

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37429 of 2015**

Arising Out of PS. Case No.-251 Year-2012 Thana- CHAPRA TOWN District- Saran

Rakesh Kumar Son of Shyamji Prasad, Resident of Mona Chow, P.S.- Chapra
Town, District- Saran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sinha, Sr. Advocate Miss. Dilkash Khan, Advocate Miss. Mimu Kumari, Advocate
For the Opposite Party/s	:	Mr. Manoj Kumar 1 App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 24-03-2023

Heard the parties.

This application has been filed for quashing the order dated 06.11.2013/10.07.2014, passed by Chief Judicial Magistrate, Chapra in Chapra Town P.S. Case No. 251 of 2012 by which learned Magistrate has taken cognizance under Section 420 of the Indian Penal Code and Section 7 of the E.C. Act.

The prosecution story in short is that on 10.09.2012 Sri Ajay Kumar Singh, Block Agriculture Officer, Sadar, Chapra made surprise inspection of Fertilizer shop of Vaishno Fertilizer, Mona Gola Road, Chapra and during inspection he found no entry in the display notice board. The Stock Register, Distribution Register and Cash memo were demanded but the



same were not produced. Thereafter it is alleged some papers were seized and seizure list was prepared. The police on the basis of the said report registered FIR being Chapra Town P.S. Case No. 251/2012 for offences under section 7 E.C.Act.

The trial is pending but no witnesses have been examined.

Learned counsel for the petitioner has submitted that when the officers visited the place of vigilance of the petitioner the petitioner was not there, and for any contravention, the petitioner cannot be fastened with any dilute as there is no *mens-rea*.

The petitioner relies upon the judgment of this Court in the case of ***Diwakar Sharma Vs. State Bihar [HC 1998 (1) PLJR 103]***.

Paragraph 9 of the judgment of ***Diwakar Sharma Vs. State Bihar (supra)*** is quoted herein below.

“In view of said decisions of this court mens rea could not be attributed to the petitioner for the contravention of the Unification Order or the terms of the licence when he was not present at the time of alleged contravention. If any default had been done without his knowledge and thereby some contravention had taken place the petitioner could not have been attributed mens rea in absence of



any cogent evidence to connect the petitioner with the alleged contravention. In this view also the prosecution of the petitioner in absence of mens rea appears to be illegal.”

In view of the law laid down by this Court in the case of ***Diwakar Sharma Vs. State Bihar (supra)***, this application is allowed.

Accordingly, the order of cognizance dated 06.11.2013/10.07.2014, passed by Chief Judicial Magistrate, Chapra in Chapra Town P.S. Case No. 251 of 2012 is hereby quashed.

(Sandeep Kumar, J)

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