

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9322 of 2018

Arising Out of PS. Case No.-139 Year-2017 Thana- PURNEA SADAR District- Purnia

Ritesh Kumar Son of Hira Prasad, Resident of Belagola Hari Nagar, P.S.-
Ram Nagar, District- West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Suman Kumar Ray, Assistant District Supply Officer, P.S.- Sadar, District-
Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate.

For the Opposite Party/s : Mr. Satyendra Narayan Singh, APP.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 01-09-2022 Learned counsel for the petitioner is permitted to

remove defect(s), as pointed out by the office, if any, within a

period of four weeks from today.

Heard Mr. Shashi Bhushan Kumar, learned counsel
for the petitioner as well as Mr. Satyendra Narayan Singh,
learned Additional Public Prosecutor for the State.

The present petition has been filed for quashing of the
F.I.R. bearing Purnea Sadar P. S. Case No. 139 of 2017
registered for the offences punishable under Sections 420, 408
of the Indian Penal Code and Section 7 of the Essential
Commodities Act.

The sum and substance of the prosecution case is



that on the information given by the S.D.O, Sadar Purnea that from a godown, situated at Gudda Chowk Gulabbag, Purnea subsidized rice was recovered and on receipt of the information, the informant rushed to the place of occurrence and it was found that a trailer attached with tractor was loaded with jute bags full of rice containing Government *marka*. All the bags were found stitched with machine. A tripal, 165 green coloured empty bags and 24 empty Jute bags were also found there. Seizure list was prepared and total 81 quintal of rice in 162 bags of 50 Kg. each, tractor & trailer, empty and bags etc. were seized. The owner of the godown, namely, Dinesh Kumar Jaiswal was found involved in black-marketing of rice and the petitioner is said to be *Munshi* of the said godown. On interrogation, they could not produce any licence or permit for transportation of the rice, in question.

Learned counsel appearing on behalf of the petitioner submitted that the petitioner is neither P.D.S. dealer nor the owner of the seized items. Even as per the F.I.R., it is evident that he was working as a *Munshi* of the godown and has been assisting in day to day affairs of the godown. It is further submitted that the trade of rice has been de-licensed from the year 2002 and the restriction have been lifted. The movement of



control, storage limit, requirement of licence, maintenance of stock register, issuance of cash memo, display of stock and price position have been abolished by issuance of notification as contained in annexure 2 to this application.

The learned counsel for the petitioner has referred to a gazette notification dated 15th February, 2002, paragraph no.3 whereof is reproduced herein below:-

“With the coming into effect of this order any dealer may freely buy, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarsegrains, sugar, edible oilseeds and edible oils and shall not require a permit or license therefor under any order issued under the Essential Commodities Act, 1955.”

It is next submitted that since the petitioner being *Munshi* of the godown, in question, he cannot be prosecuted for the offence as alleged under Section 7 of the Essential Commodities Act, especially in view of the fact that the rice is no longer a control item. Learned counsel for the petitioner also relied upon the judgement dated 26.07.2018 rendered by the learned co-ordinate Bench of this court in case of Sandip Kumar Jaiswal @ Sandip Jaiswal Vs. State of Bihar passed in Cr.W.J.C. No. 2245 of 2017 wherein similar was the facts and



circumstances and the learned co-ordinate Bench of this Hon'ble Court was pleased to quash the F.I.R. Learned counsel for the petitioner further relied upon yet another judgement dated 19.05.2022 rendered by the learned co-ordinate Bench of this court in the case of Naresh Sah Vs State of Bihar in Cr. Misc. No. 11049 of 2021. The copy of the judgements/orders have been brought on record by way of annexure 3 series to this application.

On the other hand, learned APP for the State has argued that from the materials available and the accusation made the offence under Section 7 of the Essential Commodities Act is prima facie made out against the petitioner as he was found in possession of alleged Government rice without any papers. However, he is not in a position to confront the order passed by the learned co-ordinate Bench of this court in similar matter, wherein the entire prosecution have been quashed.

Considering the submissions made on behalf of the parties and having perused the materials on record, this court finds substance in the submissions made on behalf of the parties that pursuant to the publication of the gazette notification dated 15.02.2002, rice is no-longer control item, apart from the present case stands squarely covered by the judgement dated



26.07.2018 passed in Cr.WJC No. 2245 of 2017 as also the Judgement/order dated 19.05.2022 passed in Cr. Misc. No. 11049 of 2021. Hence, this court does not find any reason to differ with the judgement passed in identical matters.

Having regard to the aforesaid facts and circumstances of the case and for the reasons mentioned herein above, this court is of the considered opinion that continuance of the present proceedings against the petitioner would be an abuse of process of the court. Hence, the F.I.R. being Purnea Sadar P. S. Case No. 139 of 2017 dated 18.03.2017 registered for the offence punishable under Sections 420, 408 of the Indian Penal Code and Section 7 of the Essential Commodities Act is hereby quashed, so far the petitioner is concerned.

Accordingly, the present application stands allowed.

(Harish Kumar, J)

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