

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36999 of 2015

Arising Out of PS. Case No.-371 Year-2014 Thana- PURNEA SADAR District- Purnia

Atulanand Choudhary son of Deva Nand Choudhary, resident of Sahevan Tola, P.S.- K. Hat, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ajay Chandra Kishore son of not known to the petitioner, resident of Azad Nagar, Balua Tola, P.S.- Motihari, District- East Champaran, presently Block Supply Officer, East Purnea, PS- Sadar, Dist- Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Raj Kumar, Advocate Mr. Rohit Kumar, Advocate Ms. Beauty Verma, Advocate
For the State.	:	Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 27-06-2024

The present petition under Section 482 Cr.PC has been preferred against the order dated 01.06.2015, passed by Ld. SDJM, Purnea, in Sadar (Mufassil) P.S. Case No. 371 of 2014, whereby Ld. S.D.J.M has taken cognizance of the offence punishable under Section 7 of the Essential Commodities Act, against seven Accused persons including the Petitioner.

2. The prosecution case as emerging from the FIR dated 28.07.2014 on the written report of Ajay Chandra Kishore, Block Supply Officer, Purnea, is that three trucks bearing registration nos. WB-23A-1743, BR-11-J-3755 and BR11B-1310 were standing in front of the house of Suraj Sah Situated in



Muffasil Police Station. The truck bearing registration no. WB23A-1743 was carrying 400 bags containing 220 quintals of rice, truck bearing registration No. WB23A-1743 was carrying 350 bags containing 175 quintals of wheat. As per allegation, grains were being loaded in another truck bearing No. BR-11-B-1310. Further allegation is that the raid was conducted in the house of Suraj Sah and 12 bags containing 50 Kg. of wheat each (Total six quintals of wheat) were recovered. Suraj Sah was not found in his house. It is also alleged that no document in regard to the loaded grains in the vehicle were produced and as per the informant, the grains were of subsidized category and they were being illegally stored for selling in black market.

3. I heard Ld. Counsel for the parties.

4. Ld. counsel for the Petitioner submits that the Petitioner is innocent and has falsely been implicated in this case. He further submits that the pre-requisites for application of provisions of the Essential Commodities Act is that the grains must come under a control order issued by appropriate government. But there is no control order in regard to dealing in wheat and rice, nor has the prosecution referred to any such control order in the written report. Hence, there is no question of application of Section 7 of the Essential Commodities Act. The



impugned order is therefore not sustainable in the eye of law. It is nothing but abuse of the process of the Court.

5. He also submits that the Petitioner is the owner of the truck bearing no. BR-11J-3755 and there is no allegation that the Petitioner was present on the spot or in the vehicle at the time of alleged offence. Nor is any allegation in the written report that in any way he has connivance in the commission of the alleged offence.

6. He further submits that there is no allegation of any misappropriation of the consignment by the consigner and he had delivered the consignment to the consignee to his satisfaction. There is no dispute in regard to proper delivery of the consignment to the Consignee. There is no complaint whatsoever on the part of the consignee against the carrier.

7. Hence, it is submitted that the impugned order is not sustainable in the eye of law. It is liable to be set aside under Section 482 Cr.PC.

8. However, Ld. APP for the State Mr. Chandra Sen Prasad Singh submits that there is no illegality or infirmity in the impugned order. A *prima facie* case is made out against the petitioner as per material on record. The impugned order is therefore sustainable in the eye of law.



9. I perused the materials available on record and considered the submission advanced on behalf of both the parties.

10. Section 7 of the Essential Commodities Act, 1955 provides for penalties in case of contravention of any order made under Section 3 of the Act. Section 3 of the Act confers power upon the competent authority to promulgate any order to control production, supply and distribution etc. of essential commodities. As such, the first and foremost requirement for application of Section 7 of the Essential Commodities Act is that there must be violation of a control order. But there is no such order mentioned in the written report in regard to dealing in wheat and rice. In the absence of any control order, everybody is free to deal in such grains. Hence, if the accused persons including the petitioner were found to be storing some rice or grains in any truck, no offence is made out.

11. In **Ranjeet Paswan Vs. State of Bihar, 2009 SCC OnLine Pat 1321**, also this Court has held that it is settled by a catena of decisions, both of the Apex Court as also this Court, that for inviting prosecution under Section 7 of the E.C. Act, the F.I.R. must disclose as to which order made under Section 3 of the E.C. Act has been contravened or violated and in



the absence of such statement or declaration in the fardbeyan or complaint, no prosecution lies under Section 7 of the E.C. Act. Similar view has been taken by this Court in **Ramavtar Prasad Vs. State of Bihar, (2008 SCC OnLine Pat 1245)** and **Gunanand Prasad @ Gunanand Sah Vs. State of Bihar & Anr., (2008 SCC OnLine Pat 1218)**.

12. In Arvind Kumar Vs. State of Bihar, 2014 SCC OnLine Pat 1369, this Court has also held that as per settled principle of law, no prosecution under the Essential Commodities Act could be launched against a private person. The Essential Commodities Act has been framed for the benefit of consuming public. For any violation of the provisions of the Essential Commodities Act or the Control Orders, promulgated under the authority of the Essential Commodities Act, only the agents or the P.D.S. dealers could be prosecuted.

13. There is also no allegation of theft of the grain in question, nor is any complaint from the Consigner or Consignee against the carrier.

14. As such, no offence is made out as per the alleged facts and circumstances of the case.

15. In the celebrated judgment of **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, Hon'ble Supreme



Court has held, amongst other things, that if as per the alleged facts and circumstances of the case, no offence is made out, the Court can invoke inherent power under Section 482 Cr.PC to prevent the abuse of the process of the Court and secure the ends of justice.

16. In Pepsi Foods Limited & Anr. Vs. Special Judicial Magistrate & Ors., [(1998) 5 SCC 749], Hon’ble Apex Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

17. Hence, the impugned order is not sustainable in the eye of law and liable to be quashed and set aside under Section 482 of Cr.PC to prevent the abuse of the process of Court and secure the ends of justice.

18. Accordingly, the petition is allowed, quashing and setting aside the impugned order dated 01.06.2015 passed by Ld. S.D.J.M., Purnea in Sadar (Mufassil) P.S. Case No. 371 of 2014.

(Jitendra Kumar, J.)

S.Ali/chandan-

AFR/NAFR	AFR
CAV DATE	NA
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