

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2245 of 2017

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Sandip Kumar Jaiswal @ Sandip Jaiswal, son of Sri Paras Prasad Jaiswal,
resident of Gunda Chowk, Bageshwari Asthan, Gulab Bag, P.S.- Sadar,
District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Purnea.
4. The District Magistrate, Purnea.
5. The Sub Divisional Officer, Sadar, Purnea.
6. The District Supply Officer, Purnea.
7. The Block Supply Officer, Purnea (East).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Adv.
Mrs. Arti Kumari, Adv.

For the Respondent/s : Md. Harun Quameshri, AC to SC 1.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 26-07-2018 Earlier vide order dated 16.05.2018, this Court has already directed for release of the rice in question. So far as, prayer for quashing of the First Information Report giving rise to Purnea Sadar P.S.Case No. 388/2017 is concerned, learned counsel for the petitioner submits that the rice is not a controlled item. It is submitted that the trade of rice is not being regulated by any licence and the requirement earlier existing prior to the year 2002 in this regard have already been withdrawn.

Learned counsel submits that the petitioner is a trader, he deals in sale and purchase of rice and, therefore, he cannot be prosecuted for the offences as alleged under Section 7 of



the Essential Commodities Act. In this regard, the petitioner relies upon Annexure 2, which is a Tax Invoice of one Manorma Rice Mill, Kumharpatti, Chanpatiya, West Champaran (Bihar), showing purchase of rice in question in the name of Jaiswal Trading.

Learned counsel for the petitioner has relied upon the judgment of a learned Coordinate Bench of this Court in Criminal Miscellaneous No. 15437 of 2014, wherein the learned Coordinate Bench has, having considered a similar case, quashed the prosecution of the petitioner in the said case. Learned counsel has also further relied upon another learned Coordinate Bench judgment of this Court in the case of **Shriram Rai & Anr. Vs. the State of Bihar and Ors.** reported in **2006 (1) PLJR 504** wherein, in similar circumstance, where 300 bags of rice were seized alleging that those were being brought from Gopalganj and Rohtas for black marketing. The learned Coordinate Bench of this Court took note of the judgment of this Court in the case of **Santosh Kumar vs. State of Bihar, [1990 (2) PLJR 520]** and **Tarapado Ghosh and Ors. vs. State of Bihar, [1990(2) PLJR 602]** in Paragraph Nos. 3 and 4 of its judgment which are noted hereunder for ready reference:-

“3. Mr. Y.V.Giri, Senior Advocate, appearing on behalf of the petitioners contends that no order made under Section 3 of the Essential Commodities Act restricts movement of rice from one place to another and, as such, petitioners cannot be said to have violated any order made under the aforesaid provision to bring



the act within the mischief of Section 7 of the Essential Commodities Act. In support of his submission he has placed reliance on a Division Bench Judgment of this Court in the case of Santosh Kumar vs. State of Bihar, [1990 (2) PLJR 520] and my attention has been drawn to paragraph 9 of the judgment, which reads as follows:-

“It is painful to note that the authorities who are the custodians of law and order are not acquainted with the latest position of law. The said Movement Control Order for the violation of which the petitioner has been put to harassment, was rescinded as far back as on 30th September, 1977. In that view of the matter the entire prosecution seems to be without any legal foundation and it is fit to be quashed at this stage.”

4. Reliance has also been placed on a decision of this Court in the case of Tarapado Ghosh and Ors. vs. State of Bihar, [1990(2) PLJR 602] and my attention has been drawn to the following passage from paragraph 5 of the judgment:-

“The Bihar Foodgrains (Movement Control) Order, 1957 had been in operation for several years but this Control Order was rescinded with effect from first day of October, 1977 by the Central Government’s Notification No. S.O. 696 (E) 30th September, 1977. This fact is accepted by the learned State Counsel. Therefore, admittedly during the time of occurrence i.e. April to June, 1978 there was no control Order under the Act to restrict the movement of foodgrains from Bihar to any outside place. It follows, therefore, that if pulses were booked from any place in Bihar, which in the present case is Chapra, to any destination outside the State no offence arises on this account.”

This Court has held that no case was made out against the petitioner for the offences alleged under Section 7 of



the Essential Commodities Act.

On the other hand, learned counsel representing the State has repeated the same old argument which were taken note of by this Court in its earlier order while quashing the order for release of the rice in question.

Having heard learned counsel for the petitioner and learned counsel representing the State, this Court finds that the judicial pronouncement on the subject are also supporting the pleadings of the petitioner and this Court, while going through those judicial pronouncements, does not find any reason to differ with the views taken by the learned Coordinate Bench. This Court is of the considered opinion that the F.I.R, being Purnea P.S. Case No. 388/2017, registered for the offences under Section 7 of the Essential Commodities Act and Section 420 of the Indian Penal Code, is liable to be quashed and it is, accordingly, quashed.

This writ application stands allowed.

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

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