

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55721 of 2023

Arising Out of PS. Case No.-80 Year-2023 Thana- CHAUSA District- Madhepura

Om Prakash @ Om Prakash Yadav Son Of Late Mithilesh Yadav @ Late Barlesh Yadav Resident Of Village And P.O. Bhatgama, P.S. Chousa, District-Madhepura

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. Sanjeev Kumar Son Of Sri Gopal Choudhary Presently Working As Supply Inspector, Chousa, P.S. Chousa, District-Madhepura

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. NK Agrawal, Sr. Adv. Mr. Ranjan Kumar Jha, Adv. Mr. Vikash Kumar, Adv.
For the Opposite Party/s	:	Mr. Navin kr. Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 21-03-2025

Heard Mr. N.K. Agrawal learned senior counsel for the petitioner and Mr. Navin Kr. Pandey learned APP for the State.

2. Present petition for quashing of FIR bearing Chousa P.S. Case No. 80 of 2023 dated 18.03.2023, filed under section 379 of IPC and Section 7 of E.C. Act.

3. The brief fact of the case as it appears from the version of the informant namely Sanjeev Kumar, Block Supply Inspector, Chausa, that on 18.03.2023 at 01.05 AM over telephone, he received information that at Bhatgama,



Arwa, rice is loaded on the truck which is for black marketing. On this information, he himself, B.D.O. Chausa, Revenue Officer and police party Chausa in joint raid, found that one truck bearing registration no. RJ09GD-5340 was loaded with 495 plastic gunny bag *Arwa* Rice of 50.00 Kg each hand stitched, total weight 247.50 quintal. Truck was standing in the godown premises of godown owner Mr. Om Prakash and on truck its driver Kailash Dangi and khalasi Vikram were present. Driver and khalasi were taken into custody and inspection was made in godown from where 80 gunny bag of rice was found stored, whereafter the godown and food grain was seized. During raid, godown owner fled. After waiting for hours, godown owner did not return nor produced any documents in respect of purchase. Information was given to S.D.O., Udakishunganj who directed to institute FIR. It is further stated that again when he reached to bring the seized rice which was kept in the godown, then he found the lock was broken and whole 80 bags of *Arwa* rice was missing from the Godown. Thereafter, seized rice was handed over on Jimmenama to the Assistant Godown Manager, S.F.C.,



Bihariganj.

4. Mr. NK Agrawal, learned senior counsel for the petitioner submitted that petitioner is the owner of the godown in question but it was given on rent to one Shailendra Kumar, son of Harilal Pandit, R/o Village + P.O. Madhurapur, Narayanpur, P.S. Bhawanipur (Bihpur), district Bhagalpur on 01.02.2022, against monthly rent of Rs. 6100/- for three years w.e.f. 01.02.2022 to 31.01.2025. The petitioner duly entered into the rent agreement with Shailendra Kumar, in terms of Annexure -2. It is further submitted by Mr. Agarwal that Shailendra Kumar was running a firm under name and style of M/s Jay Mahadev Traders, Madhurapur, Narayanpur, district Bhagapur for which the rice in issue was purchased from Adarsh Food Product, Industrial Area, Deonah, Tilrath, Begusarai, and in support of this fact a bill dated 16.03.2023 appears annexed with petition as Annexure-3. Mr. Agrawal further submitted that M/s Jay Mahadev Traders is duly registered with GST Department, Government of India since 10.08.2017. It is pointed out that petitioner is not a PDS dealer and also the said Shailendra Kumar who was given



premises on rent was also not a PDS dealer and considering all such issues the seized rice was released in favor of said Shailendra Kumar owner of M/s Jay Mahadev Traders by learned court below. It is submitted that as petitioner is not a PDS dealer, therefore, no case under E.C. Act appears made out against him. It is further submitted that the truck which was found involved in carrying of alleged seized rice i.e., bearing registration no. RJ-09-GD5340 was also released in favor of rightful order by the learned court below. It is further submitted that in view of all aforesaid factual submission, this FIR is fit to be quashed/set aside.

5. In aforesaid context, it is further submitted by Mr. Agrawal, learned senior counsel that from the perusal of various notifications as issued by the State Government, it can be gathered safely that the storage limit of various trade article including wheat and rice was fixed by the Sate Government on 17.10.1985 vide GSR No. 49. However, later on through GSR No. 57 dated 10.11.1986 the restriction in respect of stock limit of wheat and rice as aforesaid was removed and therefore, it can be safely said that seized rice



now no more falls under essential commodities. In support of his submission, learned senior counsel has relied upon the legal report of Hon'ble Supreme Court as available through ***State of Haryana and Ors. Vs Bhajan Lal [1992 Suppl. (1) SCC 335]***. Reliance was also made on legal report of this Court as available through ***Arvind Kumar vs. State of Bihar*** reported as ***2014 (4) PLJR 255***.

6. Learned APP while opposing the quashing of petition submitted that rice was seized from the premises owned by this petitioner, however, he could not disputed the submissions as advanced above by Mr. Agrawal.

7. It would be apposite to reproduce para-102 of the legal report of ***Bhajan Lal case (supra)***, which is 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 information 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 any 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 person 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- 6 and 7 of **Arvind Kumar case (supra)** as referred:-

“6. It has been settled by several decisions of this Court that no prosecution under the Essential Commodities Act could be launched as against a private person. The petitioner, admittedly, is not a dealer under the Public Distribution System. He has offered his preliminary explanation about the circumstance under which the kerosene oil was so purchased. In the absence of any provision in the Essential Commodities Act for launching prosecution as against a private person, the petitioner cannot be tried for such offence.

7. The Essential Commodities Act has been framed for the benefit of consuming public. For any violation of the provisions of the Essential Commodities Act or the Control Orders, promulgated under the authority of the Essential Commodities Act, only the agents or the P.D.S. Dealers could be prosecuted. Kerosene oil, being a controlled item, is governed by a necessary Control Order. However, since the petitioner is not a P.D.S. Dealer, he cannot be tried for the offence under Section 7 of the Essential Commodities Act.”

9. In view of aforesaid legal and factual submissions, as petitioner is not the P.D.S. dealer, where rice is no more restricted item/food grain for the purpose of “stock limit” in view of GSR No. 57 dated 10.11.1986 as submitted



above and moreover, the premises in issue was given on rent to co-accused Shailendra Kumar, therefore, the FIR in issue *qua* petitioner is hereby set aside and quashed by taking a guidelines no. 1 and 2 of ***Bhajan Lal case (supra)***.

10. Accordingly, the petition stands allowed.

11. Let a copy of the judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
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