

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.12753 of 2016**

Arising Out of PS. Case No.-594 Year-2014 Thana- LAKHISARAI District- Lakhisarai

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Rajesh Kumar @ Rajesh Saw Son of Lakki Sao, resident of Village- Naya Bazar,  
Lakhisarai, P.S. District- Lakhisarai.

..... Petitioner

Versus

The State of Bihar

.....Opposite Party

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The Code of Criminal Code - Petition under Section 482 - Courts must exercise inherent powers to prevent abuse of process and secure justice where proceedings are initiated without legal basis – Essential Commodities Act - - Section 7 of the Act applies only in cases of contravention of a control order promulgated under Section 3 of the Act - Prosecution requires evidence of specific contraventions of control orders, failing which no offence can be established under Section 7 - Principle of Judicial Mind - Judicial orders must reflect reasoned application of mind, especially when contradicting police findings. (Cases referred: - **Ranjeet Paswan v. State of Bihar (2009 SCC OnLine Pat 1321)**) Prosecution under Section 7 of the Essential Commodities Act requires explicit reference to a contravened control order - **State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335]**: Quashing of proceedings is warranted where allegations fail to disclose a prima facie offence or constitute an abuse of judicial process - **Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749]** : Summoning an accused in criminal proceedings requires judicial application of mind and substantive justification.

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Appearance :

For the Petitioner : Mr. Amrit Abhijat, Advocate  
Mr. Snehil Kumar, Advocate  
For the State : Mr. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR  
ORAL JUDGMENT

Date : 27-06-2024

The present petition has been filed under Section 482 Cr.PC seeking quashing the impugned order dated 06.07.2015 passed by Ld. S.D.J.M. Lakhisarai (Kabaiya) P.S. Case No. 594 of 2014, corresponding to G.R. No. 1562 of 2014, whereby Ld. S.D.J.M. has taken cognizance of offence punishable under Section 420 of the Indian Penal Code and Section 7 of the Essential Commodities Act against the sole Accused Rajesh Kumar.

2. The prosecution case, as emerging from the written report filed by the Informant, is that when the raid was conducted by the Informant, Assistant District Supply Officer, Lakhisarai on the godown belonging to the Accused/Petitioner



Rajesh Kumar, it was found that rice was being uploaded in a truck and no document was produced on behalf of the Accused/Petitioner. There was no rice mill found belonging to the Accused/Petitioner and in the truck bearing No. WB-41E-3390, 138 sacks of rice was found uploaded and 247 sacks of rice were also found lying in the godown.

3. After investigation, it was found by the Police that the Accused/Petitioner had license to sell and purchase rice *vide* TIN No.10553682007 and under this license, Accused/Petitioner had purchased 400 bags of rice from Shri Ram Kusmi Patel of Nutanganj Bardwan (West Bengal). The Petitioner had also produced delivery *chalan* and cash memo of the rice as well as copy of the license to the Police. Hence, the Police found that no offence was committed by the Petitioner. Accordingly, final form was filed by the Police in the Court of Ld. S.D.J.M., Lakhisarai closing the case against the Petitioner. However, Ld. Magistrate disagreeing with the view of the Police took cognizance of offence punishable under Section 420 of the Indian Penal Code and Section 7 of the Essential Commodities Act against the Petitioner.

4. Ld. Counsel for the Petitioner submits that Petitioner is innocent and has falsely been implicated in this



case. He further submits that rice is a free item and anybody is free to trade in rice, as there is no control order issued by any appropriate Authority. The impugned order is nothing but abuse of the process of the Court and grave injustice to the Petitioner. Hence, it is liable to be quashed under Section 482 Cr.PC.

5. However, Ld. APP for the State defends the impugned order saying that there is no illegality or infirmity in the impugned order. As per the material on record, a prima facie case is made out against the Petitioner and hence, the impugned order is sustainable.

6. I perused the material on record and considered the submissions advanced by Ld. Counsel for the parties.

7. Section 7 of the Essential Commodities Act, 1955 provides for penalties in case of contravention of any order made under Section 3 of the Act. Section 3 of the Act confers power upon the competent authority to promulgate any order to control production, supply and distribution etc. of essential commodities. As such, the first and foremost requirement for application of Section 7 of the Essential Commodities Act is that there must be violation of a control order. But there is no such order mentioned in the written report in regard to dealing in rice. In the absence of any control order, everybody is free to deal in



such grain. Hence, if the accused was found to be carrying or storing rice, no offence is made out.

**8. In Ranjeet Paswan Vs. State of Bihar, 2009 SCC OnLine Pat 1321**, also this Court has held that it is settled by a catena of decisions, both of the Apex Court as also this Court, that for inviting prosecution under Section 7 of the E.C. Act, the F.I.R. must disclose as to which order made under Section 3 of the E.C. Act has been contravened or violated and in the absence of such statement or declaration in the fardbeyan or complaint, no prosecution lies under Section 7 of the E.C. Act. Similar view has been taken by this Court in **Ramavtar Prasad Vs. State of Bihar, (2008 SCC OnLine Pat 1245)** and **Gunanand Prasad @ Gunanand Sah Vs. State of Bihar & Anr., (2008 SCC OnLine Pat 1218)**.

**9. In Arvind Kumar Vs. State of Bihar, 2014 SCC OnLine Pat 1369**, this Court has also held that as per settled principle of law, no prosecution under the Essential Commodities Act could be launched against a private person. 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.

10. There is also no prosecution material on record to show that the petitioner has committed an offence of cheating punishable under Section 420 of the Indian Penal Code.

11. As such, no offence is made out as per the alleged facts and circumstances of the case.

12. In the celebrated judgment of **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, Hon'ble Supreme Court has held, amongst other things, that if as per the alleged facts and circumstances of the case, no offence is made out, the Court can invoke inherent power under Section 482 Cr.PC to prevent the abuse of the process of the Court and secure the ends of justice.

13. In **Pepsi Foods Limited & Anr. v. Special Judicial Magistrate & Ors., [(1998) 5 SCC 749]**, Hon'ble Apex Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

14. Hence, the impugned order is not sustainable in the eye of law and liable to be quashed and set aside under Section 482 of Cr.PC to prevent the abuse of the process of Court and secure the ends of justice.



15. Accordingly, the present petition is allowed, setting aside the impugned order dated 06.07.2015 passed by Ld. S.D.J.M. Lakhisarai (Kabaiya) in P.S. Case No. 594 of 2014.

(Jitendra Kumar, J.)

ravishankar/shoaib

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.08.2024.
Transmission Date	12. 08.2024.

