

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.657 of 2019

Arising Out of PS. Case No.-121 Year-2019 Thana- NAUBATPUR District- Patna

Abhay Kumar, Son of Chandradeo Singh, Resident of Village-Virpur,
Naubatpur, P.S.-Phulwarisharif, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. Deputy Inspector General of Police, Patna
5. The District Magistrate, Patna
6. The Senior Superintendent of Police, Patna
7. The Sub Divisional Officer, Danapur
8. The Inspector of Police, Phulwarisharif Police Station, District- Patna
9. The Block Supply Officer, Naubatpur

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate
		Mr. Kundan Kumar, Advocate
For the Respondents-State:		Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 22-04-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the First Information Report (for short 'FIR') of Naubatpur P.S. Case No.121 of 2019 dated 02.03.2019 registered for the offence punishable under Section 7 of the Essential Commodities Act, 1955.



3. It is submitted by the learned counsel for the petitioner that the FIR has been instituted in utter haste even without verifying as to whether the consumers who made complaint against the petitioner are actually the consumers connected with the PDS dealership of the petitioner. The statement of the consumers recorded by the Block Supply Officer, Naubatpur does not attract culpability of the petitioner, as none of the consumers had disclosed the name of the petitioner as the PDS dealer, who did not supply the food-grains for the month of January, 2019. As far as the allegation that the PDS shop of the petitioner was not found at the place as described in the license is concerned, the truth of the matter is that the petitioner had submitted application before the concerned respondent authorities to change the place of PDS shop, as he was not able to run his PDS shop smoothly at the place described in the license and the Supply Officer, Patna, verbally allowed the petitioner to shift his place of business and also intermittently inspected the shop after shifting of the shop.

4. On the basis of the aforesaid submissions, learned counsel for the petitioner submitted that allowing the prosecution to continue against the petitioner would be an abuse of the process



of the court. Hence, his submission is that the FIR should be quashed.

5. *Per contra*, learned counsel appearing for the State submitted that the allegations made in the FIR would clearly attract the ingredients of section 7 of the Essential Commodities Act, 1955. The allegation is that he did not supply food-grains received for supply to the consumers. There is also an allegation that the place of business was shifted by the petitioner without any information to the licensing authority. These allegations would certainly constitute an offence under Section 7 of the Essential Commodities Act.

6. I have heard learned counsel for the parties and carefully perused the record.

7. Clause 17 of the Bihar Targeted Public Distribution System (Control) Order, 2016 prescribes that if the licensee wants change in storage place of essential commodities or business place, as described in the license, the licensee shall submit to the licensing authority a written application for this purpose stating reasons and identification details of the proposed place of change whereafter licensing authority shall take a decision of accepting or rejecting the application within a fortnight from the date of its receipt. If the petition is accepted, the licensing authority shall



order for necessary changes in the license and in the office's license register. If no decision is taken within a fortnight by the licensing authority, the licensee may store or begin business of the essential commodities at the proposed place for change with the prior permission of the District Officer. Clause 17 of the aforesaid Order further stipulates that licensee may shift the storage or business place of the essential commodities without permission of the licensing authority at a place not described in the license in emergency situations (such as earthquake, flood, or other reasons like sudden damage in the building, etc), and shall give its written information to the licensing authority within 72 hours.

8. Clause 24 of the Bihar Targeted Public Distribution System (Control) Order, 2016 provides penalty for violation of any provision of the order. It states that a violator (including a licensee) of any provision of this Order shall be liable to punishment under Section 7 of the Act.

9. Thus, for violation of Clause 17 of the aforesaid order by carrying on business at a place different from, as mentioned in the license, a criminal prosecution under Section 7 of the Essential Commodities Act would be justified.

10. Here, in the present case, though a submission has been made that a written information was given to the Supply



Officer for shifting of the business place and there was an oral approval by the Supply Officer for the change of place of business, the authenticity of such plea has to be examined by the police in course of investigation.

11. Moreover, the plea taken by the petitioner is in the nature of defence. The defence of the petitioner, who has been impleaded as an accused in the FIR can not be made a ground for quashing of the FIR.

12. The defence taken by the petitioner that the consumers, who complained about the non-supply of the food-grains were not attached to the shop of the petitioner is also to be verified and looked into by the investigating agency in course of investigation of the case. The defence taken by the petitioner can not be made the basis for setting aside the FIR.

13. In that view of the matter, no case for quashing of the FIR is made out. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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