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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

**CRM-M-5504-2022
Decided on: 14.08.2024**

RAHUL**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

SANDEEP MOUDGIL, J,(oral)

1. This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.621 dated 25.10.2021 under Section 420 of the Indian Penal Code (for short – ‘IPC’) and Sections 3, 7, 10 of the Essential Commodities Act, 1955 (for short – ‘Act’) registered at Police Station Hisar City, District Hisar, Haryana, Annexure P-1, with all subsequent proceedings arising therefrom.
2. The brief facts of the case are that FIR has been registered on the basis of complaint of Quality Control Inspector, Hisar, according to which the Quality Control Inspector had apprehended two BOLERO PICK-UP vehicles (bearing registration Nos. RJ-10GB-3919 and RJ-10GB-3425, being driven by Devi Lal son of Banwari Lal, Jat and Rajuram son of Parsaram, Jat) of fertilizer near the barricades (Naka), and in both the vehicles, 65-65 bags of Kissan DAP Khad (NFL Company) was being carried illegally and without any bill/permission and the same were being carried from Shop No.230, Hisar Anaj



Mandi.

3. It is contended by the learned counsel for the petitioner that the petitioner has not been named in the FIR and the petitioner has been implicated falsely in the present case on the basis of disclosure statement of the drivers which is not conclusive piece of evidence.

4. It is further contended that the petitioner is running the business of seeds, fertilizers/DAP/medicine etc. and has valid license, for running such business, issued by the authorized Government Agency. The co-accused came to the shop of the petitioner and purchased seeds from the petitioner's shop against bill which is at Annexure P-4. The amount of sale price was also transferred into the account of the petitioner. It is also contended that the purchase of material loaded in the pick-ups is from Shop No.230 with which the petitioner has no relevance because number of petitioner's shop is 230-A, which can be seen from the license annexed as Annexure P-7 & P-8.

5. Learned Counsel for the petitioner while referring to the notification issued by the Government of Haryana, bearing No. GSR 2/C.A.10/55/S-3/Amd.(1)/78 (Annexure P-12) has contended that by virtue of this notification, Fertilizers have been removed by the Govt. from the list of essential commodities. It is also contended that proceedings under the Essential Commodities Act, 1955 and the Indian Penal Code, 1860 cannot be initiated together under both the Codes as such the registration of FIR under both Codes is prima facie bad in law and has, thus, referred to the law laid down in "***Ravish Kumar Vs. State of Haryana being CRM-M-28989 of 2012***" which read thus:

"20. The joint prosecution of the petitioner under Section 7(1) of the Essential Commodities Act alongwith Section 420 and 120B,



IPC is also not legally sustainable as the procedure for prosecution laid down in the Fertilizer Controlled Order and Essential Commodities Act, being a summary procedure cannot be clubbed with a warrant case where the offences under Sections 420 and 120B, IPC are to be tried by the court as in case of Section 7, it is to be tried by a special court whereas the offence under Sections 420 and 120B, IPC cannot be tried by the special court.

21. In view of the judgment relied upon by the petitioner in SC Sharma case (supra), the joint prosecution of the petitioner under Section 10 of the Commodities Act and Sections 420 and 120B IPC is not sustainable.”

6. Heard counsel for the petitioner.

7. In the instant case, the FIR has been registered on the disclosure statement of co-accused i.e drivers of the pick up vehicle who were arrested on the spot. It is pertinent to mention here that petitioner is running the shop no. 230-A whereas as alleged, the fertilizer was purchased from shop no. 230. Further, a perusal of notification dated 23.01.1978 (Annexure P-12) makes it amply clear that fertilizers stands removed from essential commodities meaning thereby, registration of FIR no. 621 should not have arisen.

8. Further, it is a settled proposition of law that proceedings cannot be initiated against same person under Essential Commodities Act as well as IPC which stands supported by catena of judgments added with the fact that the prosecution laid down in the Fertilizer Controlled Order and Essential Commodities Act, being a summary procedure cannot be clubbed with offence of section 420 IPC wherein the offence under Essential Commodities Act is to be tried by a special court only.

9. Consequently, taking into consideration the above stated facts and the judgment relied upon by the petitioner in Ravish Kumar's case (supra) this



Court opines that joint prosecution of the petitioner under Section 10 of the Commodities Act and Sections 420 IPC cannot be maintainable.

10. As a result, the present petition is allowed and FIR No.621 dated 25.10.2021 under Section 420 of the Indian Penal Code and Sections 3, 7, 10 of the Essential Commodities Act, 1955 registered at Police Station Hisar City, District Hisar, Haryana, Annexure P-1, with all subsequent proceedings arising therefrom, is hereby quashed relating to the present petitioner.

14.08.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No