

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2128 of 2017

Arising Out of PS. Case No.-468 Year-2017 Thana- HAJIPUR SADAR District- Vaishali

Dayanand Sah S/o late Ramlal Sah Resident of Village- Purva, P.S. Sadar,
District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Vaishali
2. The Collector, Vaishali.
3. The Block Supply Officer, Sadar, Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Adv.
For the Respondent/s : Mr. S. Raza Ahmad, AAG-5

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 10-05-2022

Heard learned counsel for the parties.

The petitioner has filed the instant application for quashing the FIR of Sadar P.S. Case no. 468 of 2017 registered under section 7 of the Essential Commodities Act and sections 3 and 5 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

The prosecution case in brief is that on secret information having been received, on the oral orders of Sub Divisional Officer, Hajipur, a team was constituted along with the police personnel and a raid was conducted on 21.9.2017 at 1200 hours at the residence of the petitioner. All the accused had escaped and the premises was found locked. As no one was to be found,



information was given to the Sub Divisional Officer, Hajipur on mobile phone and on deputation of the Executive Magistrate, the lock of the godown was broken open. On search a total of 226 sacks containing 113 acquittals of wheat was found in the godown. The sacks were of the Fertilizer Corporation of India which was sewn by machine and tags had been put by the Government. It is stated that wheat/grains were for distribution to beneficiaries under different schemes of the Government. It was further stated that valid authorization and licence was required for storage and transport of such wheat meant of distribution amongst the beneficiaries. As neither the petitioner nor any other person appeared and in fact the petitioner had absconded, it was clear that the petitioner had stored the same for the purpose of making illegal gains through black marketing. As such the FIR was registered.

It is submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the case. He is not a PDS dealer. Rice and wheat are no longer controlled item since the year 2002, so there was no question of black marketing. Even if it is accepted that there were mark of Fertilizer Corporation of India on the gunny bags, the same would make no offence as there is no restriction of reuse of the bags having



marks of FCI. Learned counsel for the petitioner submits that it is only on the basis of suspicion that the FIR has been registered. The petitioner in support of his contention relies on the judgment in the case of *Dilip Kumar versus State of Bihar* [2018(4)PLJR 902].

The application is opposed by learned counsel appearing for the State who submits that huge quantity of wheat/grains were found stored for the purpose of blackmarketing. The same were in machine sewn gunny bags of the FCI with tags of the Government on the sacks containing grains meant for distribution to the beneficiaries under different schemes of the Government.

Having heard learned counsel for the parties and taking into consideration the fact of the case specially the allegations in the FIR it transpires that on a raid being conducted while the petitioner and others escaped, after deputing the Executive Magistrate, the lock of the godown of the petitioner was broken open and 113 quintals of wheat in 226 gunny bags were found with the bags containing tags of the Government meant for distribution amongst the beneficiaries of different Government schemes. The FIR further states that for storage and transport of such grains, it is necessary for one to have authority/ licence.



The Hon'ble Supreme Court in various judgments has held that in exercise of powers under section 482 Cr.P.C. to quash an FIR or a complaint, the High Court will have to proceed entirely on the basis of the allegations made in the complaint. It has no jurisdiction to examine the correctness or otherwise of the allegations. The allegations made in the FIR or the complaint, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, only then the FIR may be quashed. Reference may be made to the judgments of the Hon'ble Supreme Court in the case of *Pratibha Rani versus Suraj Kumar* [(1985) 2 SCC 370], *State of Haryana versus Bhajan Lal*, [(1992) Suppl. 1 SCC 335] and *State of Kerala versus OC Kuttan* [(1999) 2 SCC 651].

In the case of *Superintendent of Police, CBI versus Tapan Kumar Singh* [(2003) 6 SCC 175] the Hon'ble Supreme Court held that the the First Information Report is not an encyclopedia which must disclose all facts and details relating to the offence reported. The first informant need not necessarily be an eye witness so as to be able to disclose in great detail all aspects of the offence committed.

The Hon'ble Supreme Court in *Superintendent of Police,*



CBI versus Tapan Kumar Singh [(2003) 6 SCC 175] in paragraph no. 20 of the judgment held that in an FIR what is significant is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. Paragraph no. 20 of the judgment is quoted hereinbelow:

“20. It is well settled that a first information report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect,



on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under [Section 156](#) of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report



discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.”

In view of the facts and circumstances of the case, the contents of the FIR as also in view of the judgments of the Hon’ble Supreme Court quoted hereinabove, the Court finds no merit in the application of the petitioner praying for quashing of the FIR.

The application is dismissed.

(Partha Sarthy, J)

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