

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24421 of 2016**

Arising Out of PS. Case No.-210 Year-2014 Thana- KHAJANCHI HAT District- Purnia

Manoj Kumar Sah, Son of Durga Prasad Sah, R/o Village Khajanchi Hat,
Police Station- K. Hat Sahayak, in the District of Purnea.

... .. Petitioner/s

Versus

1. State of Bihar
2. Anjay Chandra Kishor @ Anjan Chandra Kishore, Son of Late Manindra Kishore, Block Supply Officer, Nagar Nigam , Purnea and resides as renter in the house of Rajiv Ranjan, Sipi Tola, P.S.- K. Hat, Purnea and permanent resident of Ajad Nagar, Baluatol, P.S.- Motihari, in the District of East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Raj Kumar, Advocate Mr. Vijay Kumar, Advocate
For the State	:	Mr. Binod Kumar No.3, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 27-02-2025

Heard Mr. Raj Kumar, learned counsel appearing for the petitioner and Mr. Binod Kumar No.3, learned APP for the State.

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C. ') with a prayer to quash the order dated 02.12.2014 passed by learned Sub-Divisional Judicial Magistrate, Purnea (S.D.J.M., Purnea) whereby and whereunder the cognizance of the offence under Section 7 of the Essential Commodities Act (in short 'E.C. Act') has been taken against the petitioner in connection with G.R. Case No. 1259 of 2014 arising out of K. Hat (Sahayak)



P.S. Case No. 210 of 2014.

3. As per the prosecution's allegation, petitioner's restaurant was raided by a team headed by an Assistant District Supply Officer -cum- Senior Deputy Collector and altogether eleven Domestic Subsidized Liquefied Petroleum Gas (LPG) Cylinders were found in a room adjacent to the kitchen of the restaurant of the petitioner and out of seized cylinders, eight were full and three were empty and they belonged to H.P. and Indane Gas Agencies.

4. The main grounds taken by the petitioner's counsel to assail the order impugned are that firstly, neither the informant, Block Supply Officer nor any other official of raiding team was authorized to enter and search the restaurant of the petitioner at the relevant time which is clearly a violation of the Clause 13 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000 (in short '**LPG Order, 2000**') and merely on this ground, the entire prosecution as well as investigation made in K. Hat (Sahayak) P.S. Case No. 210 of 2014 is bad in law. In support of this ground learned counsel has placed reliance upon two decisions of the Jharkhand High Court passed in the cases of **Sheela Sharma vs. The State of Jharkhand** in Cr. M.P. No. 1046 of 2013 and **Kanchan alias**



**Kanchan Kumar Singh vs. the State of Jharkhand in Cr.
M.P. No. 3153 of 2013.**

Secondly, the petitioner is a private person, so, in view of the observation made by this Court in the case of **Arvind Kumar vs. The State of Bihar** passed in **Cr. Misc. No. 21936 of 2011**, the petitioner cannot be prosecuted for the offence under Section 7 of the E.C. Act as only an agent or the Public Distribution System (PDS) Dealer can be prosecuted for the said offence.

Thirdly, the seized cylinders were kept in a room adjacent to the kitchen of restaurant and none of them was being used by the petitioner for business purpose rather they were kept by their respective owners for their convenience inside the premises of the restaurant of the petitioner and the said persons were connected with the restaurant either as being an employee or relative of the petitioner.

5. On the other hand, Mr. Binod Kumar No.3, learned APP for the State has vehemently opposed this petition and submitted that no violation of the clause- 13 of LPG Order, 2000 was made either by the informant or any other member of the raiding party as the informant was not below the rank of Inspector at the time of raid and as per the State Government's



notification, G.S.R.I. dated 18th January, 2008, issued in exercise of the power conferred under clause- 7 of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 (in short '**Motor Spirit and High Speed Diesel Regulation Order, 2005**') all Assistant District Supply Officers were empowered during the relevant period of time to search any premises in respect of the Petroleum product and the principle laid down by this Court in the order passed in the case of **Arvind Kumar (Supra)** does not applicable in the present matter as the same deals with only the black-marketing of Kerosene Oil. He further submits that there is sufficient material in the case diary to show the recovery of large quantity of Domestic Subsidized LPG cylinders from the restaurant of this petitioner which is an admitted position and the defences taken by the petitioner can only be examined by the trial court.

6. Heard both the sides, perused the order impugned and the relevant materials. The instant matter relates to the recovery of 11 domestic subsidized LPG, Cylinders from the restaurant of the petitioner and as per the FIR lodged by Block Supply Officer, Purnea, the alleged act of the petitioner is a violation of the provisions of the LPG Order, 2000 of which



details is mentioned in the FIR itself. The main ground taken by the petitioner to challenge the legality of the institution of the case against him, is the alleged violation of the provisions of clause-13(1) of the LPG Order, 2000 which says that any Officer of the Central or State Government not below the rank of Inspector duly authorized by a general or special order, by the Central Government or State Government as the case may be or any Officer of a Government Oil Company not below the rank of Sales Officer authorized by the Central Government, may with a view to securing due compliance of this order or any other order made thereunder:

“ (a) Stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product,
(b) enter and search any place,
(c) seize stocks of liquefied petroleum gas along with container and /or equipments , such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this Order has been , or is being, or is about to be made.”

7. And as per the petitioner's counsel, neither the informant nor the Assistant District Supply Officer, who led the raiding party nor any other member of the raiding party was a competent person to enter and search the premises of the



restaurant of the petitioner as none of them had been authorized either by the Central Government or State Government to enter and search a premises to ascertain the violation or compliance of LPG Order, 2000 and as such, the entire prosecution from the beginning got vitiated and in such a situation, the order impugned taking cognizance of the offence punishable under Section 7 of the E.C. Act is itself bad in the eye of law.

In support of aforesaid ground the petitioner's counsel has placed reliance upon two decisions of the Jharkhand High Court passed in the cases of **Sheela Sharma (Supra)** and **Kanchan Kumar @ Kanchan Kumar Singh (Supra)**.

8. Though the process of entering and searching any place or premises by an official of the State or Central Government who has not been authorised under clause-13 of the LPG Order, 2000 will render his entire above proceedings initiated by him to be totally unauthorised and the same, in said situation have to be struck down and in this regard, the observation made by the Hon'ble Apex Court in the case of **Avtar Singh and Another vs. State of Punjab** reported in **2023 SCC OnLine SC 319** is relevant in which the Hon'ble Apex Court while examining the legality of conviction of an accused for the offence under Section 7 of the E.C. Act relating to selling



gas cylinders in black in which the investigation was made by a Sub-Inspector of police who was not authorized to make the investigation observed as under:

“ 13. The facts in the case as noticed above as such, are not in dispute. The only argument raised is about the power of the person who had seized cylinder on the basis of which the appellants were prosecuted. Clause 7 of the Order, which is reproduced hereunder, prescribes officers who have the power.

“7. Power of entry, search and seizure:—

(1) an officer or the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying herself that this order or any order made thereunder has been complied with:



(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be, used in the contravention of this Order;

(b) Enter or search any place with such aid or assistance as may be necessary;

(c) Seize and remove with such aid or assistance as may be necessary, the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, alongwith the vehicles, vessels or any other conveyances used in carrying such stock if he has reason to suspect that any provision of this Order has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production.....”.

“ **16.** In the absence of the authority and power with the Sub-Inspector to take action as per the Order, the proceedings initiated by him will be totally unauthorised and have



to be struck down.”

9. But in the instant matter which relates to the recovery of eleven domestic subsidized cylinders from the restaurant of the petitioner, the raid at the restaurant of the petitioner was made by a team headed by Assistant District Supply Officer, Sadar, Purnea in which the informant, Block Supply Officer was also one of the members. In the supplementary counter affidavit filed by the Block Supply Officer, Purnea, it has been mentioned that as per notification of Food, Excise and Commerce Department of Bihar Government dated 30.07.2005 notified in the Extraordinary Gazette No. 413 dated 30.07.2005, the Assistant District Supply Officer, who headed the raiding team is listed at Sl. No. 14 and the notification states that all the Officers listed will have power to conduct search and seizure in accordance with Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000. It is very surprising that with this counter affidavit the Annexure- A(1) is completely irrelevant containing a different notification issued by the Bihar Government under clause-7 of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 published by the Ministry of Petroleum and Natural Gas, Government of India. The petitioner's counsel vehemently



argued that the said notification available in the counter affidavit does not deal with the issue involved in the present matter. Definitely a right submission has been made by him and very surprisingly the State has failed to produce the correct notification of which details is mentioned in supplementary counter affidavit but while dictating the order, this Court got the right/relevant notification with the help of the office and the same supports the statement made in the paragraph no. 6 of the counter affidavit, hence, the entry of the informant and Assistant District Supply Officer, who headed the raiding team, into the premises of the petitioner's restaurant and search of the premises and seizure of the alleged cylinders has not violated the LPG Order, 2000 and there is seizure memo along with the FIR which shows the seizure of eleven domestic subsidized LPG cylinders from the petitioner's restaurant and in the case diary material witnesses of the prosecution supported the said recovery, search and seizure of the cylinders from the petitioner's restaurant in their statements which are sufficient to prima facie attract the offence punishable under Section 7 of the E.C. Act. The observations made by the Jharkhand High Court in the aforesaid referred cases are not applicable in the present matter and so far as the other grounds taken by the petitioner are



concerned, the same are subject of trial for which a right conclusion can only be made by the trial court after taking evidences from both the sides, accordingly, this Court finds no merit in this petition and finds no illegality in the order impugned, so, the instant petition stands dismissed.

10. Let an explanation be called for from the Block Supply Officer, Purnea, for filing an irrelevant copy of Gazette Notification of the Bihar Government despite giving correct details in the affidavit.

11. Put up this matter with the required explanation after four weeks.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	A F R
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