

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11049 of 2021

Arising Out of PS. Case No.-198 Year-2018 Thana- KURSAILA District- Katihar

Naresh Sah S/O Moti Sah, Resident of Village - Balthi Maheshpur, P.S. -
Kursaila, District - Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Block Supply Officer, Kursaila, Katihar, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Kumar, Adv.
For the Opposite Party/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-05-2022

The present petition has been filed for quashing FIR bearing Kursaila P.S. Case No. 198 of 2018 dated 04.11.2018 lodged under section 7 of the Essential Commodities Act as also the criminal proceedings emanating therefrom.

2. The case of the prosecution in brief, as per the complaint lodged by the Block Supply Officer, Kursaila, is that in the night of 03.11.2018, information was received that food grains have been stored in the house of the petitioner for the purposes of black marketing, whereafter the said Block Supply Officer, Kursaila had contacted the Block Development Officer, Kursaila and others and had then carried out a raid in the go-down situated in the premises belonging to the petitioner. On



search, it was found that the petitioner and others were packing rice, whereupon with the help of the police officials, the lock of one of the room situated in the premises of the petitioner was broken and, 439.68 quintal of rice was recovered, apart from recovery of some packaging materials and equipments.

3. The Ld. Counsel for the petitioner submits that the petitioner had filed a writ petition bearing CWJC No. 6034 of 2019 inter alia praying therein for release of 439.68 quintals of rice and other articles and a co-ordinate Bench of this Court vide order dated 17.04.2019 had directed the Collector-cum-District Magistrate, Katihar to release the rice in question, whereafter, the rice in question was released in favour of the petitioner.

4. 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.”



5. It is thus submitted by the learned counsel for the petitioner that since the petitioner is a trader, dealing in sale and purchase of food grains, he cannot be prosecuted for the offence as alleged under section 7 of the Essential Commodities Act, especially in view of the fact that rice is no longer a controlled item. The learned counsel for the petitioner has also relied on Invoices dated 20.10.2018 and 24.10.2018 (Annexure-2 to the present petition) to show that he had purchased 471.50 quintals of rice from Uma Shankar Trader just prior to lodging of the FIR on 04.11.2018. Hence, it is submitted that the rice in question has been purchased in a bona fide manner by the petitioner and moreover, he not being a PDS dealer, there is no question of him engaging in black marketing. The learned counsel for the petitioner has also relied on a judgment dated 26.07.2018, rendered by a co-ordinate Bench of this Court in Cr. W.J.C. No. 2245 of 2017, wherein similar was the facts and circumstances and the learned co-ordinate Bench of this Court, in the said case was pleased to quash the FIR. Learned counsel for the petitioner has further relied upon yet another Judgment, rendered by a Coordinate Bench of this Court in the case of **Shriram Rai & Anr. Vs. the State of Bihar and Ors.** reported



in 2006 (1) PLJR 504 wherein, in similar circumstances, where 300 bags of rice were seized, alleging that those were being brought from Gopalganj and Rohtas for black marketing, the learned Coordinate Bench of this Court, in paragraph nos. 3 & 4 of its Judgment, took note of the judgments of this Court, rendered in the case of **Santosh Kumar vs. State of Bihar**, [1990 (2) PLJR 520] and **Tarapado Ghosh and Ors. vs. State of Bihar**, [1990(2) PLJR 602]. It would be apt to reproduce paragraph nos. 3 & 4 here under for ready reference:-

“3. Mr. Y.V.Giri, Senior Advocate, appearing on behalf of the petitioners contends that no order made under Section 3 of the Essential Commodities Act restricts movement of rice from one place to another and, as such, petitioners cannot be said to have violated any order made under the aforesaid provision to bring the act within the mischief of Section 7 of the Essential Commodities Act. In support of his submission he has placed reliance on a Division Bench Judgment of this Court in the case of Santosh Kumar vs. State of Bihar, [1990 (2) PLJR 520] and my attention has been drawn to paragraph 9 of the judgment, which reads as follows:-

“It is painful to note that the authorities who are the custodians of law



and order are not acquainted with the latest position of law. The said Movement Control Order for the violation of which the petitioner has been put to harassment, was rescinded as far back as on 30th September, 1977. In that view of the matter the entire prosecution seems to be without any legal foundation and it is fit to be quashed at this stage.”

4. Reliance has also been placed on a decision of this Court in the case of Tarapado Ghosh and Ors. vs. State of Bihar, [1990(2) PLJR 602] and my attention has been drawn to the following passage from paragraph 5 of the judgment:-

“The Bihar Foodgrains (Movement Control) Order, 1957 had been in operation for several years but this Control Order was rescinded with effect from first day of October, 1977 by the Central Government’s Notification No. S.O. 696 (E) 30th September, 1977. This fact is accepted by the learned State Counsel. Therefore, admittedly during the time of occurrence i.e. April to June, 1978 there was no control Order under the Act to restrict the movement of foodgrains from Bihar to any outside place. It follows, therefore, that if pulses were booked from any place in Bihar, which in the present case is Chapra, to any destination



outside the State no offence arises on this account.”

6. Per contra, though the learned A.P.P. appearing for the State, Smt. Anita Kumari Singh, has argued that the offence under section 7 of the Essential Commodities Act is definitely made out, however, it has not been disputed that the present case is squarely covered by the judgment dated 26.07.2018, rendered by a co-ordinate Bench of this Court in Cr. W.J.C. No. 2245 of 2017.

7. I have heard the learned counsel for the parties and perused the materials on record from which this Court finds that firstly the Invoices produced by the petitioner, Annexure-2 to the writ petition, has not been found to be false much less disputed in the present proceedings and secondly this Court also finds that pursuant to publication of the gazette notification dated 15.02.2002, rice is no longer a controlled item apart from the fact that the present case stands squarely covered by the Judgment dated 26.07.2018 passed in Cr. W.J.C. No. 2245 of 2017, hence, this Court does not find any reason to differ with the said judgment dated 26.07.2018.

Having regard to the 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 the process of the Court, hence the FIR being Kursaila P.S. Case No. 198 of 2018, registered for the offence under section 7 of the Essential Commodities Act, is liable to be quashed and it is, accordingly, quashed.

8. The present petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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