

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40539 of 2023

Arising Out of PS. Case No.-237 Year-2021 Thana- SALAKHUA District- Saharsa

SUMAN SINGH Son of Late Rajendra Prasad Singh Resident of Panchwati,
Ward No. 17, Post Officer-Saharsa, Police Station-Saharsa Sadar, District-
Saharsa, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The District Manager, State Food Corporation, Saharsa Saharsa

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar

For the Opposite Party/s : Mr.Parmeshwar Mehta

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 25-07-2023 Heard learned counsel for petitioner and learned

Additional Public Prosecutor and learned Senior Counsel for the

BSFC.

2. The present application is filed for quashing the
order dated 05.01.2023 passed in Salkhua P.S. Case No.
237/2021 dated 31.12.2021 passed by the Court of Leaned Sub-
Divisional Judicial Magistrate, Saharsa under Section 406, 409,
420, 120(B) of the IPC and Section 7 of the E.C. Act against the
accused persons including the petitioner.

3. Learned counsel for the petitioner submits the
allegation against the petitioner is of black marketing the food
grains.



4. It has been submitted by the learned Counsel for the petitioner that after investigation, the police has submitted the charge-sheet, vide charge sheet bearing No. 41/2022 dated 14.05.2022 under section 406, 409, 420 and 34 of the Indian Penal Code and Section 7 of the E.C. Act against the accused persons namely (i) Suman Singh (ii) Chandan Choudhary, who are named in the F.I.R.

5. After the submission of the charge-sheet the learned Court below took cognizance on 05.01.2023 against the accused persons. The petitioner has been enlarged on anticipatory bail in this case.

6. Petitioner at that time was working as Transport-Cum-Handling Agent(Main), for the revenue district of Saharsa, under Bihar State Goods and Civil Supply Corporation, Patna (hereinafter to be referred as “Corporation”).

7. It is further stated that the petitioner has been falsely implicated in this case on mistake of facts because he was a Transport-Cum-Handling Agent (Main) and responsible for the transportation of the food grains and was working from 2014 and since then there has been no complaint against the petitioner.

8. It is also stated that District Magistrate, Saharsa



issued a show cause notice to the petitioner for black marketing the food grains on 22-11-2021. Allegation contained in the FIR as well as in show cause notice are almost identical and based on same facts.

9. Petitioner submitted his reply denying all the allegation and further explained that goods have been delivered in the godown by him for which appropriate receipt has been given to him.

10. It is stated that the District Manager, SFC, Saharsa has cancelled the agreement, forfeited security money and bank guarantee and further blacklisted the petitioner for 5 years from doing transportation work.

11. Thereafter the petitioner preferred an appeal before Headquarter of Transport Committee, Bihar State Food and Civil Supply Corporation Ltd, Patna on 22.02.2022. The Headquarter Transport Committee vide its order dated 22.02.2022 set aside the order of District Manager, SFC, Saharsa.

12. A bare perusal of order dated 22.02.2022, would indicate that the Headquarter Transport Committee, directed District Manager, Saharsa to submit a report and further also directed Deputy General Manager of the corporation to submit a



report on the basis of online entries.

13. District Manager, Saharsha stated that the truck were having GPS system and also submitted along with the report Truck Challan, receipt of the Food Grains issued by AGM.

14. Deputy General Manager of the corporation also submitted his report giving a finding based on inflow entry report, load cell report and GPS report that on 22.11.2021, two trucks loaded with food grains from BSWC, Saharsa reached TPDS godown, Salkhua and the godown in-charge, TPDS godown Salkhua received the same quantity of food grains, which was loaded at BSWC, Saharsa.

15. It stated that on the basis of aforesaid two reports, the Headquarter Transport-Committee, came to conclusion that there is no shortage/Misappropriation of food grains and hence the facts are contrary of the Black-Marketing of food grains and accordingly the order of District Manager, SFC, Saharasa was set aside and thereafter the transportation work of the petitioner was restored.

16. The petitioner being a transporter cannot be roped in the offence of the E.C. Act on wrong facts. Even otherwise, there is admission of co-accused Chandan



Chaudhary that the food grains loaded on truck has been received in the godown.

17. Learned Senior counsel for the petitioner also submits that there is no mens rea in the instant case nor the petitioner has contravened any orders issued under Section 3 of the E.C. Act, hence the offence under Section 7 of the E.C. Act is not attracted as informant has not mentioned in the FIR about the contravention of the order.

18. In this connection, it is necessary to mention here that for the prosecution under the E.C. Act, violation of the order under Section 3 of the E.C. Act, is pre-condition and the FIR didn't disclose about the contravention of any order which attracts under Section 7 of the E.C. Act, and in absence of such statement or declaration no prosecution will lie under Section 7 of the E.C. Act.

19. He further submits that once it is evident that the petitioner has only role in transportation of aforesaid food grains, the present quashing application may be allowed in favour of the petitioner.

20. It is also clear that offences under Section 406, 409 and 420 of Indian Penal Code are not made out against the petitioner for the reason that the petitioner is contractor-cum-



transport-cum-handling agent and is only responsible for transportation of wheat from the B.S.W.C, Saharsa to T.P.D.S godown Saikhua and as such there is no question to attract such offences of Indian Penal Code.

21. Learned counsel for the BSFC has fairly submitted that pursuant to the order dated 22.02.2022, the prosecution of the petitioner will be nothing but an abuse of the process of the Court as the very basis of the prosecution of the petitioner has been set-aside by the Managing Director. Hon'ble Supreme Court in the Case of *Uttam Chand Vs. I.T.O (1982) 2 SCC 543* has held that the prosecution is to be quashed if the very basis of the prosecution has been set aside.

22. From reading the order dated 22.02.2022, it appears that the allegation leveled against the petitioner in the FIR are same as have been considered by the Managing Director in his order and after considering the entire materials, he has allowed the appeal of the petitioner and restored the transportation work of the petitioner. Moreover no offence under Section 7 of the Essential Commodities Act and other sections of the Indian Penal Code are made out against the petitioner. In that view of the matter, this application is allowed.

23. Accordingly, the order dated 05.01.2023 passed in



Salkhua P.S. Case No. 237/2021 dated 31.12.2021(Special
14/2022) (State Versus Chandan Choudhary and Anr.) passed by
the Court of Leaned Sub-Divisional Judicial Magistrate, Saharsa
is hereby quashed.

(Sandeep Kumar, J)

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