

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47524 of 2017

Arising Out of PS. Case No.-522 Year-2012 Thana- KOTWALI District- Patna

1. Ashish Kundu, S/o Late Charu Chand Kundu,
2. Debashish Kundu, S/o Ashish Kundu,
Both are resident of Mohalla- Jakkanpur, P.S.- Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N.K. Agarwal, Sr. Adv
Mr.Dhananjaya Nath Tiwari, Adv
Ms. Diksha Kumari, Adv

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 22-11-2023 1. Heard learned senior counsel for the petitioners and
learned APP for the State.

2. Learned senior counsel for the petitioners submits
that the present application has been filed seeking quashing of
the order dated 1-4-2015 passed in special Case No. 24 of 2012
arising out of Kotwali Case No. 522 of 2012 passed by the
learned SDJM, Patna whereby cognizance of offences under
Sections 8 and 9 of the Seeds (Control) Order 1983 read with
Section 7 of the Essential Commodities Act (for short "EC Act")
and Section 420 of the IPC has been taken.

3. The learned senior counsel for the petitioners
submits that though various pleas have been raised in the



quashing application seeking quashing of the order dated 1-4-2015 but then the only ground, which is being pressed, is that from perusal of the allegation as alleged in the FIR, it would manifest that *prima facie* no offence under Sections 8 and 9 of the Seeds (Control) Order 1983 is made out nor Section 420 of the IPC is made out.

4. It is next submitted that the informant alleges that on direction of the Director Agriculture, a raid was conducted in the business premises of the petitioner on 18-10-2012, who is an insecticide dealer. It is next alleged that during inspection, it was found that petitioner used to sale substandard insecticide that too without license and on inquiry, the petitioner produced insecticide license bearing license No. 14/23-02-2011 and seed license bearing license No. 35/8-6-2010. It is further alleged that commodities kept in the business premises, including the purchase document of seeds, stock register, cash memo etc were also seized for which a seizure list dated 18-12-2012, was prepared.

5. The learned senior counsel next submits that from perusal of the allegation as alleged in the FIR, it would manifest that the informant alleges that the petitioner was found selling substandard insecticide. It is next submitted that though it is



alleged that petitioner was found selling substandard insecticide, but then during the course of investigation, no material was found, which could even connect the petitioner remotely with the offence of selling substandard insecticide.

6. It is further submitted that based on the charges, the learned trial court took cognizance of offences under Sections 8 and 9 of the Seeds (Control) Order, 1983 read with Section 7 of the EC Act and Section 420 of the IPC. It is further submitted that Section 7 of the EC Act incorporates the punishment for violating the orders under the Act. It is further submitted that Seeds (Control) Order 1983 has been framed under Section 3 of the EC Act 1955.

7. It is next submitted that Section 8 of the Seeds (Control) Order, 1983 incorporates :-

Dealers to display stock and price list - Every dealer of seeds shall display in his place of business:-

(a) the opening and closing stocks, on daily basis, of different seeds held by him;

(b) a list indicating prices or rates of different seeds.

Further, Section 9 incorporates:-

Dealers to give memorandum to purchaser -



Every dealer shall give a cash or credit memorandum to a purchaser of seeds.

8. The learned senior counsel thus submits that from bare perusal of Sections 8 and 9 of the Seeds (Control) Order 1983, it would manifest that in the nature of allegation as alleged in the FIR, the provisions of Sections 8 and 9 of the Seeds (Control) Order 1983 are not attracted. It is further submitted that the offence committed under the Seeds (Control) Order 1983 is punishable under Section 7 of the EC Act as Section 7 of the EC Act prescribes punishment for violating the orders framed therein. It is next submitted that from perusal of Section 7 of the EC Act, it would manifest that the same incorporates penalties and the penalties are also divided in two parts.

9. It is next submitted that Section 7 of the EC Act incorporates:-

Penalties.—(1) *If any person contravenes any order made under Section 3,—*
(a) *he shall be punishable,—*
(i) *in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year*



and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;]

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section(4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and



special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.]

(2-A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

(2-B) For the purposes of sub-sections (1), (2) and (2-A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the



case may be.

[(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the Order.]

10. The learned senior counsel thus submits that the offence committed by the petitioner would be punishable in terms of section 7(1)(a)(i) of the EC Act. It is further submitted that since from perusal of the allegation as alleged in the FIR no offence is made out under Sections 8 and 9 of the Seeds (Control) Order, 1983 as such question of Section 7 of the EC Act being attracted does not arise. It is further submitted that cognizance has been taken under Section 420 of the IPC, which also in the nature of allegation as alleged in the FIR does not get attracted, as it is not the case of the informant that any complaint was made by any of the beneficiaries/purchaser



against the petitioner that he was cheating them nor the allegation in the FIR remotely suggests that petitioner was indulging in cheating.

11. The learned APP opposes the quashing application.

12. Considering the submission and the fact that *prima facie* no offence is made out in the nature of allegation as alleged in the FIR under Sections 8 and 9 of the Seeds (Control) Order, 1983 or Section 420 of the IPC, as such the order dated 1-4-2015 passed in special Case No. 24/2012 arising out of Kotwali P.S Case No. 522 of 2012 passed by the learned SDJM whereby cognizance of offences under Sections 8 and 9 of the Seeds (Control) Order, 1983 read with Section 7 of the EC Act and Section 420 of the IPC has been taken, is hereby quashed.

(Satyavrat Verma, J)

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