

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26577 of 2015

Arising Out of PS. Case No.-766 Year-2013 Thana- SITAMARHI District- Sitamarhi

Ram Nath Ray Son of Paltan Ray, Resident of Village- Jaynagar, P.S.
Sonbarsa, District- Sitamarhi.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vinod Kumar

For the Opposite Party/s : Mr. Md.Ataur Rahmanapp

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 10-12-2019 This application has been filed for quashing the order dated 06.02.2015 passed by the learned Sub-Divisional Judicial Magistrate, Sadar, Sitamarhi in connection with Sitamarhi P. S. Case No.766 of 2013 by which cognizance was taken against the petitioner under Section 7 of the E. C. Act.

2. Prosecution case in short is that Block Education Officer, Dumra has lodged a fard-bayan stating that he got an information that rice of Mid-day meal is being carried outside by the petitioner i.e. Headmaster, Marwari Middle School for the purpose of black marketing. Since he was not there on behalf of him, one Sadhna Devi reached at the place and found 13 bags of rice around 05 quintal 20 k.g. rice in plastic bag altogether 07 quintals 70 k.g. rice and in the school altogether 662.650 k.g. was found in addition to supply, which was about



to send for black marketing. After investigation, cognizance was being taken against the petitioner for the offence under Section 7 of the E. C. Act.

3. Learned counsel for the petitioner challenged the order taking cognizance on the ground that petitioner is not a P.D.S. Dealer and as such, no offence under Section 7 of the E. C. Act is made out against the petitioner. Moreover, there is violation of provision of Section 100 Cr.P.C. as the signature of the petitioner was not obtained. Further submission is that he was not present at that time in the school. It has also been submitted that no offence is made out against the petitioner, hence continuation of the proceeding against the petitioner is only an abuse of the process of the Court.

4. On the other hand, learned A.P.P. opposed the prayer on the ground that there is allegation against the petitioner that he was engaged in black marketing of rice supplied to the school of the petitioner for Mid-day meal programme and as such, it will amount to the misappropriation of the government fund also. Moreover, petitioner has an opportunity to raise this point at the time of framing of charge. Hence, this application has no merit.

5. Having heard both sides and perused the F.I.R.



Considering the submission of the parties, at this stage, I am not inclined to interfere with the order taking cognizance. As such, this application is disposed of with a liberty to the petitioner to raise the above points at the time of framing of charge or at an appropriate stage, which will be considered by the learned trial Court and same shall be disposed of by the trial Court by a reasoned order.

(Vinod Kumar Sinha, J)

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