

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66636 of 2021**

Arising Out of PS. Case No.-64 Year-2021 Thana- ASHOK PAPER MILL District-
Darbhanga

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ABHASH KUMAR Son of Sri Mithilesh Jha Resident of Bankers Colony,
Laxmi Sagar, P.S.- Sadar, District - Darbhanga, Address of factory Anandpur,
Laheriasarai, P.S.- Ashok Paper Mill, District - Darbhanga

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Vaishnavi Singh

For the Opposite Party/s : Mr. Ram Sumiran Rai

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT**

Date : 18-08-2023

Heard learned counsel for the petitioner and the learned
Additional Public Prosecutor.

2. That this is an application for quashing the order dated
14.07.2021 passed by the learned Judicial Magistrate Ist Class,
8th, Darbhanga in Ashok Paper Mill P.S. Case No. 64/2021
whereby and whereunder the learned Magistrate has been
pleased to reject the petition filed by the petitioner for unsealing
the factory of the petitioner which was illegally sealed by the
police as well as the revisioned order dated 06.10.2021 passed
by the learned Additional Sessions Judge, 3d, Darbhanga in
Criminal Revision No. 178/2021 by which he dismissed the
revision application preferred by the petitioner against the order



dated 14.07.2021 passed by the learned Judicial Magistrate Ist Class, 8th, Darbhanga in Ashok Paper Mill P.S. Case No. 64/2021.

3. The Prosecution story in short is that the petitioner was manufacturing kurkure, namkeen etc. and stocking the same in a pakka house seemingly a godown who on seeing the team of police fled away. The premise was inspected and it was found after perusal of the letter made available by the B.D.O., Hayaghat that the manufacturer of the item is Abhash Kumar, son of Mithilesh Jha, Anandpur P.S. Ashok Paper Mill in the district of Darbhanga whereas on the seized snacks, the address of manufacture was Saloni Food Product, Bettiah Kumar Bagh, West Champaran, Bihar. No batch number or the date of manufacture was found on the product which is a violation of section 27(1)(c) of the Food

4. It is further submitted by the learned counsel for the petitioner that the petitioner has a valid license in the name of M/s Vijaydeep Enterprises which is situated at village Anandpur P.S. Ashok Paper Mill in the district of Darbhanga and the said license is for manufacture of namkeen, chips, kurkure, bhujia and bakery products being license no 10420310000239. and the said license was issued on 8.10.2020 and it is valid till



7.10.2025.

5. It is next submitted by learned counsel for the petitioner that the petitioner along with his father is residing at Darbhanga but their factory premise is situated at village Anandpur.

6. Thereafter, learned counsel for the petitioner submits that at this juncture the petitioner is not going into the merit of the case but from the analysis report it will be evident that the products do not contains any adulterant matter and the namkeen was misbranded due to regulation 2.2.2 and the petitioner has a license to manufacture the same and the said manufacturing unit is situated at village Anandpur.

7. It is further submitted that in the entire Food Safety and Standard Act, 2006 (hereinafter referred to as the "Act"), no power is vested in the Food Safety Officer to seal any premise or factory and the powers of the Food Safety Officer is mentioned in section 38 of the Act. Similarly, section 41 of the Act prescribes power of search, seizure, investigation, and prosecution and procedure thereof.

8. It is further submitted by learned counsel for the petitioner that under the Act, the police don't have any jurisdiction to institute a First Information Report and submit



the charge sheet.

9. It is next submitted on behalf of the petitioner that in any view of the matter, from the First Information Report and the documents contained therein, it will be evident that it is the Food Safety Officer who allegedly sealed the factory premise of the petitioner on the order of the BDO, Hayaghat.

10. It is next submitted by learned counsel for the petitioner that under the Act, neither the BDO has any jurisdiction to give any direction nor has the Food Safety Officer got any power to seal any factory premises either under section 38 of 41 of 42 of the Act.

11. Learned counsel for the petitioner further submits that in any view of the matter, petitioner has a valid license for manufacturing namkeen, chips, kurkure, bhujia and bakery products and authorities have neither cancelled nor suspended the license, and the same can't be sealed by the Food Safety Officer. In the present case the police have already submitted charge sheet no. 68/2021 dated 23.06.2021 but it is strange that along with the First Information Report several other documents have also been supplied including seizure memo dated 6.05.2021, a letter as contained in memo no. 1261/2021 dated 11.07.2021, the analysis report and its forwarding letter etc.



12. It is further submitted that as in the case relating to Ashok Paper Mill P.S. Case No. 64/2021, factory premise of the petitioner was sealed by the Food Safety Officer, Darbhanga, the petitioner filed an application before the learned Judicial Magistrate Ist Class, 8th, Darbhanga for giving direction to unseal the premises so that the petitioner may start his regular business but the learned Magistrate vide his order dated 14.07.2021 dismissed the said application filed by the petitioner observing that he was running the factory illegally and he has no valid and legal authority and rejected the said petition.

13. It is further submitted on behalf of the petitioner that as advised, being aggrieved by the said order dated 14.07.2021 passed by the learned magistrate, the petitioner preferred a revision application before the learned Sessions Judge, Darbhanga in Criminal Revision No. 178/2021 and the same was transferred to the court of the learned Additional Sessions Judge, 3", Darbhanga who after hearing the parties vide order dated 6.10.2021 has been pleased to reject the revision application of the petitioner saying that there is no illegality or perversity in the order dated 14.07.2021 passed by the learned Magistrate ignoring the fact that under the Act the Food Safety Officer has got no jurisdiction to seal any factory and his power



of search and seizure is already defined in the Act in section 41 of the Act and his powers have been defined under section 38 of the Act.

14. Learned counsel for the State has submitted that the factory cannot be unsealed since the case is still pending in Court.

15. I have considered the submission of the parties.

16. Chapter 8 of *The Food Safety and Standards Act, 2006* deals with the enforcement of the Act. Section 41 of the Act deals with the wide power of seizure, investigation, prosecution and procedure thereof.

17. Section 41 of the *The Food Safety and Standards Act, 2006* is as follows:

41. Power of search, seizure, investigation, prosecution and procedure thereof (1) Notwithstanding anything contained in sub-section (2) of section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food and shall thereafter inform the Designated Officer of the actions taken by him in writing: Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated. (2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search, seizure summon,



investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act.

This clause empowers the Food Safety Officer to search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food. However, no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

18. Section 48 of Chapter IX of the *The Food Safety and Standards Act, 2006* is the general provision relating to offence which reads as follows:

General provisions relating to offences.-(1) A person may render any article of food injurious to health by means of one or more of the following operations, namely:-

(a) adding any article or substance to the food;

(b) using any article or substance as an ingredient in the preparation of the food;

(c) abstracting any constituents from the food; or

(d) subjecting the food to any other process or treatment, with the knowledge that it may be sold or offered for sale or distributed for human consumption.

(2) In determining whether any food is unsafe or injurious to health, regard shall be had to-

(a)(i) the normal conditions of use of the food by the consumer and its handling at each stage of production, processing and distribution;

(ii) the information provided to the consumer, including information on the



label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods not only to the probable, immediate or short-term or long-term effects of that food on the health of a person consuming it, but also on subsequent generations;

(ii) to the probable cumulative toxic effects;

(iv) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers;

(v) and also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities;

(b) the fact where the quality or purity of the article, being primary food, has fallen below the specified standard or its constituents are present in quantities not within the specified limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be unsafe or sub-standard or food containing extraneous matter.

Explanation. For the purposes of this section, "injury", includes any impairment, whether permanent or temporary, and "injurious to health" shall be construed accordingly.

This clause provides for general provisions relating to offences. In determining whether any food is injurious to health, regard shall be had to the particular health sensitivities of a specific category of consumer where the food is intended for that category of consumers but also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities. For the purposes of the Chapter on Offences and Penalties, "injury" includes any impairment, whether permanent or temporary, and



"injurious to health" shall be construed accordingly.

19. From reading various provisions of the Act, it appears that there is no power provided in the Act for sealing of the factory premises.

20. Power of the Food Safety Officer is to take a sample, seize any article of food in the safe container which appears to the Food Safety Officer to be in contravention of this Act and the regulations made thereunder and the safe custody of food business operator such article of food after taking sample.

21. The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.

22. Section 41 of the *The Food Safety and Standards Act, 2006* also does not prescribe any sealing of the factory premises from which the article of food is seized.

23. In my opinion, the factory from which the food article have been seized cannot be kept sealed indefinitely by the police.

24. In these circumstances, the order dated 14.07.2021



passed by the learned Judicial Magistrate 1st Class, 8th Darbhanga in Ashok Paper Mill P.S. Case No. 64 of 2021 as well as the revision order dated 06.10.2021 passed by the learned Additional Sessions Judge, 3rd, Darbhanga in Criminal Revision No. 178 of 2021 is hereby quashed and the application filed by the petitioner for unsealing of the factory is allowed.

25. The police is directed to unseal the factory premises of the petitioner forthwith.

(Sandeep Kumar, J)

Sunnykr/-

AFR/NAFR	NAFR
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