

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20832 of 2015

Arising Out of PS. Case No.-181 Year-2013 Thana- PHULPARAS District- Madhubani

Jai Prakash Yadav, S/o Late Kusan Yadav, Resident of village - Siswa Barah,
P.S. - Phulparas, District - Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vikash Sharma, Advocate Mr. Ratanakar Jha, Advocate Mr. Kushum Rani, Advocate
For the State	:	Mr. Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-07-2019

Heard learned counsel for the parties.

2. The petitioner has challenged the order of cognizance dated 29.08.2014 passed in Phulparas P.S. Case No. 181 of 2013 by the learned Sub-Divisional Judicial Magistrate, Jhanjharpur whereby the petitioner has been asked to face the trial, for offence under Section 7 of the Essential Commodities Act, after submission of police report under Section 173 Cr.P.C.

3. According to First Information Report lodged by the Sub-Divisional Agriculture Officer, Jhanjarpur, a tractor carrying fertilizer was intercepted, seized and was taken to the police station. The tractor was carrying 30 bags of Urea and 6 bags of D.A.P. fertilizer. The driver of the tractor and others on the said tractor, disclosed that since last two years, they are purchasing



fertilizer from the PDS shop of this petitioner and are selling the same in the market.

4. Submission of learned counsel for the petitioner is that during whole of the investigation, no further evidence was collected to substantiate involvement of the petitioner in the occurrence alleged. The premise of the petitioner was never searched nor stock register was checked and verified to ascertain any lapses in the records and the actuals. Hence, it cannot be said that what the accused stated before the informant was a gospel truth. On the basis of material collected, there is not even blink chance of conviction of the petitioner. Hence, criminal prosecution of the petitioner is an abuse of the process of the Court.

5. Learned counsel for the State opposes the prayer. However, after going through the case diary, he is also of the view that there is no other material against the petitioner save and except statement of the person who were found on the tractor including the driver.

6. Since confession of co-accused before the police while in police custody cannot be proved in view of the bar under Sections 25 and 26 of the Evidence Act. The same cannot be treated as evidence at any stage of the proceeding. Besides the aforesaid, there is no other material against the petitioner. Hence,



criminal prosecution is an abuse of the process of the court.
Accordingly, the impugned order and all subsequent proceeding
against the petitioner stands quashed and this application stands
allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	23.07.2019
Transmission Date	23.07.2019

