IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41259 of 2019
Arising Out of PS. Case No.-138 Year-2017 Thana- RAJAOLI District- Nawada
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Ram Lakhan Prasad, son of Late Daso Prasad Resident of Village- Andharbari Tola Narayan Bigha, P.S.- Rajauli, District- Nawada

... ... Petitioner/s

Versus

The State of Bihar Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate
For the Opposite Party/s : Mr. Ram Priya Sharan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 19-07-2019

Heard the counsel for the parties.

2. The petitioner seeks quashing of the order dated 27.09.2018 passed by the learned Chief Judicial Magistrate, Nawada in connection with Rajauli P.S. Case No. 138 of 2017(G.R. No. 1656 of 2017) whereby cognizance has been taken under Section 7 of the Essential Commodities Act, 1955.

3. The prosecution story is that on the direction of the District Magistrate, Nawada, the PDS shop of the petitioner was inspected. At the time of inspection, the shop was found open and the display board was also

placed at such a position which was visible and under the gaze of public eye. The stock register but showed some mismatch. Certain quantity of wheat was found to be short. On such allegation, the F.I.R was lodged.

4. Mr. N.K. Agrawal, learned senior advocate has submitted that petitioner has been a dealer of the Public Distribution System for the last several years and never any complaint was lodged against him. In fact, even in the present case, the inspection was made in a routine manner and not pursuant to any complaint by anyone of the customers. The inspection was made during the midst of the business hours and therefore the mismatch which was found was not because of the foodgrains having been sold unauthorizedly or sold in the black-market. Considering the aforesaid facts, the petitioner was granted anticipatory bail.

5. It has further been submitted that the books of account have been maintained properly and that merely because *prima facie* 28.7 quintals of wheat was

found to be short, the petitioner could not be prosecuted for the offence. The entire prosecution report and the police papers do not indicate the index on the basis of which loss was calculated. It has not been asserted in the F.I.R or during the course of investigation that certain quantity of rice or wheat or controlled foodgrains which was given to the petitioner as a dealer to be sold to the consumers, was not sold. The deficit has to be against some index. No mention of the aforesaid facts in the F.I.R makes the allegation absolutely suspect.

6. Apart from this, Mr. Agrawal, learned senior advocate for the petitioner has submitted that assuming but not admitting that the allegation of shortage of wheat in the books of account is accepted to be *ex-facie* true, the offence would only fall under Section 3(2)(i) of the Essential Commodities Act for which the maximum punishment is one year and the period of limitation for taking cognizance would be one year. The cognizance in the present case as counted from the date of institution

of the report has been taken after the statutory period of taking cognizance in such offence.

7. This argument of the petitioner is not acceptable for the reason that there is no allegation that the books of account or the display board were not kept in the PDS centre. The books of account were maintained and therefore any anomaly in such account would not come under the mischief of Section 3(2)(i) of the Essential Commodities Act.

8. In that view of the matter, the period of limitation would not be one year.

9. However on facts, the case under Section 7 of the Essential Commodities Act cannot be made out as the offence pertains to Section 3(2)(e) of the Essential Commodities Act and for the aforesaid offence, the petitioner has an explanation which is very tenable. The inspection was made during the business hours and there is no figure before this Court to know as to how the deficit has been calculated.

10. The prosecution of the petitioner therefore does not appear to be based on sound reason.

11. The allegation of black-marketing and selling of the controlled foodgrains to unauthorized persons is a figment of imagination and there is no corresponding evidence for the same.

12. For the aforesaid reasons, this Court finds that the prosecution of the petitioner is misconceived and ought not to be allowed to continue. The prosecution has to be seen as one integrated whole and if it is found that the prosecution is not based on cogent evidence, allowing the prosecution to continue would be nothing less than abuse of the process of law.

13. In order to secure the ends of justice, this Court deems it appropriate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order of cognizance and the resultant prosecution arising therefrom.

14. The petition stands allowed with the

aforesaid observation.

(Ashutosh Kumar, J)

Shageer/-

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