

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37132 of 2016

Arising Out of PS. Case No.-23 Year-2013 Thana- WARISLIGANJ District- Nawada

Kishori Sah S/o - Late Ram Prasad Sah Resident of Village - Subhanpur
Bhatta, P.S. - Kashichak, District - Nawadah.

... .. Petitioner/s

Versus

1. State of Bihar
2. Bimla Devi W/o - Sri Ram Naresh Sharma resident of Magadh Colony,
Road No. 7E, P.S. - Magadh Medical College, District - Gaya, At present -
Posted as a Block Supply Officer Warsaliganj, P.S. - Warsaliganj, Dist. -
Nawadah.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mahendra Thakur, Advocate Mr. Vijay Kumar, Advocate
For the Opposite Party No. 2 :		Mr. Ratnakar Jha, Advocate
For the Opposite Party/s :		Mr. Ram Priya Sharan Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

8 16-10-2019 Heard the learned counsel for the parties.

The petitioner seeks quashing of the order dated 05.01.2015 passed by the learned Chief Judicial Magistrate, Nawadah in connection with Warsaliganj P. S. Case No. 23 of 2013, whereby cognizance has been taken against the petitioner under Section 7 of the Essential Commodities Act, 1955.

It has been submitted on behalf of the petitioner that the F.I.R. was registered against Manish Kamaliya and Satish Kamaliya for being in possession of rice which *prima facie* was found to be subsidized. However, the consignment



of rice was recovered from a Rice Mill.

Learned counsel for the petitioner submits that his name transpired when a statement was made by the accused persons that the petitioner had taken a room in the aforesaid godown of Manish Kamaliya and Satish Kamaliya.

Learned counsel for the petitioner further submits that assuming but not admitting that a room was taken on rent by him, it would have been important and necessary for the investigating agency to have stated clearly whether any recovery was made from the room which was taken on rent by the petitioner.

Apart from this, it has been urged on behalf of the petitioner that he was never a PDS dealer and even if rice was found in the godown in which one of the rooms was taken on rent by the petitioner, that would not make him liable for being prosecuted under the provisions of the Essential Commodities Act, 1955.

There is no evidence that the rice in question was stolen or purchased in black-market by the petitioner.

The recovered rice is not covered by any control



order. Nonetheless, the rice was subsidized, but in the absence of any evidence with respect to the petitioner having purchased or acquired the same through any illegal means, and he not being a PDS dealer, it would be difficult to sustain the prosecution against him.

For the aforesaid reasons, this Court deems it appropriate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure in setting aside the order of cognizance.

The order of cognizance is set aside.

The aforesaid order has been passed in order to secure the ends of justice as on such flimsy evidence, it would not be appropriate to subject the petitioner to the rigours of a trial.

All further proceedings against the petitioner stands quashed.

The application is allowed.

(Ashutosh Kumar, J)

skm/-

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