IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2567 of 2017

Arising Out of PS.Case No. -21 Year- 2017 Thana – Sabour (Goradih) District- BHAGALPUR

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Puran Sah, Son of Late Sukdeo Sah, Resident of Village- Nadiama, P.S.- Goradih, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The District Magistrate, Bhagalpur.
4. The Senior Superintendent of Police, Bhagalpur.
5. The Block Supply Officer, Goradih Block, District- Bhagalpur.
6. The Officer in Charge (S.H.O), Goradih P.S., District- Bhagalpur.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Anil Kumar Singh, Adv.
For the Respondent/s : Mr. Anup Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
Date: 31-08-2018

Heard learned counsel for the petitioner and the State.

2. In this writ application the following prayers have been made :-

"(i) For issuance of writ in the nature of certiorari to quash the order dated 4.9.2017 passed by the Court of sessions Judge, Bhagalpur in cr Rev No 123 of 2017 by which learned Sessions Judge has been pleased to pass an order holding therein that the court is not require any interference with the order of S.D.J.M, Bhagalpur dated 19.6.2017 passed in connection with Sabour (Goradih) P.S Case no 21/2017 and rejected the petition of the petitioner for release of seized grains on the ground that a confiscation proceeding is pending

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before the District Magistrate, Bhagalpur relating to the said seized grains.

(ii) For issuance of writ in the nature of mandamus commanding and directing the respondents concerned to release the seized grains(rice) in favour of the petitioner as he is not named in the F.I.R. and seized grains are his own produced grains for the purpose of his business and not belonging of Control shop as alleged.

(iii) For holding and declaration that seized grains are not of Control Shop, rather it is own purchased by the petitioner for the purpose of business.

(iv) *And/or pass such other order or orders as deem fit and proper in the interest of justice."*

3. On going through the impugned order dated 04.09.2017 passed by learned Sessions Judge, Bhagalpur in Criminal Revision No. 123 of 2017 it appears that during the pendency of the said revision application, a confiscation proceeding was initiated by the District Magistrate, Bhagalpur giving rise to Misc. EC 6A Case No. 107/2017-18 and in the said confiscation proceeding the District Magistrate directed vide his order dated 13.07.2017 a copy of which has been brought on record with the counter affidavit filed on behalf of respondent no. 4 that the Block Supply Officer, Goradih shall get sold the seized rice to the public distribution shops and the amount received through such sale shall be deposited in the district treasury.

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He also directed that the seized vehicle (Pick Up No. BR-10G-7753) shall be kept safely in the police station and a report with regard to the ownership of the Pick Up van shall be obtained from the office of B.D.O., Bhagalpur. In the present writ application the petitioner claims that he is the owner of the rice in question and is entitled to get release of the same.

4. Learned counsel for the petitioner argues that the seizure in question was wholly illegal as it would appear from the materials available on the record that one Ramesh Mandal who claims that he is the *Sarpanch* of Gram Panchayat Nadiama had intercepted the Pick Up van with loaded rice in the night of 22.01.2017 at 10:00 PM. He claimed that he had received an information that the public distribution shop dealer Ganesh Prasad Sah was stealthily going to sale the rice of the ration shop by way of committing theft. It is submitted that the vehicle in question was not intercepted by the police or the Block Supply Officer and even though the said Ramesh Mandal claimed that he had intercepted the vehicle with loaded rice on 22.01.2017 in the night hour at 10:00 PM, the written information in this regard was given to the Officer In-charge of the Goradih Police Station vide his letter dated 24.01.2017 and the FIR in question has been lodged on 30.01.2017 under Section 7 of the Essential Commodities Act only when the Block Supply Officer, Goradih

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lodged the written complaint with the Officer In-charge of Goradih O.P. stating therein that Ramesh Mandal had intercepted the vehicle which was loaded with rice packed in plastic bags and those bags were 73 in numbers, all the bags were having more than 60 Kg. of rice. He claimed that the sample of the rice gives an impression that it is a government subsidized rice. The Block Supply Officer claimed that by indulging in stealthily attempting to take away the rice during night hours it appears that the vehicle owner had been indulging in sale of rice in black market and he raised the suspicion that the dealer might have maintained the register without actually supplying the rice to the beneficiaries.

In his written report addressed to the Officer In-charge of the concerned O.P. the Block Supply Officer has mentioned that in course of inspection of the public distribution shop of Ganesh Sah on 25.01.2017 the rice and wheat stored in the shop were as per the register maintained, thus he did not find any discrepancy in the wheat and rice available in the shop and register maintained in that shop.

5. It is the case of the petitioner that he is the owner of the rice and had been taking the rice for sale in the market but Ramesh Mandal in convince with the police authorities intercepted the vehicle and without taking any step in accordance with law the

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vehicle and the rice were lying in possession of Ramesh Mandal. The F.I.R. was lodged only on 30.01.2017. Block Supply Officer had conducted inspection of the public distribution shop of Ganesh Sah but no discrepancy was found in the shop. A first information report was lodged on mere baseless suspicion, more over during the pendency of the revision application itself the rice was sold by the District Magistrate without giving any opportunity to the petitioner. The order to sale the rice was taken in haste without there being any legal and valid reason. Rice cannot be said to be a perishable item, thus the power conferred upon the District Magistrate under Section 6(2-A) of the E.C. Act, 1955 has not been exercised in accordance with law.

6. On the other hand, learned counsel representing the State submits that this writ application as framed cannot proceeds in the facts and circumstances of the case. It is submitted that the rice in question has already been sold to the public distribution shop as per order dated 13.07.2017 passed by the District Magistrate, Bhagalpur. The order of the District Magistrate has been sought to be defended citing provisions contained in Section 6 of the Essential Commodities Act, 1955 (hereinafter referred to as the 'E.C. Act').

7. It is submitted that in such circumstances where the goods were perishable in nature and there likely to decay over the

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period, the District Magistrate has got power to pass an order for sale of such goods and in this case the power exercised by the District Magistrate is in accordance with law. It is further submitted that the confiscation proceeding and the order dated 13.07.2017 passed by the District Magistrate, Bhagalpur has not been challenged by the petitioner in the present writ application, more over there is no *prima facie* proof of ownership of rice in favour of petitioner and, therefore, in the given circumstance if the order by which the District Magistrate, Bhagalpur directed the sale of rice is not under challenge, the reliefs prayed for a direction to deliver seized rice to the petitioner seems to be misconceived. In the given circumstances now question of release of rice does not arise.

8. Having heard learned counsel for the parties and upon perusal of the records this Court finds that the petitioner in the present case has not challenged the order dated 13.07.2017 passed by District Magistrate, Bhagalpur and no alternative prayer has been made in the facts and circumstances of this Case. The reliefs as prayed in the writ application cannot be granted in present circumstance. The petitioner, if so advised may file a fresh application in appropriate jurisdiction for redressal of his grievances. All question raised in the present writ application shall remain open. For the present this Court has taken note of the submissions of the parties without expressing

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any opinion on merit.

(Rajeev Ranjan Prasad, J)

Ved/-

AFR/NAFR	NAFR
CAV DATE	03.08.2018
Uploading Date	31.08.2018
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