

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26066 of 2023

Arising Out of PS. Case No.-193 Year-2020 Thana- ARA MUFFSIL District- Bhojpur

KAMESHWAR SINGH Son of Late Jagdish Singh R/o Village- Piparahiya
P.S.- Ara Mufassil, Dist- Bhojpur. Petitioner/s

Versus

1. The State of Bihar.
2. The Block Supply Officer, Ara Sadar, Ara, Namely Rajani Kant Ojha Bihar.
... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar Singh, Advocate
For the Opposite Party/s : Mr.Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 08-05-2025

Heard learned counsel appearing on behalf of the

parties.

2. The present application has been filed for quashing the order dated 22.09.2022 passed by the learned S.D.J.M., Bhojpur at Ara in G.R. No. 55/2021, whereby and where under the petition filed under Section 239 Cr.P.C. (discharge) by the petitioner dated 30.03.2022 was heard and rejected without considering the fact that petitioner's was not a P.D.S. dealer at the time of lodging FIR for the offences punishable under Section 7 of Essential Commodities Act.

3. Prosecution case in brief is that on 24.6.2020, villager of Piparahiya gave a telephonic information to the local police station that one Bishnu Gupta who is going with Luna vehicle loaded the grain bags deposed that he purchased the rice



from the petitioner i.e. total of 150 Kg, which was the articles of Essential commodities along with other bags as he is doing business of sale and purchase of food grains. Thereafter some other villagers called by one Mantu Yadav, who supported their version and thereafter local police was intimated about the same. S.D.O. Sadar, Ara arrested Bishnu Gupta alongwith articles with Luna vehicle and took away to the Police Station after making seizure-list in presence of two independent witnesses.

4. It is submitted by learned counsel appearing for the petitioner that the present case instituted on instance of witnesses of Ara (Mu) P.S. Case No. 106/2020 lodged by this petitioner under Sections 341, 323, 372, 354, 427, 504, 506, 34 of the Indian Penal Code (in short 'IPC). It is submitted that apparently this case was lodged with ulterior and oblique motive to settle score in aforesaid case against petitioner. In this context, it is further submitted by learned counsel that the seized vehicle loaded with grains was not seized from the shop of the petitioner rather on way and from possession of one Bishnu Gupta. It is pointed out that the dealership of the petitioner was suspended much prior to lodging this case and therefore at the relevant point of time petitioner was not a PDS dealer and, as such, institution of present case is bad in eyes of law against him. It is further



submitted that the licence of petitioner was cancelled on 04.05.2020, whereas the present case was lodged on 24.06.2020. It is also pointed out that the implication raised on the basis of shortage of wheat which was said to about 1.5 quintals only. In this context, it is submitted that wheat is no more in the list of essential commodities as per government notification i.e. **State Government on 17.10.1985 vide GSR No. 49. However later on through GSR No. 57 dated 10.11.1986.**

5. In view of the aforesaid, it is submitted that all such legal positions and documents on record, which is of sterling nature was not considered while rejecting the prayer of petitioner as pressed before the learned trial court under Section 239 of the Cr.P.C. Learned counsel relied upon the legal report of Hon'ble Supreme Court in the matter of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335*** and ***State of Orissa vs. Devendra Nath Padhi*** reported in ***(2005) 1 SCC 568***.

6. Learned APP opposed the prayer of quashing application.

7. It would be apposite to reproduce para 102 of the ***Bhajan Lal's case (supra)***, 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.”

8. It would be further apposite to reproduce para -29 of the ***Devendra Nath Padhi's case (supra)***, which reads as under:

“29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case [1992 Supp (1) SCC 335]”.

9. In view of aforesaid factual and legal submissions



that admittedly as per notification dated 10.11.1986, wheat is no more in the category of essential commodities, where admittedly on the date of lodging FIR, the petitioner was not the PDS dealer, the ulterior and oblique motive as submitted above cannot also be denied behind lodging this case.

10. Considering the aforesaid aspects, it appears that the case of the petitioner covered under golden guideline nos. 1, 6 and 7 of **Bhajan Lal's Case (supra)**, accordingly, order dated 22.09.2022 passed by the learned S.D.J.M., Bhojpur at Ara in G.R. No. 55/2021, is hereby set aside and quashed *qua* petitioner with all its consequential proceedings.

11. Accordingly, present quashing petition stands allowed.

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

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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