IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43069 of 2019

Arising Out of PS. Case No.-76 Year-2010 Thana- GOVERNMENT OFFICIAL COMP. District- Darbhanga

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Atul Churiwal Son Of Late Permanand Churiwal Managing Director, M/S Krishi Rashayan Export Pvt. Ltd., Resident Of House No. 4, National Library Avenue, P.S.- Kolkata, District - Kolkata (West Bengal)

... ... Petitioner/s

Versus

1. The State of Bihar
2. Dr. Pramod Kumar, Deputy Director Agriculture, Plant Protection, Darbhanga Division, Darbhanga. Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dhananjaya Nath Tiwari
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 25-07-2023

1. This is an application for quashing of the order dated 23.09.2010 passed in G-O Case No. 76 of 2010, Trial No. 900 of 2010 passed by the learned C.J.M., Dharbhanga by which the learned Magistrate took cognizance for the offences punishable under Section 31(1)(2) of the Insecticides Act against the petitioner and also for quashing the Revisional order dated 26.07.2018 passed in Cr. Revision No. 317/2010, Registration No. 304 of 2017 by the learned Vth Additional Sessions Judge, Dharbhanga by which the learned Magistrate dismissed the Cr. Revision and affirmed the order passed by the learned C.J.M., Dharbhanga.

2. As per the prosecution case, the complainant

filed a complaint alleging that on 06.12.2009, sample of insecticides Tiger was collected and sent for quality test and in result the sample does not confirm the relevant standard specification and the product was found misbranded in active ingredient.

3. It has been submitted by the learned counsel for the petitioner that the present criminal case being G.O. Case No. 76/2010 Tr No. 900/2010 U/s 31(1)(2) of the insecticides act was filed against the petitioner's company and against the petitioner because of the reason that one of the product namely Tuged (Trizophos 35% + Deltamethrin 1% EC) Batch No. K.R.E./JK 70 was found substandard/misbranded.

4. He further submits that it shall not be out of place to mention that the Director Agriculture after the above case imposed ban on its sale on 15.04.2011. He further submits that petitioner's company being aggrieved with the order dated 15.04.2011 preferred appeal before Secretary Agriculture-cum-Appellate Authority.

5. He further submits that the appellate authority vide his order dated 21.12.2011 gave benefit of doubt and directed to Director Agriculture Bihar, Patna to lift ban on sale of above product. After the order dated 21.12.2011 of the

Secretary Govt. of Bihar, Patna, the Director Agriculture, Bihar Patna was pleased to recall the order of ban of the product giving rise to present criminal case vide his order dated 20.01.2012.

6. He further submits that it is needless to say that against the ban order of the product the petitioner's company filed C.W.J.C. No. 13817 of 2019. On 30.01.2015, the above case was disposed of as infructuous since the grievance of the petitioner's company was already redressed in terms of order dated 21.12.2011 of the learned Secretary Agriculture, Bihar, Patna.

7. While deciding the appeal of the petitioner, the Secretary Agriculture and Appellate Authority vide his order dated 21.12.2011 in the concluding portion has held as follows:-

> *"From the arguments and submissions from both sides and after going through the relevant documents placed in the record it appears that in all the above cases, the company was denied its right by violating the rule of natural justice by not asking for a showcause.*
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> *The relevant provisions of the Insecticides Act, 1968 & Rules, 1971 were overlooked and the sale of the above mentioned four products was banned. Due to these anamolies and misleading and contrary reports by SPTL Patna and CIL, Faridabad, it was decided to give the company the benefit of doubt and the Director Agriculture is directed to lift the ban on sale for the above mentioned four products. The case is disposed off with this direction."*

8. I have heard the learned APP for the State also.

9. The case of the petitioner in appeal as well as

grounds raised in the present case are same and the allegations levelled against the petitioner, the basis of the F.I.R. has been set aside in appeal.

10. It has been held by the Hon'ble Supreme Court in the case of ***Uttam Chand & Ors Vs Income Tax Officer, Central Circle 1982 133 I.T.R. 909*** that once the very basis for initiating the prosecution goes the prosecution cannot continue.

11. Accordingly, this application is allowed and the order dated 23.09.2010 passed in G-O Case No. 76 of 2010, Trial No. 900 of 2010 passed by the learned C.J.M., Dharbhanga and the Revisional order dated 26.07.2018 passed in Cr. Revision No. 317/2010, Registration No. 304 of 2017 by the learned Vth Additional Sessions Judge, Dharbhanga are hereby quashed.

(Sandeep Kumar, J)

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