

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4371 of 2015

Arising Out of PS. Case No.-418 Year-2013 Thana- SHERGHATI District- Gaya

Awadhesh Paswan S/o Sushil Paswan Resident of Village Bhatkurha, Police
Station Sherghatti, District Gaya.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli with Mr. Sanket, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 10-05-2019

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

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the ‘Code’) for the following relief:

“ That the present application is being filed for quashing
of the order issuing summon dated 21.08.2014 passed
by the Court of learned SDJM Sherghati (Gaya), under
Section 7 of E.C. Act in connection with Sherghati
Police Station Case No. 418 of 2013 along with the
entire criminal case.”

3. The allegation against the petitioner is that 36.9
quintals of rice, which were lifted from the State Food Corporation



Limited godown at Sherghati, meant for being sold under the Public Distribution System, was sold in the open black market.

4. Learned counsel for the petitioner submitted that surprise inspection was carried out on 15.09.2013 at 4:35 P.M. whereas the material was lifted itself on the same day and due to some reason could not reach the shop in time but the same was brought to the shop at 6:00 P.M. on the same day. It was submitted that next day the food grains were also distributed to the beneficiaries. It was submitted that Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the 'Act') is not attracted in the present case. It was submitted that the order under the Act for stocking and transportation of rice is no more required.

5. Learned APP submitted that the petitioner does not deserve any indulgence. It was submitted that the allegation is that the rice meant for distribution through Public Distribution System had been sold in the black market. It was further submitted that in the presence of the wife and other villagers whose statements were also recorded, from which it is clear that no rice or wheat was received in the shop on that day, i.e., 15.09.2013.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.



7. The contention of learned counsel for the petitioner that the rice is no more an article controlled under the Act is absolutely of no consequence for the reason that such restriction has been removed from stocking and dealing in rice by general traders. This does not mean that the rice, which is collected from the State godown, meant for distribution under the Public Distribution System to the targeted groups can be dealt freely and in any manner by any person. Thus, such removal of restriction with regard to stock and transportation of rice has no connection with regard to a dealer of the Public Distribution System lifting the rice from the godown of the State/its instrumentalities for distribution under the Public Distribution System which are controlled, the defence taken that the rice was no more a controlled item has absolutely no relevance to the facts and circumstances of the present case. Moreover, the wife of the petitioner himself did not even mention that due to any problem, the rice lifted from the godown had not reached the shop despite the fact that it was in the same town i.e., Sherghati, which is a small mufasil town also clearly shows that such defence being taken is only for the purposes of creating a defence. Had such fact been true, at the relevant moment itself, either the petitioner himself should have come to his shop to explain or the wife should have at least



indicated to the Inspecting Team such fact. Moreover, such defence on the part of the petitioner is required to be proved by bringing cogent and relevant materials and getting them proved through the deposition of witnesses, which can only be done in a full fledged trial. Thus, at the present stage, where only cognizance has been taken by the Court, after perusing materials, including FIR and the case diary, the same cannot be said to be suffering from any legal or factual infirmity so as to warrant interference by this Court under its inherent power under Section 482 of the Code.

8. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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