

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48734 of 2022

Arising Out of PS. Case No.-540 Year-2021 Thana- LAHERIMUHALLA District- Nalanda

Kislay Krishna, son of Madhusudan Saw, R/V- Banshipur, P.O- Arma, P.S-
Kajra, Dist- Lakhisarai

... .. Petitioner

Versus

1. The State of Bihar
2. The Supply Inspector-Cum-Marketing Officer, Municipal Corp., Bihar
Sharif Bihar

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Prashant Sinha, Advocate
For the Opposite Party	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 22-08-2023

The petitioner has challenged the order dated 06.05.2022 passed by learned Sub-Divisional Judicial Magistrate, Bihar Sharif, in G.R. No.6979 of 2021 (T.R. No.3572 of 2022) arising out of Laheri P.S. Case No. 540 of 2021, by which the learned Magistrate has taken cognizance against the petitioner for the offence under Section 7 of the Essential Commodities Act.

2. The petitioner is the Assistant Manager of State Food Corporation, Prakhanda Parisar Godown. On physical verification of the aforesaid godown, 2.94 quintals of wheat was found in excess while 19.29 quintals of rice was found to be in



deficit. It is alleged that the petitioner has committed black-marketing of 19.29 quintals of rice and has illegally stored 2.94 quintals of wheat for the purposes of black-marketing. Accordingly, the present F.I.R. has been filed against the petitioner for the offence under Section 7 of the Essential Commodities Act.

3. Learned counsel for the petitioner submits that no offence under Section 7 of the Essential Commodities Act is made out against the petitioner as there is no violation of any order issued by the authorities. He further submits that after lodging of the F.I.R. the godown in question was sealed and the same was again unsealed in presence of witnesses pursuant to the order of the District Magistrate, Nalanda and upon verification, it was found that about 36 Kgs. of wheat and 16 Kgs. of rice was in deficit and value of which has been deposited by the petitioner in the account of the Bihar State Food & civil Supplies Corporation pursuant to the order of the District Manager, State Food Corporation, Nalanda.

4. Learned counsel for the petitioner further submits that for the alleged violation no departmental proceeding has been initiated against the petitioner and once the authorities have chosen not to proceed against the petitioner



departmentally, the present F.I.R. should not have been lodged in a hurry. He further submits that this kind of difference in stock will not attract any criminal prosecution.

5. By making the aforesaid submissions, learned counsel for the petitioner submits that this Court may allow this application and quash the prosecution of the petitioner.

6. Learned counsel for the State has opposed this application and has submitted that the petitioner has committed misappropriation and therefore, the impugned order taking cognizance against the petitioner is just and proper.

7. I have considered the submissions of the parties and perused the materials on record. In the opinion of this Court, for any discrepancy in the stock of the godown in question if the authorities have not proceeded against the petitioner departmentally and when no order under Essential Commodities Act has been violation by the petitioner, the prosecution against the petitioner is nothing but an abuse of the process of the Court. Moreover, in subsequent inspection, the deficit quantity of wheat has been found to be about 36 Kgs. and rice to be about 16 Kgs and the petitioner has deposited an amount of Rs.1484/- towards the value of the deficit food-grains



in the account of the Bihar State Food & Civil Supplies Corporation pursuant to the order of the District Manager, State Food Corporation, Nalanda.

8. In view of the aforesaid reasons, this application deserves to be allowed and accordingly, the same is allowed. The F.I.R. vide Laheri P.S. Case No.540 of 2021 lodged against the petitioner for the offence under Section 7 of the Essential Commodities Act and all consequential proceedings arising out of the aforesaid F.I.R. including the order dated 06.05.2022 passed by learned Sub-Divisional Judicial Magistrate, Biharsharif are quashed in the interest of justice.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	04.09.2023
Transmission Date	04 .09.2023

