IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42678 of 2016

Arising Out of PS. Case No.-116 Year-2011 Thana- BACHHWARA District- Begusarai

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1. Rajiv Kumar
2. Sanjiv Kumar. Both are sons of Ram Lochan Yadav, Resident of Bank Bazar Bachhwara, P.S. - Bachhwara, District - Begusarai.

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Kumar Virendra Narayan, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL ORDER

10 12-05-2026 1. Heard learned counsel for the petitioners as well as learned APP for the State.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 08.08.2014 passed by the learned Sub-Divisional Judicial Magistrate, Begusarai (hereinafter referred to as 'Magistrate') in connection with Bachhwara P.S. Case No.116 of 2011, wherein the learned Magistrate took cognizance of the offence under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as 'E.C. Act') against the present petitioners and one other accused person, as well as for quashing of the order dated 04.08.2016 passed by the learned District and Sessions Judge, Begusarai (hereinafter

referred to as ‘Revisional Court’) in Criminal Revision No.314 of 2016, whereby the learned Revisional Court affirmed the order of cognizance passed by the learned Magistrate and dismissed the revision preferred by the petitioners.

3. The prosecution case, in brief, is that on the basis of a written report submitted by the Block Supply Officer, Bachhwara, a case being Bachhwara P.S. Case No. 116 of 2011 came to be instituted alleging that on 10.10.2011, pursuant to secret information regarding black marketing of L.P.G. cylinders by the proprietor of “M/s Uttama Indane Agency” (Petitioner No.1) and his brother (Petitioner No.2), a raid was conducted near the godown of the said agency. During the raid, one co-accused, namely Bipin Jha, was apprehended with five L.P.G. cylinders on a motorcycle and consumer gas cards and a seizure list was prepared in presence of independent witnesses and during the inspection/visit of the agency premises, several materials/equipment were found, which were being used for the unauthorized transfer of gas from one cylinder to another. Petitioner No.2, Sanjiv Kumar was also arrested from the place of occurrence. It was alleged that the said co-accused, Bipin Jha disclosed that he was acting in connivance with the present petitioners. It was further alleged that the accused persons

including petitioners herein were engaged in black marketing of L.P.G. cylinders in violation of the provisions of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000. On the basis of the said allegations, the aforesaid case was registered under Sections 419 and 420 of the Indian Penal Code, 1860 and under Section 7 of the E.C. Act. After investigation, charge-sheet bearing C.S. No. 199 of 2011 was submitted on 30.11.2011.

4. Upon perusal of the materials available on record, the learned Magistrate, *vide* the order dated 08.08.2014, took cognizance of the offence under Section 7 of the E.C. Act against the petitioners and one other accused person, while discarding the offences under Sections 419 and 420 of the Indian Penal Code for want of sufficient material. The aforesaid order of cognizance was subsequently affirmed by the learned Revisional Court in Criminal Revision No. 314 of 2016 *vide* the impugned order dated 04.08.2016, which is also under challenge in the present Criminal Miscellaneous Application.

5. Learned counsel for the petitioners submits that the impugned order taking cognizance under Section 7 of the E.C. Act is wholly illegal and has been passed in a mechanical manner without there being any material on record to *prima*

facie establish violation of any order issued under Section 3 of the E.C. Act, which is a *sine qua non* for constituting an offence under Section 7 of the E.C. Act. It is submitted that the entire prosecution case rests upon mere suspicion of black marketing, whereas neither during the raid nor in course of investigation any discrepancy in stock, irregularity in distribution, or violation of licensing conditions has been found against the petitioners. Learned counsel submits that even the learned Magistrate has itself found no material to proceed under Sections 419 and 420 Indian Penal Code, which clearly reflects absence of any dishonest or fraudulent intention attributable to the petitioners.

6. Learned counsel further submits that the recovery of five cylinders was made from a co-accused outside the premises of the petitioners and the same were admittedly linked to genuine consumers, whose consumer cards were also recovered and who, during investigation, supported the case that they had authorized the co-accused to collect cylinders on their behalf. He submits that no complaint has ever been made either by any consumer or by the oil company regarding any malpractice by the petitioners, who are *bonafide* distributors since long. He next submits that continuation of the criminal proceeding, in absence of any foundational facts constituting an

offence under Section 7 of the E.C. Act, would amount to abuse of the process of the Court and, therefore, both the impugned orders are liable to be quashed.

7. *Per contra*, learned APP for the State opposes the prayer for quashing and submits that the impugned order of cognizance has been passed on the basis of materials collected during investigation, which *prima facie* disclose commission of offence under Section 7 of the E.C. Act. Learned APP further submits that the allegations relate to violation of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000, which is a control order issued under Section 3 of the E.C. Act, and therefore the essential ingredients for attracting Section 7 of the E.C. Act are *prima facie* made out. He further submits that the recovery of L.P.G. cylinders from the possession of the co-accused and the information regarding black marketing which provide sufficient ground to proceed against the petitioners, and at the stage of cognizance, detailed appreciation of evidence is not required.

8. Having considered the submissions advanced on behalf of the parties and upon perusal of the materials available on record, this Court proceeds to examine the scope of its inherent jurisdiction under Section 482 of the Code of Criminal

Procedure in matters relating to quashing of criminal proceedings. It is well settled that the power under Section 482 Code of Criminal Procedure is to be exercised sparingly and with circumspection, particularly where the allegations in the F.I.R. and the materials collected during investigation disclose commission of a cognizable offence. At the stage of cognizance, the Court is not required to meticulously appreciate the evidence or adjudicate upon the correctness of the allegations, rather it is only required to ascertain whether a *prima facie* case is made out from the materials available on record.

9. At this stage, it is pertinent to examine the legislative requirement of Section 7 of the E.C. Act, which is reproduced as under:

> ***"7. Penalties.—*** *[(1) If any person contravenes any order made under Section 3,— (a) he shall be punishable,— (i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and (ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months; (b) any property in respect of which the order has been contravened shall be forfeited to the*

> *Government; (c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government…………………”*

10. A plain reading of the aforesaid provision makes it manifest that for attracting the penal consequences under Section 7 of the E.C. Act, the *sine qua non* is the existence of a contravention of an order issued under Section 3 of the E.C. Act. In other words, mere allegation or suspicion of irregularity is not sufficient unless it is demonstrated that the accused has violated any specific control order governing production, supply, distribution, or pricing of the essential commodity. Thus, the prosecution is required to *prima facie* establish violation of a valid control order under Section 3 of the E.C. Act.

11. In the present case, the allegations in the F.I.R. disclose that acting upon secret information regarding black marketing of L.P.G. cylinders, a raid was conducted near the godown of the agency of the petitioners, during which five domestic L.P.G. cylinders, consumer gas cards and other articles were recovered from the possession of the co-accused and further during the inspection of the agency premises, various materials and equipment were found, which were being used for the unauthorized transfer of gas from one cylinder to another.

The prosecution case further alleges that the co-accused disclosed involvement of the present petitioners in the alleged illegal distribution and black marketing of cylinders, which are in violation of the provisions of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000. It is relevant to mention here that the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 is a Control Order promulgated in exercise of the powers conferred under Section 3 of of the E.C. Act.

13. In such background, this Court finds that there is material on record to demonstrate contravention of any order issued under Section 3 of the E.C. Act, which is a *sine qua non* for attracting liability under Section 7 of the E.C. Act. The submission advanced on behalf of the petitioners that no violation of Section 3 of the the E.C. Act is made out is a matter of trial and at this stage it can not be adjudicated.

14. The Hon'ble Supreme Court in ***Prakash Babu Raghuvanshi v. State of M.P.***, reported in ***(2004) 7 SCC 490***, has observed with respect to attracting liability under section 7 of the E.C. Act, as herein under:

> ***"5.*** *Section 7 refers to contravention of any order made under Section 3. It is essential for bringing in application of Section 7 to show that some order has been made under*

> *Section 3 and the order has been contravened. Section 3 deals with powers to control production, supply, distribution etc. of essential commodities. Exercise of such powers, can be done by "order". According to Section 2(c), "notified order" means an order notified in the Official Gazette, and Section 2(cc) provides that "order" includes a direction issued thereunder.***"**

16. In view of the discussions made hereinabove, this Court is of the considered opinion that once the prosecution case specifically alleges contravention of a control order issued under Section 3 of the E.C. Act and materials have been collected during investigation in support thereof, the correctness or sufficiency of such materials cannot be examined in detail in a petition under Section 482 Code of Criminal Procedure. At the stage of cognizance, a meticulous analysis of evidence is impermissible. Further this Court does not find that the case falls within any of the categories warranting interference in exercise of inherent powers as laid down by the Hon'ble Supreme Court in ***State of Haryana and Ors. v. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) SCC 335*** as *prima facie* materials exist for proceeding against the petitioners. Accordingly, this Court is not persuaded to hold that continuation of the criminal proceeding would amount to abuse of the process of the Court.

17. Accordingly, the impugned order dated 08.08.2014 passed by the learned Magistrate in connection with Bachhwara P.S. Case No. 116 of 2011, whereby cognizance has been taken of the offence under Section 7 of the E.C. Act against the petitioners, as well as the order dated 04.08.2016 passed by the learned Revisional Court in Criminal Revision No. 314 of 2016 affirming the same, do not warrant interference by this Court in exercise of its inherent jurisdiction.

18. The present Criminal Miscellaneous Application stands dismissed.

19. Considering that in the present case, the F.I.R. was lodged in year 2011 and the cognizance of the offence was taken on 08.08.2014, the trial is required to be expedited. The learned Trial Court is directed to take steps for early disposal of the case in accordance with law.

20. Let a copy of this order be communicated to the Court concerned forthwith.

(Sunil Dutta Mishra, J)

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