

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69150 of 2018

Arising Out of PS. Case No.-125 Year-2014 Thana- KURSAILA District- Katihar

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Gopal Agrawal Son of Mohan Lal Agrawal, resident of Village- Mansi, P.S.
Mansi, District- Khagaria.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Adv. Mr. Saroj Kumar Chaudhary, Adv. Mr. Kumar Rajdeep, Adv.
For the Opposite Party/s :		Mr. Uma Shankar Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

4 13-07-2026 In compliance of the order dated 30.04.2026, the status report has been received from the Court below, from perusal of the same, it transpires that the stage against the petitioner has not been changed.

2. Heard learned Sr. counsel for the petitioner and learned APP appearing on behalf of the State.

3. The instant application has been filed on behalf of the petitioner for quashing of the order dated 06.05.2015 passed by learned Judicial Magistrate, 1st Class, Katihar in connection with G.R. Case NO. 2578 of 2014 arising out of Kurshela P.S. Case No. 125 of 2014 by which learned Judicial Magistrate took cognizance against five persons including the present petitioner under Section 7 of Essential Commodities Act.



4. As per the allegations, a truck bearing Registration No. RJ11GA-1725 was intercepted, and a total quantity of 470 bags of Tata Paras Urea were found loaded the total quantity of urea was 23,500 kg. The driver of the truck, namely Gopi Chand Sah, was apprehended at the spot and he failed to produce any valid documents authorizing the transportation of the said urea. During interrogation, he disclosed that the owner of the truck was Devendra Kumar Gupta.

5. Learned Sr. counsel for the petitioner has submitted that the petitioner was not named in the F.I.R. rather his name has transpired in this case during the course of investigation, as two witnesses stated that fertilizers were loaded from the shop of the petitioner. It has further been submitted that there is no document on record to show that the same was loaded from the shop of the petitioner. The shop of the petitioner was never inspected and verified by the Block Agriculture Officer, while the petitioner is a licensee. It has further been submitted that no offence against the petitioner is made out and he has not violated any order under Section 3 of the Essential Commodities Act which is necessary condition for prosecution under Section 7 of the Essential Commodities Act.

6. In support of such contention, learned Sr. counsel



for the petitioner has placed reliance on a decision of a Co-ordinate Bench of this Court in the case of ***Subodh Kumar vs. State of Bihar*** reported in **2026 (3) 405 BLJ** and relies on para nos. 6 and 7 of the judgment which is reproduced hereinbelow:-

“6. Learned counsel for the petitioner further submits that the FIR does not disclose violation of any Control Order made under Section 3 of the E.C. Act which is a necessary condition for prosecution under Section 7. The allegation is only of involvement in the black marketing for which the case was instituted. The petitioner was merely a Transporter-cum-Handling Agent of Bihar State Food & Civil Supply Corporation, Bhagalpur and had no ownership or dominion over the food grains. The seized food grains belonged to one Alok Kumar hence no allegation of misappropriation or black marketing can be sustained. There is no material in the FIR or charge-sheet to show that the petitioner sold, diverted or misused any food grains. In absence of such allegation no mens rea can be attributed to him and offences under Sections 406, 409, 420 IPC or Section 7 of the E.C. Act are not made out. For prosecution under Section 7 of the E.C. Act contravention of an order under Section 3 is a pre-condition. Neither the FIR nor the charge-sheet specifies any such contravention. In absence of such material, the cognizance order dated



13.09.2018 is unsustainable. As there is no law restricting the movement of wheat within the State of Bihar and the food grains in question were released and confiscation order has been set-aside by the learned District and Sessions Judge, Bhagalpur in appeal, no offence under the provisions of the E.C. Act is made out. Hence, the cognizance order is liable to be set aside.

*7. Learned counsel for the petitioner relied on the judgment passed in the case of **Hari Narain Mahto Vs. The State of Bihar** reported in **2009 (3) PLJR 822** in which his Lordship has held at Para-5 and 6 that:-*

“5.The F.I.R. does not disclose as to which Order made under Section 3 of the E.C. Act has been violated. Section 7 of the E.C. Act deals with the persons who contravene any Order made under Section 3 of the E.C. Act, hence no prosecution lies.

6. Secondly mere allegation that the articles seized was purportedly for the purposes of black marketing is not complete in the prosecution. The element of sale being also absent the allegation of black marketing is not complete.”



7. Lastly, it has been submitted that no offence whatsoever is made out against the petitioner, as there is no tangible, cogent, or reliable material on record to suggest that the petitioner was involved in any act of black marketing.

8. Learned Additional Public Prosecutor appearing on behalf of the State vehemently opposed the prayer of the petitioner and submitted that the learned court below has rightly taken cognizance as a *prima facie* case is made out.

9. Considering that the petitioner was merely a transporter and there is no material to indicate his involvement in the alleged offence of black marketing, the order taking cognizance dated 06.05.2015 passed by the learned Judicial Magistrate, 1st Class, Katihar, in Kurshela P.S. Case No. 125 of 2014 is hereby quashed against the petitioner only.

10. Accordingly, the application stands allowed.

(Praveen Kumar, J)

Ankit Kumar/-

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