

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32053 of 2018

Arising Out of PS. Case No.-392 Year-2012 Thana- MUFFASIL District- West Champaran

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DHIRAJ KUMAR AGRAWAL @ DHEERAJ KUMAR S/o Late Bishwanath
Prasad Agrawal, R/o Ward No. 15, Sonarpatti, Narkatiyaganj, P.S.- Shikarpur,
District- West Champaran.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Dhananjaya Nath Tiwari, Advocate Mr. Arvind Kumar, Advocate Mr. Kumar Rajdeep, Advocate Ms. Diksha Kumari, Advocate
For the Opposite Party/s :		Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-03-2024

1. Heard learned counsel appearing on behalf of
the parties.

2. The present application has been filed for
quashing the order dated 15.04.2015 passed by learned
Chief Judicial Magistrate, West Champaran at Bettiah, in
connection with Bettiah (M) P.S. Case No. 392 of 2012,
where cognizance was taken for the offences under
section 7 of the E.C. Act.

3. Prosecution case in brief is that the
informant who is District Agriculture Officer, West



Champan at Bettiah, lodged the present case alleging therein that he got information from M.V.I., Bettiah that a truck loaded with Fertilizer has been intercepted and during checking, Amonium Sulphate was found loaded on the truck. It is also alleged that the fertilizer was issued vide challan no. 32 dated 05.08.2012 by Shiv Traders, Gopalganj in the name of Ganesh Traders, Narkatiaganj, West Champaran and in this way the truck loaded with fertilizer was plying from one district to another which is violative under the Fertilizer Control Order and thereafter, 400 bags of fertilizer was seized and the present case was registered under section 7 of the E.C. Act.

4. It is submitted by Mr. N.K. Agrawal, learned senior counsel appearing for the petitioner that police after investigation submitted the final form against petitioner, where without assigning any reason, while differing with exoneration of petitioner by police after investigation, the cognizance was taken by learned trial



court through impugned order which in itself is bad in the eyes of law and on this score alone impugned order taking cognizance be quashed and set aside. It is submitted that the movement as alleged is within the State of Bihar, which does not come under the purview of definition 'export' as it is defined under Order 2(a) of the Fertilizer (Movement Control) Order, 1973. It is submitted by learned senior counsel that main implication as per narration of FIR is violation of Order 7 of the Fertilizer (Control) Order, 1985, where after lodging the FIR licence of petitioner was cancelled but same after enquiry was revoked by District Agricultural Officer, West Champaran, Bettiah vide order dated 28.08.2012 by making a *prima facie*, observation that no such case as alleged for violation of Fertilizer (Control) Order, 1985 appears against the petitioner. In support of submission Mr. Agrawal, learned senior counsel, appearing for the petitioner referred the judgment of this Court as passed in the matter of



Girijesh Kumar Vs. The State of Bihar reported through ***2015 (3) PLJR 63*** and also referred the legal report of this Court as reported in the matter ***Jagarnath Prasad Gupta @ Jaganath Pd. Gupta Vs. The State of Bihar*** as reported in ***2018(1) PLJR 369.***

5. Learned APP while opposing the application submitted that there is specific allegation against the petitioner through FIR as to violate the provisions of Order 7 of the Fertilizer (Control) Order, 1985. It is submitted that the cognizance/impugned order was taken after perusal of the case diary and as such, it cannot be said that it was passed in mechanical manner. It is further submitted that the movement of vehicle having fertilizer is clearly the violation of Order 7 of the Fertilizer (Control) Order, 1985 and, therefore, in furtherance thereof the licence of petitioner was cancelled, but learned APP fairly conceded that District Agricultural Officer, Bettiah, restored the licence of petitioner as submitted above.



6. It would be appropriate to re-produce Order 2 of the Fertilizer (Movement Control) Order, 1973 to understand the definition of "export" as defined thereof.

" 2 Definition- In this Order unless the context otherwise requires-

(a) 'export' means to take or cause to be taken out of any place within a State to any place outside that State."

(b).....

(c).....

7. It would be further apposite to re-produce Sections 7 and 8 of the Fertilizer (Control) Order, 1985 to understand the present fact in better manner.

"7. Registration of Industrial dealers and authorization of other dealers.- No person shall sell, offer for sale or carry on the business of selling of fertilizer at any place as wholesale dealer or retail dealer except under and in accordance with clause 8:

Provided that a State Government may, if it considers it necessary or expedient, by notification in the Official Gazette, exempt from the provisions of this clause any person selling fertilizer to farmers in such areas and subject to such conditions as may be specified



in that notification.

8. Application for intimation or registration.-

1. Every person intending to sell or offer for sale or carrying on the business of selling of fertilizer as Industrial Dealer shall obtain a certificate of registration from the controller by making an application in Form A together with the fee prescribed under clause 36 and a Certificate of source in Form O.

2. Every person including a manufacturer, an importer, a pool handling agency, wholesaler and a retail dealer intending to sell or offer for sale or carrying on the business of selling of fertilizer shall make a Memorandum of Intimation to the Notified Authority, in Form A1 duly filled in, in duplicate, together with the fee prescribed under clause 36 and certificate of source in Form O.

3. On receipt of a Memorandum of Intimation, complete in all respects, the Notified Authority shall issue an acknowledgement of receipt in Form A2 and it shall be deemed to be an authorization letter granted and the concerned person as authorised dealer for the purposes of this Order.

Provided that a certificate of



registration granted before the commencement of the Fertiliser (Control) Amendment Order, 2003, shall be deemed to be an authorization letter granted under the provisions of this Order:

Provided further that where the applicant is a State Government, a manufacturer or an importer or a pool-handling agency, it shall not be necessary for it or him to submit Form O.

Provided also that a separate Memorandum of Intimation shall be submitted by an applicant for whole sale business or retail dealership, as the case may be:

Provided also that where fertilizers are obtained for sale from different sources, a certificate of source from each such source shall be furnished in Form O."

Provided also that a wholesale dealer excepting a manufacturer, a pool handling agency or a State Government, shall not issue the certificate of source of another wholesale dealer. A wholesale dealer shall issue a certificate of source only to a retail dealer."

Provided also that where the manufacturer of organic fertilizer is a State Government or municipality, it shall not be necessary for it to obtain the authorisation



letter:

Provided also that where the manufacturer of vermi-compost, other than a State Government or municipality, has annual production capacity less than 50 metric tonnes, it shall not be necessary for him to obtain the authorization letter."

8. It would be apposite to re-produce legal report of this Court as reported in the matter ***Jagarnath Prasad Gupta @ Jaganath Pd. Gupta (supra)***, where para-7 specifically pressed being relevant part of the legal report, which runs as under:-

"7. The learned counsel for the petitioner has relied upon a decision reported in 2006(4) PLJR 167 (***Kamleshwari Singh vs. The State of Bihar***) and 2011(4) PLJR 21 (***Harendra Kishore Singh @ Harendra Singh vs. State of Bihar***) which supports the submission of the petitioner-that cognizance taken against the petitioner despite Final Form submitted by police, as mistake of fact i.e. constituting no offence-under Section 11, no cognizance can be taken by the Magistrate in such a case. As such, the order taking cognizance by the learned Magistrate is bad in law".



9. It would further be apposite to re-produce para 102 of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation



by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



10. In view of aforesaid factual and legal submission, it appears that the petitioner is an authorized dealer of fertilizer, where said activities governed by the Essential Commodities Act, 1955 and further by different orders as enacted in view of Section 3 of the Essential Commodities Act, 1955. From perusal of record, it appears that after investigation, police exonerated the petitioner but the learned trial court took cognizance through the impugned order. It appears that impugned order of cognizance is without reason, as to differ with finding of investigating agency to exonerate the petitioner, which a learned Magistrate is duty bound to speak through order taking cognizance. It further appears that movement of goods is not outside the State and as such, the activities of petitioner as alleged through present FIR *prima facie* not comes under the purview of 'export' as defined through Order 2(a) of the Fertilizer (Movement Control) Order, 1973 as discussed above. As far violation of Order 7 and 8 of the



Fertilizer (Control) Order, 1985 are concerned, a departmental enquiry was made in this regard, where after enquiry, The District Agricultural Officer, District-Bettiah, Bihar revoked the licence in favour of petitioner with a *prima facie*, observation that the allegation as raised through present FIR does not make any violation of the Fertilizer (Control) Order, 1985. This order was issued on 28.08.2012. Hence, in view of aforesaid factual background continuing with present proceeding would only amount to abusing the process of law. The fact of this case is covered under guideline no. 5 of ***Bhajan Lal's Case (supra)***.

11. Accordingly, in view of above discussed factual and legal aspects, cognizance order dated 15.04.2015 passed by learned Chief Judicial Magistrate, West Champaran at Bettiah, in connection with Bettiah (M) P.S. Case No. 392 of 2012 taking cognizance for the offence under Section 7 of the E.C. Act with all its consequential proceedings *qua* petitioner is hereby



quashed and set aside.

12. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2024
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