

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.486 of 2017

Arising Out of PS. Case No.-13 Year-2016 Thana- SIKARHATTA District- Bhojpur

Pushpa Devi wife of Sri Rameshwar Prasad owner of M/s Raj Traders,
resident of KG Road, P.S. Ara Nagar, District Bhojpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Director General of Police, Bihar, Patna Bihar
2. The Senior Superintendent of Police, District Bhojpur at Arrah, Bihar.
3. The Officer In Charge, Sikarhatta P.S. District- Bhojpur, Bihar Bihar
4. The Block Supply Officer cum Circle Officer, Tarari, District Bhojpur, Bihar.
5. Bihar State Food and Civil Supplies Corporation Limited Bihar
6. Addl. Director General, Economic Offence Unit, Patna. Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 502 of 2017

Arising Out of PS. Case No.-13 Year-2016 Thana- SIKARHATTA District- Bhojpur

Niraj Kumar @ Niraj Kumar Singh Son of Sri Manoj Kumar Singh Resident
of village - Kurmuri, P.S. Sikarhatta, District - Ara, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna. Bihar
2. The Senior Superintendent of Police, District Bhojpur at Arrah, Bihar. Bihar
3. The Officer In Charge, Sikarhatta P.S. District Bhojpur, Bihar. Bihar
4. The Block Supply Officer cum Circle Officer, Tarari, District Bhojpur, Bihar. Bihar
5. The Bihar State Food and Civil Supply Corporation Limited Bihar
6. Additional Director General of Police, Economic Offence Unit, Patna

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 486 of 2017)

For the Petitioner/s	:	Ms. Shilpa Singh, Advocate
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate
For the EOU	:	Mr. V.N.P. Sinha, Sr. Advocate
		Ms. Soni Shrivastava, Advocate



For the State : Mr. Ajeet Kumar, GA-9
(In Criminal Writ Jurisdiction Case No. 502 of 2017)
For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the BSFC : Mr. Shailendra Kumar Singh, Advocate
For the EOU : Mr. V.N.P. Sinha, Sr. Advocate
Ms. Soni Shrivastava, Advocate
For the State : Mr. Deepak Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

17 25-01-2024 Heard Ms. Shilpa Singh, learned Advocate in Cr.WJC No.486 of 2017 and Mr. Prabhat Ranjan in Cr.WJC No.502 of 2017, Mr. Shailendra Kumar Singh, learned counsel for the Bihar State Food Corporation (in short 'BSFC') and Mr. V.N.P. Sinha, learned senior counsel assisted by Ms. Soni Shrivastava, learned Advocate for the Economic Offence Unit (in short 'EOU').

2. These two writ applications have been taken up for consideration on the request of the parties.

Cr.WJC No.486 of 2017

3. This writ application has been filed by owner of the six trucks/vehicles which were involved in transportation of the food-grains from the godown of the Food Corporation of India to the godown of the State Food Corporation. The petitioner is seeking quashing of the FIR of Sikarhatta P.S. Case No.13 of 2016 (G.R. No.1033 of 2016) registered under Sections 411 and 120(B) of the Indian Penal Code and Section 7 of the Essential Commodities Act.



4. It is stated that the petitioner had earlier moved this Court for quashing of the FIR giving rise to Cr.WJC No.236 of 2016 but the same was permitted to be withdrawn with a liberty to approach this Court with appropriate application in future, if so advised. Reliance in this regard has been placed on the order dated 08.04.2016, copy of which has been enclosed as Annexure- '1' to the writ application.

5. Learned counsel for the petitioner submits that as per the written complaint lodged by the Block Supply Officer, Tarari addressed to the officer in-charge of the police station, the Block Supply Officer is said to have received an intelligence information regarding unloading of the government food-grains in the premises of Singh Rice Mill for purpose of black-marketing. When he reached there, the informant found that two trucks were parked on the road covered by Tarpaulin. On Piro Imadpur road two trucks were found covered with Tarpaulin and parked. It is alleged that upon entering into the premises of Singh Rice Mill, three trucks were found parked and the food-grains were being unloaded. On seeing the officials, the labourers allegedly managed to flee away. The registration number of the trucks which were found inside the premises are also mentioned in the FIR. It is alleged that reports were



called for from the respective godown managers with regard to the foodgrains transported by the respective trucks and upon consideration of the same and all attending circumstances the FIR is being lodged. The allegation is that the food-grains were being packed in the gunny bags inside the premises of the rice mill and those were intended to be sold in black-marketing.

6. Learned counsel for the petitioner submits that the allegations contained in the FIR are palpably false, concocted and baseless. In fact, the petitioner had already transported the loaded food-grains to the destination point and the fact that the rice had been delivered at the destination point has been clearly mentioned in the records of the recipient godown. It is also the case of the petitioner that the transportation bill of the petitioner for the period of January, 2016 has been paid. In course of submissions, learned counsel for the petitioner submits that in fact the entire payments of this transaction has been made during pendency of the investigation and after withdrawal of the first writ application filed by the petitioner.

7. It is pointed out that in exercise of power conferred upon the Central Government under Section 3 of the Essential Commodities Act, 1955, the Central government has issued Removal of (Licensing Requirements, Stock Limits and



Movement Restrictions) On Specified Foodstuffs Order, 2002. (hereinafter referred to as the 'Order of 2002'). By this order, the Central Government has allowed any dealer to freely buy, stock, sale, transport, distribute and dispose of any quantity of wheat/paddy/rice etc. It is submitted that in view of this Order of 2002, no case under Section 7 of the E.C. Act could have been registered against the petitioner.

8. Learned counsel further submits that in a similar circumstance when one FIR was lodged against the petitioner on earlier occasion, a learned coordinate Bench of this Court had been pleased to quash the same in Cr.WJC No.740 of 2013 (Annexure- '5' to the writ application). It is further submitted that the investigation of this case has been kept pending since 02.02.2016, about eight years have gone thereafter but the investigation has not been completed, therefore, it is one of those cases in which the petitioner has been deprived of his right to get speedy trial which includes right to get speedy investigation of the case.

Cr.WJC No.502 of 2017

9. This writ application has been preferred by the owner of the rice mill, namely, M/s Singh Rice Mill. He has moved this Court for the first time seeking identical relief of



quashing of the FIR.

10. Learned counsel for the petitioner has, while endorsing the submissions of learned counsel for the petitioner in the abovementioned case, further added that so far as this petitioner is concerned, he is engaged in the business of rice milling and for that purpose he was free to deal in any quantity of rice. The Order of 2002 as mentioned above has been relied upon.

11. It is further submitted that on an application made before this Court in CWJC No.5652 of 2016, vide order dated 06.04.2016, a learned coordinate Bench of this Court had been pleased to direct release of the rice in favour of the petitioner subject to furnishing sufficient guarantee/security equivalent to 10% of the valuation of the seized food-grains. This Court also directed for keeping necessary samples and after obtaining necessary surety the rice to be released. Accordingly, on compliance made by the petitioner, the seized rice has been released in favour of the petitioner. It is submitted that on a bare reading of the FIR, no offence would be disclosed as against the petitioner, hence, the FIR is fit to be quashed.

Stand of respondent no.5.

12. The District Manager, State Food Corporation has filed a counter affidavit and a supplementary counter affidavit. It



is submitted that the offences alleged against the petitioners are cognizable, hence, the First Information Report was lodged by the Block Supply Officer. It is stated that in course of investigation, police has found the case true against all the FIR named accused persons and presently the case is pending in want of further order from the Economic Cell, Patna.

13. It is stated in paragraph '8' of the counter affidavit that the petitioner had lifted the food-grains i.e. CMR from 27.01.2016 to 29.01.2016 from Amarai, Nawada, SFC godown to Peero TPDS, SFC, godown and Gorhari TPDS godown. The petitioner has violated the terms and conditions of agreement in unloading of government food-grains for purpose of black-marketing.

14. In the supplementary counter affidavit certain facts have been brought on record with regard to the enquiry conducted by the S.D.P.O. and a copy of the supervision report of the SDPO, Piro and the Superintendent of Police, Bhojpur have been placed before this Court as Annexure- 'Y' and 'Z' respectively to the supplementary counter affidavit.

Stand of the E.O.U.

15. Mr. V.N.P. Sinha, learned senior counsel represents the E.O.U. A counter affidavit has also been filed. It



is the stand of the E.O.U. that during investigation with regard to illegal unloading of CMR meant for TPDS scheme from the truck of the petitioner at the Singh Rice Mill, it has been found that a cognizable offence is made out against the petitioner. It is the stand of the E.O.U. that the illegal act of unloading the trucks could not have been possible without the collusion and participation of the petitioner and the allegations further stand corroborated with the evidence collected during the investigation up till now. Learned senior counsel for the E.O.U. submits that the investigation is almost complete but the police report in terms of Section 173 Cr.P.C. has not been filed because of an interim order passed on 04.07.2023 whereby and whereunder the further proceeding against the petitioner in Cr.WJC No.486 of 2017 has been stayed.

Consideration

16. Having heard learned counsel for the petitioner, learned senior counsel for the E.O.U. and learned counsel for the BSFC as also on perusal of the records, this Court finds that so far as Cr.WJC No.486 of 2017 is concerned, the petitioner of the said case had moved earlier also before this Court for identical reliefs. The order dated 08.04.2016 passed in Cr.WJC No.236 of 2016 would show that after some argument, learned



counsel for the petitioners sought permission to withdraw the writ application with liberty to approach this Court with appropriate application in future, if so advised.

17. The present writ application has been filed just within one year from the date of withdrawal of the first writ application. The sheet-anchor of the argument of learned counsel for the petitioner is the fact that during investigation the BSFC has accepted that the rice loaded on the trucks of the petitioner were delivered at the destination point and for this reason the transportation bills of the petitioner have been settled and stand paid.

18. From the records, it appears that the BSFC has taken a plea before this Court that the petitioner had violated the terms and conditions of the agreement in unloading of the food-grains for black-marketing near Singh Rice Mill. It has transpired in course of investigation that the in-charge of the godown has though made an entry in the register but a plea has been taken by him at this stage that the same has been done without receiving the actual material. The investigating agency has further taken a plea that in course of investigation no entry has been found in the computerized records of the same godown. It is further stand of the investigating agency that the



evidences collected till now would show that though the transport agent had submitted the bills but it is not reflected that it is the bill of the seized trucks. As regards release of the seized CMR, it has been pointed out that the seized CMR has been provisionally released in favour of the mill owner on account of its being in the nature of perishable goods but the said release is subject to final result of the Confiscation Case No. 9 of 2015-16.

19. This Court, therefore, finds that both the contentions of learned counsel for the petitioner that the transactions of transportation of food-grains were completed by the trucks of the petitioner in Cr.W.J.C. No. 486 of 2017 and then it was duly entered in the register maintained in the concerned godown and further that the bills of those trucks were also settled and paid are being disputed by the investigating agency.

20. So far as the submission of learned counsel for the petitioner in both the writ applications that provisions of the E.C. Act would not apply by virtue of Order of 2002, is concerned, this Court is of the considered opinion that it is not one of those cases in which the Order of 2002 would come into way of lodging of the FIR or the investigation. The allegations



against the petitioner(s) are that of indulging in alleged black-marketing of the government subsidized rice. The FIR is not for indulging in purchase or sale of any quantity of rice. If somebody is indulging in black-marketing of a government subsidized rice, it cannot be allowed to be argued that by virtue of the Order of 2002, such act would be permissible. As per allegations huge quantity of government subsidised rice have been found in the premises of the rice mill. Thus, the submission on this count is also liable to be rejected.

21. To this Court, it appears that in the given facts and circumstances of the case where the investigation is almost complete and the claim of the petitioner in both the writ applications are being disputed by the investigating agency, it would not be appropriate for this Court to exercise its extraordinary writ jurisdiction to quash the FIR. This opinion of the Court is coupled with the fact that the petitioner in Cr.WJC No.486 of 2017 had earlier availed her remedy for the same relief but the writ application was sought to be withdrawn. The liberty granted by this Court to avail the remedy in future in an appropriate application cannot be construed in the manner it is sought to be done by learned counsel for the petitioner at this stage. The case is still at the same stage of investigation and no



further cause of action has arisen to the petitioner in Cr.WJC No.486 of 2017. If the writ court was not inclined to interfere with the on-going investigation in Cr.WJC No.236 of 2016, there is no reason why the same reliefs be allowed to be prayed in this writ application.

22. For the reasons aforesaid, both the writ applications are dismissed.

23. The E.O.U. shall complete the investigation from all angles including as to whether the bills pertaining to these transactions have been cleared by the BSFC during pendency of the investigation and if it has been done, then the same would also be taken into account in course of investigation.

(Rajeev Ranjan Prasad, J)

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