

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80406 of 2019

Arising Out of PS. Case No.-141 Year-2014 Thana- PHULWARIA District- Begusarai

=====

RAJEEV SINGH @ RAJEEV KUMAR Son of Rameshwar Prasad Singh
Resident of Village-Sihma, Police Station-Matihani, District-Begusarai.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

=====

Appearance :

For the Petitioner	:	Mr. Santosh Kumar, Sr. Advocate Mr. Sanjeet Kumar, Advocate
For the State	:	Mr. Ganesh Prasad Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 12-03-2026

In this case, the petitioner has challenged the order dated 06.12.2016 passed by the S.D.J.M, Begusarai in connection with Phulwaria P.S. Case No. 141 of 2014, by which the learned Magistrate has taken cognizance against the petitioner under section 465 of the Indian Penal Code and under section 7 of the Essential Commodities Act.

2. The prosecution case is that the informant-Circle Officer, namely Kamlesh Kumar Singh along with other officials went to the godown of *Bakhthan Astan* and found that some persons were loading bags on a Truck bearing No. BR-06C-8413 and others were packaging rice in bags having F.C.I printed on it. Upon seeing the police, the persons at the godown



tried to flee, but the police managed to apprehend them and thereafter, they disclosed their names and addresses. The *munsi* (clerk) of the godown namely, Suresh Prasad, disclosed that the godown belongs to this petitioner and at his instance the F.C.I. sealed rice bags were replaced with 'double tiger' marked bags and the same were being supplied to the local market. Accordingly, the present F.I.R. bearing Phulwaria P.S. Case No. 141 of 2014 was registered under sections 420, 467, 468, 471 of the Indian Penal Code and under section 7 of the Essential Commodities Act.

3. Learned Senior Counsel for the petitioner submits that the petitioner was not named in the F.I.R. but the Investigating Officer of the case filed a petition before the court below for adding his name as accused in the case and thereafter the name of the petitioner was added as an accused in the F.I.R. and the court below *vide* impugned order dated 06.12.2016 has taken cognizance against the petitioner.

4. Learned Senior Counsel for the petitioner further submits that the godown in question actually fell in the share of the own brother of the petitioner namely, Pankaj Kumar, who had let out the same to the co-accused Suresh Prasad Singh @ Sujeet Kumar Mishra and in this regard a



'kirayanama' (rent-agreement) was also executed between them and said Suresh Prasad Singh alias Sujeet Kumar Mishra, was engaged in running the business of food-grains in the said godown. Further, the seized food grains and articles have been released in favour of said co-accused - Suresh Prasad Singh on the petition filed by him in the court below. Therefore, it is the submission of learned Senior Counsel for the petitioner that neither the petitioner nor any of his family members were in any way concerned with the business run by the tenant.

5. It is the submission of the learned Senior Counsel for the petitioner that even the F.I.R. does not disclose any violation of provision of specific Control Order made under section 3 of the Essential Commodities Act, violation of which is punishable under section 7 of the E.C. Act. The seized food grains is free sale commodity and there is no control order, made under section 3 of the E.C. Act which prohibits the sale and purchase of food-grains.

6. It is the categorical submission of learned Senior Counsel for the petitioner that since the petitioner is not a P.D.S. dealer, the provisions of Public Distribution System (Control Order), 2007 would not be applicable against him.

7. It has been submitted by learned Senior



Counsel for the petitioner that the allegation of black marketing of foodgrains is wrong as keeping of the food-grains is not an offence and further there is no allegation against the petitioner of having sold the foodgrains. Further, there is no allegation in the F.I.R. or even in the charge-sheet for violation of any of the order made under section 3 of the E.C. Act.

8. It has categorically been submitted by the learned Senior Counsel for the petitioner that in exercise of the powers conferred by Section 3 of the aforesaid Act and with prior concurrence of the Central Government, the Hon'ble Governor of Bihar has been pleased to make an order, G.S.R. 2, dated the 12.10.2002 which is known as Bihar Trade Articles (Licensing Unification) Order 1984, by which the word 'food grain' has been repealed. Furthermore, under the provisions of Section 2G of the Bihar Trade Articles (Licensing unification order) 1984, the word 'food grain' has been defined which means any one or more of the food grains as specified in Part A of the Schedule 1 and includes product of such food grains other than husk and bran. Therefore, it is the contention of the learned Senior Counsel that there is no law at present, restricting the movement of wheat and rice inside the State of Bihar.

9. He next submits that the initiation of the



criminal proceeding is also without jurisdiction because of the reason that the goods were not seized by the officers, who under the provisions of the Act, are authorized by the State Government to make search and seizure. It is well settled principal of law that any Criminal Proceeding initiated on the basis of illegal search and seizure is not maintainable in the eye of law and hence the impugned order is fit to be set aside.

10. The learned Senior Counsel for the petitioner next submits that during the investigation only the statement of official witnesses have been recorded which are more or less same when compared to each other and no independent witnesses have been examined by the investigating officer in this regard. Also, from the allegation, made in the F.I.R. and evidence collected during the course of investigation nothing incriminating has been found against the petitioner.

11. Learned Senior Counsel for the petitioner has relied upon the following decisions:-

- i. Hari Narain Mahto vs. The State of Bihar* reported as **2009 (3) PLJR 82**
= 2009 SCC OnLine Pat 1232;
- ii. Ranjeet Kumar vs. The State of Bihar & Anr.* reported as **2009 (4)**



***PLJR 310 = 2009 SCC OnLine Pat
1406;***

12. The State has opposed the prayer made by the petitioner in the present petition and has supported the impugned order.

13. I have considered the submissions of the parties and perused the materials on record.

14. From the perusal of the records, it appears that the F.I.R. was registered on 02.09.2014 against nine named accused persons and the present petitioner was not named as an accused in the aforesaid F.I.R., however, he has been arrayed as an accused based on an application preferred by the Investigating Officer on 27.09.2014 which came to be allowed by the learned S.D.J.M., Begusarai vide order dated 29.11.2014. Thereafter, the charge-sheet was submitted.

15. Pertinently, the F.I.R. instituted by the official informant does not disclose the specific Control Order which has allegedly been violated to invoke section 7 of the Essential Commodities Act. This Court in the case of ***Hari Narain Mahto (supra)*** had categorically held that when the F.I.R. fails to disclose the specific Control Order made under section 3 of the Essential Commodities Act, which has been



allegedly violated, then no prosecution would lie under section 7 of the Essential Commodities Act. Further, a bald statement that the articles seized on mere suspicion of black-marketing cannot meet the essential ingredients for the criminal prosecution.

16. It will be relevant to quote paragraph nos. 6 to 8 of the decision rendered in the case of *Hari Narain Mahto (supra)* which read as under:-

“6. This application is fit to be allowed on the following grounds stated hereinbelow:—

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 E.C. Act deals with the persons who contravene any Order made under Section 3 of the E.C. Act thereof but when the F.I.R. does not disclose which Order made under Section 3 of E.C. Act has been contravened no prosecution lies.

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

8. Due regard being had to the facts and circumstances of the case and the discussions made above the prosecution of the petitioners herein would amount to an abuse of the process



of the Court and the same cannot be sustained in the eye of law.” (emphasis supplied)

17. Further, in the case of **Ranjeet Kumar** (*supra*) this Court while dealing with the confiscation order passed by the Collector, has held as under:-

*“5. Shri N.K. Agrawal, learned Senior Counsel appearing on behalf of the petitioner submits that the entire exercise right from culminating in the confiscation order has been wholly without jurisdiction. He submits that so far as wheat and rice are concerned, there is neither any storage restriction nor any movement restriction nor any licensing requirement under any order made under the Essential Commodities Act. He further submits that there is no statutory price fixation under Essential Commodities Act in relation to wheat and rice and that being so, there is no question of blackmarketing of wheat and rice as held by this Court as far back as in **1982 PLJR 304 in Pritamlal Yadav v. State of Bihar**. He further submits that before the Collector can assume jurisdiction to initiate confiscation proceeding or order confiscation, it is incumbent upon him to find that any provision of any order issued under Section 3 of the Essential Commodities Act is violated in absence whereof the very initiation of the proceedings becomes wholly without jurisdiction and the order of confiscation is also without jurisdiction. He further submits that a reference to the order in*



question would show that Collector has not given any finding with regard to violation of any provision of any order issued under the Essential Commodities Act. He has acted merely on suspicion and surmises. It is further submitted that a first information report is merely an allegation but it is not known under what jurisprudence, the learned Collector has treated the first information report as a gospel truth for this Court has more than a decade back held that any ipse dixit stated by the State cannot be taken to be gospel truth and before a person is required to defend his case, it is for the State to establish by cogent materials its case. Here, the Collector had accepted the first information report as a gospel truth and treated it as a judgment of petitioner's criminal acts. That is not permissible or sustainable in law.

- 6. Having heard the parties, the writ petition is being disposed of at this stage itself.*
- 7. A bare perusal of the order shows a very dispensing trend. Valuable property of petitioner is being confiscated in such a casual manner. The right to initiate a confiscation proceeding under Section 6A of the Essential Commodities Act is dependent on a prima facie finding of a violation of any provision of any Order issued under Section 3 of the Essential Commodities Act. The entire ordersheet of the Court of Collector has been annexed. At no point of time has the Collector even bothered to look as to what order and in what manner which order is*



*being violated. The entire proceeding started on suspicion of blackmarketing. When there being no statutory price fixation for sale of wheat and rice under any order issued under the Essential Commodities Act, still allegation of blackmarketing is made. That is not sustainable in view of the Division Bench judgment of this Court in the case of Pritamlal Yadav (supra). That is not all. Collector gives a finding that on basis of allegations in the first information report, which he takes to be the gospel truth against all canons of justice and all rule of law, he holds the wheat and rice to be an FCI wheat. If it is FCI wheat then at best it could be a case of theft of FCI wheat. That is not an offence under Essential Commodities Act for which Collector has jurisdiction to confiscate. The tragedy is that even though it has been over one year since the case was instituted, FCI has not led any claim in respect of the wheat in question. Still the Collector treats it to be FCI wheat. The person, whose property it is alleged to be stolen, is not laying his claim, but the learned Collector has chosen to lodge a case on their behalf. This is another curious aspect contrary to the rule of law. In my view, virtually all these matters stand concluded by judgment of Justice B.N. Agrawal, as he then was, speaking for Division Bench in the case of **Dharmdeo Yadav v. State of Bihar** since reported in 1990 (2) PLJR 169 where the jurisdiction of the Collector, in such matters, have been elaborately discussed and if one*



reads the said judgment, it could be found that every part of the judgment has been flagrantly violated by the Collector in the present proceedings.

8. *In nutshell, in the entire proceedings, there is no reference to any order or any provision of any order issued under Section 3 of the Essential Commodities Act which could be said to have been violated. Bald, vague allegations of black-marketing do not get us anywhere especially when we are dealing with property rights of citizens. Article 300 of the Constitution clearly stipulates that no person can be deprived of his property except by procedure established by law. Here, petitioner has been deprived of his property without authority of law because the power under Section 6A of the Essential Commodities Act could only be exercised on certain facts being there. Those facts not being there nor having been found to be there, the exercise was clear abuse of process of Court and cannot be sustained.*

9. *The order of confiscation, therefore, is set aside. The Collector, Muzaffarpur is now directed to act in terms of Section 6C and there being no statutory price fixed for wheat and rice in terms of Section 3(3B) of the Act, the Collector would be bound to pay the petitioner the market price of the wheat and rice on the day when the wheat and rice were sold irrespective of the price of the wheat and rice on which it was sold and the*



amount deposited in the Government Treasury. Apart from it, the petitioner would be entitled to the statutory interest as provided under Section 6C(2) of the Essential Commodities Act.” (emphasis supplied).

18. From the afore-quoted decisions, it is abundantly clear that the prosecution cannot be launched *sans* mentioning the specific Control Order which is alleged to be violated. In the present case, the F.I.R. does not disclose any Control Order issued by the State Government under Section 3 of the Essential Commodities Act, which is said to be violated by the petitioner. Mere suspicion with bald and vague allegation of black-marketing could not suffice to launch a criminal prosecution against the petitioner.

19. It is also noted that the brother of the petitioner had let out the premises in question to the co-accused, who was using the aforesaid premises for running a business of foodgrains. Furthermore, the seized food grains and articles have since been released in favour of said co-accused on the petition filed by him in the court below. Pertinently, the petitioner is not a P.D.S. dealer. No prosecution under the Essential Commodities Act can be launched against a private person, more-so, when no specific allegation is attributed against him.



20. Considering the aforesaid facts, this application is allowed. Accordingly, the order taking cognizance dated 06.12.2016 passed by the S.D.J.M, Begusarai in connection with Phulwaria P.S. Case No.141 of 2014 is hereby quashed and set aside *qua* petitioner.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R
CAV DATE	19.01.2026
Uploading Date	12.03.2026
Transmission Date	12.03.2026

