

**(2011) 03 JH CK 0066**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 889 of 2010

Mahendra Prasad Sahu @  
Mahendra Saw and Kameshwar  
Singh @ Kamo Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** March 17, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Essential Commodities Act, 1955 - Section 3, 7
- Penal Code, 1860 (IPC) - Section 414

**Citation:** (2011) 8 RCR(Criminal) 2117

**Hon'ble Judges:** Dilip kumar sinha, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

D.K. Sinha, J.

The Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure with the prayer for quashment of the order dated 15.6.2010 by which the learned Chief Judicial Magistrate, Chatra had taken cognizance of the offence against the Petitioners u/s 414 of the Indian Penal Code as also u/s 7 of the Essential Commodities Act in Hunterganj P.S. Case No. 112/09, corresponding to G.R. No. 644/09. The Petitioners further requested for the quashment of their entire criminal proceedings pending in the court of the Chief Judicial Magistrate, Chatra.

2. Prosecution story in short was that the informant Mahabir Shivanand Kindo, Sub Inspector of Police, in his written report presented before the Hunterganj Police narrated that during course of night patrol, he got secret information that a Mini Truck 407 bearing Registration No. BEM 1175 was carrying bags of wheat which was

allocated for distribution under P.D.S. from Hunterganj to Dovi to be sold in the black market. The truck was intercepted by the police party. On interrogation, truck driver disclosed his name Mahendra Prasad Sahu @ Mahendra Saw and narrated that he was the owner of the truck and on the instruction of one Kameshwar Singh @ Kamo Singh of village Baluri, P.S. Hunterganj, District-Chatra, he was carrying ninety-six bags of wheat to deliver in the go down of one Naresh Agarwal of village-Khotwara, P.S.-Dovi, District-Gaya (Bihar). On demand, no document was produced by the driver-cum-owner of the truck related to transportation or possession of the wheat bags nor any satisfactory answer could be given whereupon the truck was seized with 96 bags of wheat loaded thereon in presence of the witnesses. Each bag contained 50 Kg. of wheat. The driver-cum-owner of the truck was arrested and case was instituted for the offence u/s 414 of the Indian Penal Code as also u/s 7 of the Essential Commodities Act.

3. Learned Counsel, Mr. Binod Singh, submitted that the Petitioner No. 1 Mahendra Prasad Sahu @ Mahendra Saw was admittedly the driver-cum-owner of the said truck, whereas the Petitioner No. 2 Kameshwar Singh @ Kamo Singh was the owner of ninety-six bags of wheat, which were seized by the police.

4. Learned Counsel further submitted that none of the Petitioners is licensee under Public Distribution System and it is nowhere alleged in the F.I.R. as to which control order/unification order as framed u/s 3 of the Essential Commodities Act was violated by the Petitioners so as to call for their punishment u/s 7 of the Essential Commodities Act. There is no restriction on sale, purchase and transportation of wheat and rice and by the Notification No. G.S.R. 104(E), issued by the Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, New Delhi dated 15.2.2002 following orders were made,

Whereas the Central Government is of the opinion that it is necessary and expedient to do so for securing the availability of commodities specified in the order at fair prices through the country.

Now, therefore, in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following order."

"With the coming into effect of this Order any dealer may freely stock, sell transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarsegrains, sugar, edible oilseeds and edible oils and shall not require a permit or license therefore under any order issued under the Essential Commodities Act, 1955.

5. Mr. Singh further submitted that State of Jharkhand had adopted the Notification of the Government of India and accordingly, has withdrawn the restriction from purchase, sell, transport, stocking of wheat, therefore, the criminal prosecution of the Petitioners was illegal, which would tantamount to miscarriage of justice.

6. Finally, the learned Counsel submitted that 48 bags of wheat carrying 50 Kg. each were purchased from M/s. Anand Traders, Mahrar, Rohtas, Bihar on 20.7.2009 on cash payment of Rs. 24,480/- and this fact was substantiated when investigation was made by the Investigating Officer and a report in this regard was sent to the Public Prosecutor, Chatra. Balance quantity of wheat were purchased from different agencies to which it was not necessary to produce the receipt as the common farmers growing wheat could not afford to give the receipt on the sale of their wheat.

7. Heard Mr. Md. Hatim, the learned A.P.P. on behalf of the State, who did not dispute the legal position as well as the Notification issued by the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, New Delhi vide 104(E) dated 15.2.2002 and adopted by the State of Jharkhand.

8. Having regard to the facts and circumstances, I find that restriction from purchase, sell, transport, stocking of wheat have been withdrawn by the order dated 15.2.2002 by the Notification of Government of India, referred to hereinbefore and admittedly, the same has been adopted by Jharkhand State. In view of that the criminal prosecution of the Petitioners cannot sustain for the alleged offence u/s 7 of the Essential Commodities Act. I further find that Section 414 of the Indian Penal Code is also not maintainable against the Petitioners in view of the above observation.

9. In the result, the impugned order dated 15.6.2010, by which cognizance of the offence has been taken against the Petitioners (1) Mahendra Prasad Sahu @ Mahendra Saw and (2) Kameshwar Singh @ Kamo Singh including their criminal prosecution are quashed and this Criminal Miscellaneous Petition is allowed.