

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30791 of 2015

Arising Out of PS. Case No.-139 Year-2011 Thana- CHHATAPUR District- Supaul

Raj Kumar Agrawal @ Raju Agrawal Son of Late Phoolchand Agrawal
Resident of Ganpatganj, P.S. Raghapur, District - Supaul

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Dhananjaya Nath Tiwari, Advocate Mr. Kumar Rajdeep, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, App

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-03-2024

1. Heard learned counsel appearing for the petitioner and learned APP appearing for the State.

2. The present application is preferred for the quashing of order dated 13.06.2012 as passed in G.R. Case No. 1171 of 2011 arising out of Chhatapur P.S. Case No. 139 of 2011, by the learned S.D.J.M., Supaul, for which cognizance of the offence under Section 7 of the Essential Commodities Act was taken against the petitioner.

3. The prosecution case in brief *inter alia* is that Block Supply Officer filed an application before O/C Chattapur Police Station alleging therein that on confidential information, he intercepted a truck bearing no. NL02G-8434, which was found loaded with “sugar”. The informant further alleged that



on enquiry the driver disclosed that 220 bags of “sugar” was brought from Kahara (Saharsa) at the instance of the petitioner and he was directed by the petitioner to unload the “sugar bags” at different place as per his direction given through his slip. It was further alleged that the driver failed to produce any paper regarding sugar. It was further alleged that 30 bags of sugar were delivered to one Ravi Sah and Narayan Sah, which was seized by the informant and rest 160 bags of sugar was found loaded on the truck. It was further alleged that from go-down of said Ravi Sah, certain quantity of mustard oil, refined oil, vegetable oil, pulses etc. were recovered and accordingly, a seizure was prepared in support of present case.

4. Learned senior counsel appearing for the petitioner submitted that the petitioner is a wholesale dealer of the sugar and also working as a commission agent and as such he is entitled to sale and purchase of sugar. It is pointed out that order, made under Section 3 of the Essential Commodities Act is not applicable or enforceable in the eyes of law regarding business activities of petitioner so as to seize the items concerned i.e. the sugar.

5. It is further submitted by learned senior counsel that the sugar, mustard oil, refined oil, dalda, chana, maida etc.



is now not controlled items under the provision of Bihar Trade Articles (License Unification) Order, 1984. It is also pointed out that by a gazette notification, the central government as well as state government issued in the year 2002 deleted all the above items from the schedule of Bihar Trade Articles (License Unification) Order, 1984. It is submitted that no license is now required for doing business of aforesaid commodities. It is also submitted that now, there is no upper limit for storing such commodities.

6. In support of his contention, learned senior counsel for the petitioner has placed reliance on the notification issued by the Central Government bearing Notification No. GSR-104(E) dated 15.02.2002, which reads as under :-

"MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)

ORDER

New Delhi, the 15th February, 2002

G.S.R. 104(E)

Whereas the Central Government is of the opinion that it is necessary and expedient to do so for securing the availability of commodities specified in the Order at fair prices throughout the counter.

Now, therefore, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order :-



1. Short Title, Extent and Commencement

(a) This Order may be called the Removal of under the Essential Commodities Act, 1955

4. The provisions of this Order shall take effect notwithstanding anything to the contrary in any Order made by a State Government before the commencement of this Order except as respects anything done, or omitted to be done, thereunder before such commencement.

5. Issue of any order by the State Governments under powers delegated in GSR 452(E) dated the 25th October, 1972 issued by the Government of India in the then Ministry of Agriculture (Department of Food) and GSR 800 dated the 9th June, 1978 issued by the Government of India in the then Ministry of Agriculture and Irrigation (Department of Food) for regulating by licenses, permit or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any of the commodities specified in clause 3 shall require the prior concurrence of the Central Government.

6. Nothing contained in this Order shall affect the operation of the Public Distribution System (Control) Order, 2001 issued by the Central Government and orders of the State Government issued in pursuance thereof.”

7. Learned senior counsel appearing for the petitioner further relied upon the report of this court as reported in the matter of *Santosh Kumar vs. State of Bihar*, [1990 (2) PLJR 520] and *Tarapado Ghosh and Ors. vs. State of Bihar*,



[1990 (2) PLJR 602] and pressed Paragraph Nos. 3 and 4 of said judgment which are as:-

"3. Mr. Y.V.Giri, Senior Advocate. appearing on behalf of the petitioners contends that no order made under Section 3 of the Essential Commodities Act restricts movement of rice from one place to another and, as such, petitioners cannot be said to have violated any order made under the aforesaid provision to bring the act within the mischief of Section 7 of the Essential Commodities Act. In support of his submission he has placed reliance on a Division Bench Judgment of this Court in the case of Santosh Kumar vs. State of Bihar. [1990 (2) PLJR 520] and my attention has been drawn to paragraph 9 of the judgment, which reads as follows:-

"It is painful to note that the authorities who are the custodians of law and order are not acquainted with the latest position of law. The said Movement Control Order for the violation of which the petitioner has been put to harassment, was rescinded as far back as on 30th September, 1977. In that view of the matter the entire prosecution seems to be without any legal foundation and it is fit to be quashed at this stage."

4. Reliance has also been placed on a decision of this Court in the case of Tarapado Ghosh and Ors. vs. State of Bihar, [1990(2) PLJR 602] and my attention has been drawn to the following passage from paragraph 5 of the judgment:-

"The Bihar Foodgrains (Movement Control) Order, 1957 had been in operation for several years but this Control Order was rescinded with effect from first day of October, 1977 by the Central Government's Notification No. S.O. 696 (E) 30th September, 1977. This fact is accepted by the learned State Counsel. Therefore, admittedly during the time of occurrence i.e. April to June, 1978 there was no control Order under the Act to restrict the movement of foodgrains from Bihar to any outside place. It follows, therefore, that if pulses were booked from any place in Bihar, which in the present



case is Chapra, to any destination outside the State no offence arises on this account."

8. Learned APP Mr. Jharkhandi Upadhyay, while opposing the application, referred Para-9 of the counter affidavit of District Magistrate, Supaul, stated therein that Para-6 to 26 of the present criminal miscellaneous petition not requires to be replied specifically.

9. It would be appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** 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 discussions, as petitioner is not a PDS dealer rather he is a wholesale dealer dealing in business of sugar, where as per



notification dated 15.02.2002, a free movement of sugar is permitted, where a person can store sugar of any limit.

11. Accordingly, continuing with the present proceedings would amount to nothing but an abuse of the process of court.

12. Hence, the impugned order dated 13.06.2012 passed in G.R. Case No. 1171 of 2011 arising out of Chhatapur P.S. Case No. 139 of 2011, by the learned S.D.J.M., Supaul is hereby, quashed and set aside with all its consequential proceedings *qua* petitioner.

13. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2024
Transmission Date	05.03.2024

