

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75942 of 2019

Arising Out of PS. Case No.-148 Year-2014 Thana- DIGHA District- Patna

SUNIL KUMAR SINHA @ SUNIL SINHA Son of Late Mathura Prasad
Resident of Mica Colony, P.S.- Digha, Distt - Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Sri Rakesh Kumar, Marketing Officer, Rationing, Patna. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Braj Bhushan Mishra, Advocate
For the Opposite Party/s : Mr.Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 02-12-2019 Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner in this case is seeking quashing of the order dated 14.05.2019 passed by learned Sub-Divisional Judicial Magistrate, Patna in Special Case No. 8 of 2014 arising out of Digha P.S. Case No. 148 of 2014.

By the impugned order learned Sub-Divisional Judicial Magistrate, Patna has been pleased to dismiss the application of the petitioner seeking discharge.

It appears that Digha P.S. Case No. 148 of 2014 has been lodged on 29.06.2014 under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the 'Act of 1955'). In the first information report there is an allegation that



when a tempo loaded with 20 bags of rice was intercepted by the Marketing Officer, Patna Rationing Office, the driver of the Tempo as well as the purchaser Shri Bhola Kumar made a statement that they had purchased the rice from this petitioner. The rice were packed in the Jute bags on which Bihar State Food and Civil Supplies Corporation Limited was printed. The allegation in the FIR is that the government subsidized rice which is made available for distribution to the beneficiaries are being sold for black-marketing which is an offence under Section 3 of the Black Marketing of Essential Commodities Act and the same is punishable under Section 7 of the Act of 1955.

After investigation the Police has submitted chargesheet, thereafter, cognizance was taken and at this stage when the case was fixed for framing of charge, the petitioner filed an application for his discharge on the ground that during the investigation the Investigating Officer had failed to prove that the seized rice belongs to this petitioner and on perusal of the various registers such as sale register, stock register, cash-memo and ration cards of the consumes it would appear that on the alleged date of occurrence, stock was not available in the shop of the petitioner, therefore, the allegation of black marketing or selling the rice and wheat through black market is



false and baseless.

On a reading of the impugned order it appears that the learned S.D.J.M., Patna has gone through the materials available on the record and having noticed the materials present in the case diary particularly the statement of the Tempo Driver and Shri Bhola Kumar, learned Magistrate formed an opinion that at this stage there are sufficient materials to frame charges against the petitioner.

Learned counsel for the petitioner submits that the impugned order is wholly illegal, arbitrary and not sustainable in law inasmuch as the learned S.D.J.M., Patna has not considered the submission of the petitioner.

Learned APP for the State has, however, opposed this application as according to him, there being materials available on the record, learned S.D.J.M., Patna has rightly rejected the application of the petitioner.

Having considered the rival submissions and upon perusal of the records, this Court finds that in the first information report there are allegations against the petitioner and those are based on the statements of the Tempo Driver and the purchaser of the rice, the learned Sub-Divisional Magistrate, Patna has referred the various paragraphs of the case diary and



came to a conclusion that at this stage there are materials to frame charges against the petitioner.

It is well settled that while considering an application for discharge of the accused, the court is not required to find out as to in ultimate analysis on the basis of the materials on the record the accused is likely to be convicted or not. The consideration is limited to the extent that as to whether or not there are materials satisfying the ingredients of the offence for the purpose of framing of charge.

In this case, in the opinion of this Court, learned Sub-Divisional Magistrate, Patna has rightly considered the submissions of the petitioner and taking into consideration the statements of the witnesses which are present in the case diary, the application for discharge has been rejected. No fault may be found in the impugned order.

The application is thus, dismissed.

(Rajeev Ranjan Prasad, J)

avin/-

U		T	
---	--	---	--

