

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51536 of 2021**

Arising Out of PS. Case No.-37 Year-2016 Thana- JAGDISHPUR District- Bhagalpur

SUBODH KUMAR @ SUBODH KUMAR GUPTA Son of Late Babulal
Gupta Resident of Village- Raj Bandha, Police Station- Dhoriaya, District-
Bhagalpur, Bihar

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar, Advocate

For the Opposite Party/s : Mr.A.G

**CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT**

Date : 11-03-2026

Heard learned counsel for the petitioner, learned counsel
for the informant and learned counsel for the State.

2. The present quashing application is filed on behalf of
the petitioner for quashing the order of cognizance dated
13.09.2018 passed in Jagdish P.S. Case No. 37 of 2016 (Tr. No.
3396 of 2018) passed by the court of learned Sub-Divisional
Judicial Magistrate, Bhagalpur in which cognizance of the offence
has been taken under Section 406, 409, 420, 120(B) of the Indian
Penal Code and Section 7 of the E.C. Act.

3. The prosecution case is that on the secret information
on 03.02.2016 at 02:00PM Truck No. BR-10G-1884 and Truck
No. DL-1GA-6303 were stopped at Bhagalpur Bounsi Road near



Baijani Petrol Pump. It is alleged that on the verification of the loaded wheat bags on the trucks it was found that the bags were inscribed with the seal of Govt. of Punjab, crop year 2015-16. It was also found that all bags were stitched with the hand after removing machine stitches. It is further alleged that after verification of both trucks and weight it was found that 503 bags of wheat weighing 250 quintals were loaded on the Truck No. BR-10G-1884 and 319 bags of wheat weighing 155 quintals was loaded on Truck No. DL-1GA-6303. After preparing seizure list both trucks were unloaded and wheat bags were handed over to Sri Abhay Kumar Pandey on Zimmanama and empty trucks were kept in the premises of Block under the safety and security of Jagdishpur Police Station till further order. It is also alleged that informant assumed that the same were subsidised food grains of Govt. Account and stitched with the machine, which was to be distributed amongst the beneficiaries. The truck drivers fled away and neither the owner of the trucks or drivers appeared with the valid documents and the informant further alleged that contractor Raman Kumar Singh and Subodh Gupta are responsible for the transportation of the wheat from the Naugachia Rail head, which proves that all are involved in the black marketing, as such the case was instituted.



4. The petitioner is named in the FIR as Transporter-cum-Handling Agent, though his role was confined to transportation of food grains. On completion of investigation, the police submitted Charge-Sheet No. 265 of 2018 dated 31.08.2018 against the petitioner and other three persons. Vide impugned order dated 13.09.2018, the learned court below took cognizance of the offences under Sections 406, 409, 420, 120B of the Indian Penal Code and Section 7 of the Essential Commodities Act against the petitioner (Subodh Kumar Gupta) and other three accused persons.

5. The counsel for the petitioner submits that the petitioner was working as Transporter-cum-Handling Agent for the Bihar State Food and Civil Supply Corporation, Bhagalpur and his role was confined only to transportation of food grains from the Rail Head to godowns of Bihar State Food and Civil Supplies Corporation. The food grains have been released in favour of one Alok Kumar vide order dated 11.05.2016 passed in C.W.J.C. No. 7802/2016 (Alok Kumar and others Vs. The State of Bihar and others). The learned District and Sessions Judge, Bhagalpur vide order dated 17.11.2025 set-aside the order of Confiscation of Food Grains in Criminal Appeal No. 47 of 2017 (Alok Kumar Vs. The State of Bihar).



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.”

8. Learned counsel for the informant as well as learned counsel for the State has vehemently opposed the prayer for quashing the order of cognizance dated 13.09.2018.

9. Considering that the petitioner was merely a Transporter-cum-Handling Agent of Bihar State Food & Civil Supply Corporation, Bhagalpur and in the light of the judgment of *Hari Narain Mahto Vs. The State (Supra)*, the order of cognizance dated 13.09.2018 passed in Jagdish P.S. Case No. 37 of



2016 (Tr. No. 3396 of 2018) passed by the court of learned Sub-Divisional Judicial Magistrate, Bhagalpur is hereby quashed.

10. In result, the instant application is allowed.

(Ansul, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.04.2026
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