

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4589 of 2017

Arising Out of PS. Case No.-79 Year-2012 Thana- DUMRAO District- Buxar

Atyus Ranjan @ Athiouse Ranjan Son of Manoj Kumar @ Banarshi Singh @
Banarsi Sah, resident of Village- Prana Bhojpur, P.S.- Dumraon Naya
Bhojpur, District- Buxar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh

For the Opposite Party/s : Mr. Sri Amitesh Kumar

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 21-06-2019 Heard learned counsel for the petitioner as well as
learned APP.

Petitioner has challenged order dated 09.12.2013
whereby and whereunder petitioner Atyus Ranjan @ Athiouse
Ranjan along with others has been summoned to face trial for an
offence punishable under Section 7 of the EC Act by SDJM,
Buxar in connection with Dumraon (Naya Bhojpur) P.S. Case
no.79/2012, G.R. No.500/2012.

C.O., Dumraon conducted raid at a premises where, as
has been alleged the rice bag containing monogram of Indian
Fertilizer Ltd. (Bhartiya Khad Nigam) were being loaded over
tractor and trolley whereupon, construed that aforesaid rice were
taken to open market for sale. Furthermore, it has also been
disclosed that while vehicle laden with rice bags was seized, the
empty bags were also seized.



After registration of the case investigation commenced and concluding the same, charge sheet has been submitted followed by the order impugned, subject matter of instant petition.

From the record, it is evident that petitioner was not at all present at the spot. His identification has been at an initial stage as the owner of the tractor and trolley but, during course of investigation, it is evident that one Om Prakash Gupta has been identified to be the owner of the tractor and trolley. Apart from this, from the case diary, it is evident that none alleged anything against the petitioner.

Application of section 7 of the EC Act is always permissible on account of violation of Section 3. Section 3 prescribes the modalities governing the movement of essential commodity so identified by way of gazette notification in accordance with Section 2A of the Act. For better appreciation Section 2A of the Act is quoted below:

[2A. Essential commodities declaration, etc.]-(1) For the purposes of this Act, "essential commodity" means a commodity specified in the Schedule.

(2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to—



- (a) add a commodity to the said Schedule;
- (b) remove any commodity from the said Schedule, in consultation with the State Governments.
- (3) Any notification issued under sub-section (2) may also direct that an entry shall be made against such commodity in the said Schedule declaring that such commodity shall be deemed to be an essential commodity for such period not exceeding six months to be specified in the notification:
Provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the Official Gazette, extend such period beyond the said six months.
- (4) The Central Government may exercise its powers under sub-section (2) in respect of the commodity to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.
- (5) Every notification issued under sub-section (2) shall be laid, as soon as may be after it is issued, before both Houses of Parliament.]

As per schedule, it is evident that rice is not incorporated therein. For better appreciation the essential commodity so identified under the schedule is quoted below:

THE SCHEDULE

[See Section 2-A]

Essential Commodities

(1) drugs.

Explanation.-For the purposes of this Schedule, “drugs” has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

- (2) fertilizer, whether inorganic, organic or mixed;
- (3) foodstuffs, including edible oilseeds and oils;
- (4) hank yarn made wholly from cotton;
- (5) petroleum and petroleum products;
- (6) raw jute and jute textiles;
- (7) (i) seeds of food-crops and seeds of fruits and vegetables;



- (ii) seeds of cattle fodder; and
- (iii) jute seeds;
- [(iv) cotton seed.]

That being so, the order of cognizance relating to the petitioner happens to be bad consequent thereupon, the order impugned relating to the petitioner is hereby set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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