

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41151 of 2016

Arising Out of PS. Case No.-96 Year-2012 Thana- BAHADURGANJ District- Kishanganj

1. Jainath Jha, son of Damodar Jha, r/o Suhagamaro, P.S. Bardaha, Distt. Araria.
2. Mustaque @ Mushtaque, son of late Mir Abdul Subhan, Resident of Dehti, P.S. Palasi in the District of Araria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ram Dhari Baitha, B.S.O., Bahadurganj, son of late Shiv Baran Baitha, resident of Sikariya, P.S. Paliganj in the district of Patna.

... .. 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 Pd. 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 impugned order dated 01.07.2016, passed by Ld. SDJM, Kishanganj, in Trial No. 729 of 2016 (CIS No. 4924 of 2014), G.R. No. 668 of 2012 arising out of Bahadurganj P.S. Case No. 96 of 2012, for the offense punishable under



Section 414 of the Indian Penal Code and Section 7 of the Essential Commodities Act, whereby Ld. SDJM has rejected the application of the Petitioners for discharge under Section 239 Cr. P.C.

2. The prosecution case as emerging from the written report filed by the informant is that one truck bearing registration no.BR-19-9263 and one tractor bearing registration no.BR-11L-1905 were found to be carrying 160 sacks containing wheat of the weight of 50 kg each in the truck and 125 sacks containing wheat of 50 kg each in the tractor and as per the further case of the prosecution this grains belonged to the FCI.

3. Heard Ld. Counsel for the Petitioners and Ld. APP for the State.

4. Ld. counsel for the Petitioners submits that the Petitioners are innocent and have falsely been implicated in this case. Petitioner No.1, Jainath Jha is the owner of the truck bearing no. BR-19-9263 whereas Petitioner No.2. Mustaque @ Mushtaque was trader dealing in wheat. He further submits there is no control order issued by any appropriate government in regard to dealing in wheat. Hence, everybody is free to trade in wheat and there is no question of application of Section 7 of



the Essential Commodities Act.

5. As per further submission of Ld. counsel for the Petitioner, there is also no allegation that the grain in question is a case property of any criminal case registered for theft. Hence, there is no question of application of even Section 414 of the I.P.C.

6. Hence, it is submitted by Ld. counsel for the Petitioner is that impugned order is not sustainable in the eye of law and is liable to be set aside under Section 482 Cr.PC.

7. However, Ld. APP for the State submits that there is no illegality or infirmity in the impugned order. There is *prima facie* case made out against the Petitioners as per material on record. The impugned order is sustainable in the eye of law.

8. I perused the material on record and considered the rival submissions of the parties.

9. 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. In the absence of any control order, everybody is free to deal in such grain. Hence, if the accused persons including the petitioner were found to be carrying wheat, no offence is made out.

10. 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)**.

11. 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.

12. There is also no allegation that the grain in question is case property of a case registered for commission of theft of the grain.

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

14. It is a settled principle of law that at the stage of framing of charge, the Court is required to evaluate prosecution materials and documents on record with a view to find out whether the facts emerging therefrom, if taken at their face value, disclose the existence of all the ingredients constituting the alleged offence, though the Court is not expected to sift the probative value of material on record or conduct a mini trial.

The following authorities may be referred to in this regard:

- (i) Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4
- (ii) State of M.P. Vs. Mohanlal Soni, (2000) 6 SCC 338
- (iii) Soma Chakravarty Vs. State, (2007) 5 SCC 403
- (iv) Onkar Nath Mishra Vs. State, (2008) 2 SCC 561
- (v) P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398
- (vi) Sajjan Kumar Vs. CBI, (2010) 9 SCC 368
- (vii) Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460
- (viii) Saranya v. Bharathi, (2021) 8 SCC 583



- (ix) CBI Vs. Aryan Singh, 2023 SCC OnLine SC 379
- (x) State of T.N. Vs. R. Soundirarasu, (2023) 6 SCC 768)

15. In the case on hand, it has been already found that no case is made out against the Petitioner as per the prosecution material on record. Hence, the impugned order is not sustainable in the eye of law. It is liable to be quashed and set aside to prevent the abuse of process of the Court and secure the ends of justice under Section 482 Cr.PC as held by Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335.**

16. Accordingly, the petition is allowed, quashing and setting aside the impugned order dated 01.07.2016 passed by Ld. S.D.J.M., Kishanganj. in Trial No. 729 of 2016 (CIS No. 4924 of 2014), G.R. No. 668 of 2012 arising out of Bahadurganj P.S. Case No. 96 of 2012.

(Jitendra Kumar, J.)

S.Ali/Chandan

AFR/NAFR	AFR
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