

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24101 of 2019

Arising Out of PS. Case No.-3 Year-2018 Thana- DAGARUA District- Purnia

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1. Md. Taiyubul @ Md. Tayabul, Male, aged about 46 Years, Son of Mohiuddin, Resident of Bangrora, Charaiya, P.S.- Baisi, District- Purnea
 2. Abdulla, Male, aged about 48 years, Son of A. Nur Resident of Salempur, Telta, P.S.- Barsoi, District- Katihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Raj Kumar, Advocate.
		Mr. Rajnish Kumar, Advocate.
For the Opposite Party/s :		Mr.Parmeshwar Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 30-04-2019

Heard learned counsel for the petitioners and
learned APP for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.02.2019 passed by learned S.D.J.M., Purnea in Dagarua P.S. Case No. 03 of 2018 whereby the learned Magistrate has taken cognizance of the offence under Section 420 of the Indian Penal Code and Section 7 of the E.C. Act against the petitioners and one Md. Tabrej.

3. Factual matrix of the case is that Dagarua P.S. Case No. 03 of 2018 was instituted against the unknown owner and driver of the tractor and trailer, unknown owner of the rice



and other unknown accused on the basis of the written report of Vijay Kumar Sinha, Block Supply Officer, Dagarua, Purnea with the allegation in succinct that on the tip off about carrying of the government subsidized rice by the tractor for blackmarketing, informant arrived at the place of occurrence and found a tractor standing on the road and some persons engaged in tying tarpaulin with rope and seeing the informant they made good their escape. On inspection of the tractor, he noticed 123 gunny bags weighing 71.90 quintal government subsidized rice laden on the tractor.

4. Aforesaid case was investigated by the police and after investigation of the case, I.O. submitted chargesheet under Section 420 of the Indian Penal Code and Section 7 of the E.C. Act against the petitioners and co-accused namely Md. Tabrerj and learned Magistrate considering the case diary and materials available on record took cognizance of the offence under aforesaid Sections against the petitioners and Md. Tabrej vide impugned order.

5. It is submitted by learned counsel for the petitioners that the petitioner no.1 namely Md. Taiyubul happens to be the owner of the tractor and petitioner no.2 namely Abdulla its driver. They do not happen to be PDS



dealer and the seized rice was also not hailing to them. Aforesaid rice was not government subsidized rice rather was purchased by Md. Tabrej from one Jaiswal Mini Rice Mill, Damka Chowk, Gulabbagh, Purnea and Md. Tabrej has filed a petition before the S.D.J.M., Purnea for release of the aforesaid seized rice. There is no complaint against the petitioners about transporting of the aforesaid rice from any PDS shop for its black marketing. As the petitioners do not happen to be PDS dealer rather private person, no offence under Section 7 E.C. Act is made out against them and there is no accusation of Section 420 IPC levelled against the petitioners. Hence taking cognizance of the offence under aforesaid Sections against the petitioners is nothing but the abuse of process of the Court. Learned Counsel for the petitioners has relied upon the judgments of this Court rendered in **Arvind Kumar Vs. The State of Bihar** reported in **2014 (4) PLJR 255** and in **Dilip Kumar Vs. The State of Bihar** reported in **2018 (2) PLJR 902** in buttress of his submission.

6. On the other hand, learned APP for the State opposing the quashing petition submitted that the petitioners were transporting government subsidized rice for its black marketing on their tractor and on the way aforesaid rice laden



tractor was seized by the informant and learned Magistrate considering the case diary and material available on record and finding prima facie case has rightly taken cognizance against the petitioners and one other accused.

7. From perusal of the record, it appears that the petitioner no.1 happens to be owner while petitioner no.2 is the driver of the aforesaid tractor. From perusal of the invoice filed by the petitioners, it appears that 123 gunny bags of rice weighing 71.90 quintal laden on the said tractor was purchased by one Md. Tabrej from Jaiswal Mini Rice Mill, Damka Chowk, Gulabbagh, Purnea on 05.01.2018 and said Md. Tabrej happens to be the owner of the aforesaid rice. Aforesaid rice was being transported by the petitioners by their tractor and on the way it was seized by the informant. Petitioners do not happen to be PDS dealer rather private persons. It is settled principle of law that no prosecution under the EC Act could be launched against a private person for violation of provisions of EC Act or the Control Order, only the agents or PDS dealer could be prosecuted and as the petitioners do not happen to be PDS dealer, hence they cannot be prosecuted for the offence under Section 7 E.C. Act. Moreover, from perusal of the complaint petition itself, it appears that there is no accusation



of cheating or deceiving the informant by the petitioners levelled against them. Hence, no offence under Section 420 IPC is also made out against the petitioners.

8. This Court in Arvind Kumar Vs. The State of Bihar reported in **2014 (4) PLJR 255** has been pleased to rule that “the Essential Commodities Act has been framed for the benefit of consuming public. For any violation of the provisions of the Essential Commodities Act or the Control Orders, promulgated under the authority of the Essential Commodities Act, only the agents or the P.D.S. Dealers could be prosecuted. Kerosene oil, being a controlled item, is governed by a necessary Control order. However, since the petitioner is not a P.D.S. Dealer, he cannot be tried for the offence under Section 7 of the Essential Commodities Act. This Court in **Dilip Kumar Vs. The State of Bihar** reported in **2018 (2) PLJR 902** has been pleased to rule that “allegation against petitioner is of selling rice of Government scheme to blackmarket. Petitioner deals in free sale of foodgrains and is not a PDS dealer. Sale of rice is not covered under any Control Order. Petitioner not violated any provision of Section 3 of EC Act and Section 420 IPC is not attracted. Hence prosecution is quashed.



9. In the facts and circumstances of the case, I find that taking cognizance of the offence under aforesaid sections against the petitioners is nothing but abuse of process of the Court. Hence aforesaid cognizance order taken against the petitioners is hereby quashed and this petition is accordingly allowed.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	09.05.2019
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