

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13560 of 2023

Arising Out of PS. Case No.-18 Year-2018 Thana- SUKHANI District- Kishanganj

-
1. Md. Qaiyum, S/o Late Haji Abdul Kadir,
 2. Kashif Quamar @ Gulab @ Md. Gulaab @ Md. Gulam, S/o Md. Qaiyum
Both are R/o Village- Bhagwanpur, Bairgachhi, P.S.- Jokihat, Distt- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K, Agrawal, Senior Advocate Mr. Kumar Rajdeep, Advocate Mr. Arvind Kumar, Advocate Ms. Diksha Kumari, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-03-2025

Heard learned counsel appearing for the petitioners
and learned APP for the State.

2. The present application has been filed by the petitioners for quashing of the order dated 21.07.2022 passed by learned Sub-divisional Judicial Magistrate, Kishanganj in connection with Sukhani P.S. Case No.18 of 2018 and S.G.R. No.1741 of 2018, whereby the learned jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 413, 414, 467 of the Indian Penal Code (in short 'IPC') and Section 7 of the Essential



Commodities Act (in short 'E.C. Act') and also by the same order, charges were framed against the petitioners.

3. The case of prosecution set out against the petitioners, *inter alia*, is that on 12.09.2018 at about 12:45 P.M., the Block Supply Officer namely, Amit Kumar Singh, Thakurganj has submitted a written report to the S.H.O. Sukhani Police Station, Thakurganj alleging therein that after reaching at Sabodangi Chowk, the informant found that a truck bearing Registration No.WB59A4055 was intercepted by the Sukhani Police Officers. On verification, it was found that the wheat bags were loaded in the truck and gunny bags were printed with the monogram of F.C.I. and all the bags were hand-stitched. It is further alleged that on enquiry from the said truck driver namely, Chandrama Mahto, he said that he has loaded the wheat in truck from M/s. Naaz Stock Point, Araria and he produced the bill and mobile no., which was mentioned on the bill. On call from the said mobile no., one Safir replied that the wheat does not belong to him i.e. M/s. Naaz Stock Point. Hence, the bill appears to be suspected. It is further alleged that the driver of the truck gave his



statement that he had taken the wheat from M/s. Naaz Stock Point, Bhagwanpur, Araria and was going to Shakambari Flour Mills, Siliguri and in the meantime, he was apprehended by the Sukhani Police Officers. From the said truck, total 259 sacks containing 129.5 quintals of wheat were found loaded in the alleged truck. It is further alleged that *prima facie* the recovered wheat appears to be government subsidized items, which was being taken to Siliguri for the purpose of black marketing. The seized wheat were handed over to a PDS dealer, namely, Babu Lal Singh, till further order.

4. Learned counsel appearing on behalf of the petitioners submitted that the petitioners are not named in the FIR. The owner and the driver of the alleged truck bearing Registration No.WB59A4055 were made accused in the FIR. It is further submitted that initially after investigation, the police submitted charge-sheet on 31.01.2019 against one Chandrama Mahto and learned A.D.J.-III, Kishanganj took cognizance of the offences under Sections 413, 414, 467 of the IPC and Section 7 of the E.C. Act. It is further submitted that subsequently, supplementary charge-sheet vide Charge-



sheet No.6 of 2022 dated 31.01.2022 was filed in the court of learned S.D.J.M., Kishanganj and on 21.07.2022, it took cognizance against the petitioners. It is further submitted that the petitioners are not at all concerned with wheat found loaded on the truck bearing Registration No.WB59A4055 and/or with the truck in question, on which wheat was found loaded.

5. Learned counsel further submitted that even if the prosecution case is accepted on its face value, no case is made out under Section 7 of the E.C. Act and under Sections 413, 414 and 467 of the IPC. It is submitted that according to FIR, all the bags were hand-stitched and not stitched by machine and/or were not tagged with tag of F.C.I. It is further submitted that petitioners are not at all concerned with M/s Naaz Stock Point and he is neither partner nor the proprietor of the firm. It is further submitted that only on the suspicion without any basis or materials that the loaded wheat appears to be government subsidized wheat and was being carried for the purpose of black marketing to Siliguri is baseless and unfounded and, therefore, the impugned order is fit to



quashed/set aside. In support of his submission, learned 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 counsel appearing for the State while opposing the prayer for quashing of the petition submitted that the wheat, which was found loaded on the truck was subsidized and same was carried by the petitioners for black marketing.

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 petitioners are not the P.D.S. dealer, and also not appears connected with alleged truck and shop i.e. M/s Naaz Stock Point, Araria, in any manner, whereas implication appears on the basis of suspicion out of confessional statement of truck driver, the impugned order of cognizance dated 21.07.2022 passed by learned Sub-divisional Judicial Magistrate, Kishanganj in connection with Sukhani P.S. Case No.18 of 2018 and S.G.R. No.1741 of 2018 with all its consequential proceedings is hereby set aside and quashed *qua* petitioners.

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.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05-03-2025
Transmission Date	05-03-2025

