

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 2150 of 2018

Arising Out of PS. Case No.-263 Year-2015 Thana- GAURICHAK District- Patna

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Pankaj Kumar S/o Shailendra Kumar Sinha, R/o Rajputana Gali,
Maharajganj, P.S.- Alamganj, District- Patna. Petitioner/s
Versus

1. The State Of Bihar Through Secretary, Deptt. Of Home, Bihar, Patna and Anr
 2. The Block Supply Officer, Sampatchak, District- Patna.
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar GP 4

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

7 24-07-2025 Heard learned counsel for the petitioner and the

learned counsel for the State.

2. The instant application has been filed for quashing of the entire proceeding of the F.I.R. bearing Gauri Chak P.S. Case No. 263 of 2015 dated 26.12.2015 instituted against the petitioner under Section 7 of the E.C. Act by the Block Supply Officer, Sampatchak, wherein it is alleged that the petitioner has stocked rice that was meant for subsidy sale in his rice mill.

3. As per the FIR the prosecution case is that on 25.12.2015, information was received that in Astha Rice Mill, situated in the Sampatchak near Usha Martin School, subsidized government food grains were kept for black marketing and on the aforesaid information, a raid was conducted by the Sub Divisional Magistrate, Patna City, at about 7 P.M. It is further



alleged that on the aforesaid time the Rice Miller namely, Pankaj Kumar (petitioner) was not there, the S.D.O., sealed the godown of the petitioner and on the next day i.e. on 26.12.2015 at about 12.30 P.M. in absence of the petitioner, the godown was opened in presence of one Sanjeet Kumar Singh Assistant Police Inspector, Gaurichak P.S. and in presence of the A.D.S.O., Patna Sadar, Block Supply Officer, Phulwari Sharif and In-charge police station, the physical inspection of the godown was done and it was found that subsidized rice was stocked in the hall and after inspection of the bag it was found that on the bags it was printed as Food Corporation of India and also mentioned as Central food Grains Government of Haryana and some empty bags, thread and Sua (Needles) were also found. It is also alleged that the Food Corporation of India from the various stalls purchased rice for the sale at a subsidized rate from P.D.S. shops. It is further alleged that this petitioner, with the help of the transportation employee, purchased the said rice for black marketing. It is alleged that 480 quintals of rice were stocked in 998 bags and were seized and after preparation of the seizure list, they were given in possession to one Suryadeo Singh, P.D.S. dealer, for safety.

4. Learned counsel for the petitioner has submitted that



the petitioner is innocent and has falsely been implicated in this case due to ulterior motives. Learned counsel has further submitted that the petitioner runs a rice mill for the livelihood of his family members after taking a piece of land on lease from one Most. Phulmati Devi. The petitioner receives paddy from the farmer, and after milling the same, either a proportionate quantity is delivered to the farmer or the same is sold. The seized food grains were the outcome of paddy, which was received by the petitioner from different farmers.

5. Learned counsel has further submitted that no offence under Section 7 of the E.C. Act is made out against the petitioner, as the petitioner is not a P.D.S. dealer. From a bare perusal of Section 7 of the E.C. Act, it is found that it is a penal section for the persons who contravene any order made under Section 3 of the E.C. Act. Rice is not a controlled item in terms of the Gazette notification dated 15.02.2002 (Annexure-2). It has been submitted by the petitioner that, according to the 1984 Unification order vide notification dated 11.10.2002, food grains are deleted from the list of controlled items and thereafter there is no need to have a permit or license for stocking, distributing, selling, disposing of or acquiring and consuming any quantity of rice and therefore, Section 7 of the E.C. Act does not apply to



the petitioner.

6. Learned counsel has submitted that the Central Government by its Gazette notification No. GSR-104 (E) dated 15.02.2002, has removed the license requirement, stock limit and restriction on the movement of specified food items by clause 3 of the aforesaid notification and rice is one of the said items. In these circumstances, the prosecution case is abuse of the process and as such, the criminal proceeding of Gauri Chak P.S. Case No. 263 of 2015 is fit to be quashed.

7. Learned counsel has submitted that the food grain from the premises of the mill of the petitioner is seized for malafide intention. It is relevant to mention here that the Hon'ble High Court vide order dated 25.7.2018 passed in CWJC No. 13610/18 had directed to release the seized food grain. The petitioner is implicated in this case merely on suspicion and surmises and there is a golden principle of law that the suspicion howsoever is strong but that can not take the value of evidence. Learned counsel has next submitted that the alleged empty rice bags that were found in the mill/godown of the petitioner are easily available in the market and the petitioner has purchased the said bags for trading of rice and mere recovery of said bags cannot lead to a presumption that the bags with rice were illegally



procured.

8. Learned counsel for the petitioner has relied on the judgment of this Hon'ble Court in the case of Deep Kumar reported in 2004 (4) PLJR 429 and has submitted that in the said case a coordinate Bench of this Hon'ble Court has held that no proceeding for confiscation or prosecution for possession of food grain under section 7 of the E.C. Act can be initiated in view of the fact that the Central government abolished the storage limit of wheat and rice and no license is required for the same and in the similar matter in a series of cases, FIR under section 7 of the E.C. Act has been quashed. It has lastly been submitted that in view of the above, the institution of F.I.R. under section 7 of the E.C. Act for possessing rice in the mill premise is bad in the eye of the law as well as against the settled principle of this Hon'ble Court.

9. The learned Additional Public Prosecutor for the State has opposed the quashing application primarily on the ground that the petitioner was found black marketing rice and bags with names of Food Corporation of India was recovered from his mill.

10. Considering the aforesaid submissions made by the parties, especially taking into account that the prosecution



against the petitioner, who admittedly was a Rice Miller and not a PDS dealer and as held by this Hon'ble Court in the case of **Arvind Kumr vs. The State of Bihar** reported in **2014 (4) PLJR 255** that prosecution u/s 7 of the E.C. Act cannot be proceeded against a private person, the entire proceedings initiated against the petitioner arising out of Gauri Chak P.S. Case No. 263 of 2015 is hereby quashed, quo the petitioner.

11. The application is allowed.

(Sourendra Pandey, J)

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