the IPC. Thus, it has rightly been submitted by the learned counsel for the petitioner that there was no material on record even on admitted facts to constitute the offences punishable under Sections 409 and 420 of the IPC.

9. It has rightly been submitted by the learned counsel for the petitioner that the allegation made in the FIR, even if taken on its face value, would at best constitute an offence punishable under Section 7(1)(a)(i) of the E.C. Act, which reads as under :-

> "**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."

10. As far as maintenance of books of accounts and their production for inspection are concerned, they are covered by the provisions of clauses (h) & (i) of sub-section (2) of Section 3 of the

E.C. Act, which read 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."

11. For a breach of the provisions of Section 3(2)(h) & (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.

12. Admittedly, the offence alleged took place on 20.07.2005 and the order taking cognizance was passed on 12.02.2014 that is more than eight years of the alleged date of offence.

13. Section 468 of the Cr.P.C. deals with delay in taking cognizance after lapse of the period of limitation. Section 468(2)(b) of the Cr.P.C. prescribes that no court shall take cognizance of an offence after one year if the offence is punishable with imprisonment for a term not exceeding one year. Since Section 7(1)(a)(i) of the E.C. Act prescribes punishment which may extend to one year, the period of limitation in terms of Section 468(2)(b) of the Cr.P.C. would be

one year. That being so, the learned Sub-Divisional Judicial Magistrate should not have taken cognizance of the offence after expiry of one year from the date of the alleged offence. I do find that the case of the petitioner is squarely covered by the decision of this Court in ***Jhopari Sao*** (Supra).

14. In that view of the matter, the impugned order dated 12.02.2014 passed by the learned Sub-Divisional Judicial Magistrate, Rosera in Bibhutipur P.S.Case No. 135 of 2005 is hereby quashed.

15. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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