

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86422 of 2019

Arising Out of PS. Case No.-40 Year-2016 Thana- AURAI District- Muzaffarpur

RAMDAYAL BAITHA Son of Late Rajdeo Baitha Resident of Village-
Madhvan Besi, P.S.- Aurai, Dist- Muzaffarpur.

... .. Petitioner

Versus

1. THE STATE OF BIHAR
2. Yogendra Ojha S/o Late Ramanand Ojha Resident of Village- Ramshahar,
P.S.- Barahara, Dist- Bhojpur (Ara)

... .. Opposite Party

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 10-01-2020 Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner in this application is seeking quashing
of the First Information Report of Aurai P.S. Case No. 40 of
2016 registered for the offence punishable under Section 7 of
the Essential Commodities Act.

Learned counsel for the petitioner submits that as per
the prosecution story, the Block Supply Officer, Aurai had
lodged the first information report alleging therein that on
information received from the villagers of Bharthua Panchayat
when he intercepted one tractor and one trolley bearing
registration no. BR06C- 5094 and BR06C 5757, he seized six
bags of rice containing a total quantity of 3 quintals and 20



bags wheat containing 10 quintals which was Government's Subsidized rice and wheats. The informant alleged that the tractor driver made statement that the seized articles were loaded by this petitioner changing the bag. On these allegations the FIR was lodged and the matter is under investigation.

Learned counsel for the petitioner submits that although the Police has not completed the investigation so far but he has a reason to move this Court seeking its intervention under the inherent power of the Court to quash the First Information Report. He has heavily relied upon a letter bearing no. 56 dated 22.07.2016 written by the same Block Supply Officer (informant) to the Officer-in-Charge of the Police Station as contained in Annexure '2' to the present application. In this letter he has informed the Officer-in-Charge that subsequent to lodgment of the First Information Report, the son of the petitioner informed the informant that the rice and wheats loaded on the tractor and the trolley were being taken for purpose of distribution among the beneficiaries of Bharthua and Madhuban Besi village which was situated at a distance of 4 kilometer and the beneficiaries of those villages were attached to the shop of the petitioner and it is during that transportation, on mere suspicion, the foodgrains were seized and the case was



lodged. In his letter as contained in Annexure '2' the informant has made a statement that on the basis of the statement of the son of this petitioner and upon perusal of the stock and distribution registers it may be found on estimation basis that because of distance between the shop and the village of the beneficiaries, the wheats and rice were being transported and the case was lodged because those were sealed in the bags of the State Food Corporation. This letter has been signed by the informant and it is the sheet-anchor document of the learned counsel for the petitioner for purpose of quashing of the present case.

On the other hand, learned counsel for the State has opposed the application. It is his submission that on a bare reading of the first information report it would appear that there is a specific allegation that the tractor driver had loaded the rice and the wheats which were kept in a different bag after taking out from the sealed bags and those were being taken out by this petitioner for purpose of black marketing as was informed by the villagers.

Learned counsel for the State submits that it is surprising that the opposite party no. 2 who is himself the informant of this case has chosen to write a letter in his own pen



after about three months of lodgment of the FIR when the matter was still under investigation. Reference has been made to Section 162 of the Code of Criminal Procedure (in short 'Cr.P.C.') to say that a signed statement of witness cannot be used, at this stage for any purpose much less for quashing of the First Information Report when the case is still under investigation.

Having heard learned counsel for the petitioner and learned APP for the State and upon perusal of the materials available on the record, this Court is of the considered opinion that the petitioner is unable to make out a case for exercising of inherent power of this Court under Section 482 Cr.P.C. inasmuch as it appears from the first information report that there are specific allegations against the petitioner that he had been taking out the Government's Subsidized rice and wheat in the market for purpose of black marketing and the said allegation is still under investigation by police.

In the opinion of this Court, the letter written by the informant cannot be a clinching document to conclude by this Court that no case is made out against the petitioner. The matter is still under investigation and it has to be taken a logical end.

The manner in which the letter as contained in



Annexure '2' has been issued by the informant in course of investigation to the Officer-in-Charge of the Police Station does not inspire confidence in view of the provisions contained in Section 162 Cr.P.C. and the same cannot be relied upon as has been prayed on behalf of the petitioner for purpose of quashing of the First Information Report.

This application has thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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