

(2008) 04 PAT CK 0077

Patna High Court

Case No: Criminal Miscellaneous No. 38380 of 2007

Ram Chandra Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: April 17, 2008**Acts Referred:**

- Essential Commodities Act, 1955 - Section 7
- Penal Code, 1860 (IPC) - Section 409, 420, 467, 468

Citation: (2008) 3 PLJR 161**Hon'ble Judges:** Abhijit Sinha, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.

Heard Sri Mrigank Mauli, the learned counsel for the petitioner and Sri Jharkhandi Upadhaya, the learned A.P.P for the State. The petitioner who is a dealer under the Public Distribution System (hereinafter referred to as "the P.D.S.") is aggrieved by order dated 17.1.2007 passed by the learned Chief Judicial Magistrate, Nawada, in Akbarpur P.S. Case No. 75 of 2005 registered under Sections 409, 420, 467 and 468 I.P.C. and Section 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act") and has prayed for quashing of the same, whereby cognizance has been taken only u/s 7 of the E.C. Act for contravention of the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984, (hereinafter referred to as "the Unification Order").

2. According to the prosecution case as made out from the written report submitted by the Supply Inspector, Akbarpur, on inquiry from the various cardholders and on verification of the cards of about 30 of the Yellow cardholders, it was found that the petitioner had been irregular in supply of controlled items like rice, wheat and

kerosene oil. It has also been alleged that even the holders of the general cards had complained about the irregular supply. Accordingly, it was alleged that the petitioner had indulged in blackmarketing of articles supplied to him and a prayer was made to take action for contravention of Section 7 of the E.C. Act.

3. It has been submitted that although the prayer was made for taking action only under the provisions of the E.C. Act yet the police had registered the case also under several provisions of the Penal Code notwithstanding the fact that no penal offence was made out from the averments made therein and rightly a charge-sheet had been submitted u/s 7 of the E.C. Act. It has also been submitted that the petitioner has been working under the license without any complaint whatsoever for more than 20 years and has been falsely implicated more so when there is nothing in the F.I.R. that makes out a case against the petitioner.

4. The learned counsel for the petitioner also sought to point out that actual inspection had in fact been done not by the informant but by the Sub-Divisional Officer who in his inspection report had stated that he had visited the premises of the petitioner and on inspection of the distribution register had found that on some of the pages the number of the signatures and thumb impressions did not total up to the number of names on the various pages and the petitioner could not produce any proof of distribution of wheat under the Antoday Scheme and it was on the basis thereof that it had been alleged that the petitioner had indulged in blackmarketing of foodgrains. In this connection, it was submitted that in the Antoday Scheme there had been no allocation at all to the petitioner and the same has been noted by the Supply Officer of Akbarpur Block and registered in the unit register of the petitioner and as such there was no question of supply of any wheat under the Antoday Scheme and the yellow cardholders under the Antoday Scheme. That apart, it has been submitted, the sales from the shop of the petitioner had been supervised by the Panchayat Committee, the daily sales and in that context the Panchayat Member had written (Annexure-5) to the Sub-Divisional Officer that the sales and the stocks of the petitioner had been supervised by them and that the petitioner had been falsely implicated.

5. It was finally submitted that in view of the provisions of Clause 31(2) of the Unification Order the dealers under the P.D.S. being approved agency of the State Government are protected from prosecution for violation of any provision of the Unification Order and as such their prosecution is fit to be quashed.

6. It is by now well settled by a catena of decisions that the dealers of Public Distribution System being the approved agency of the State Government under the terms and conditions of the agreement between the dealer and the State of Bihar they are protected by Clause 31(2) of the Unification Order from prosecution for violation of any of the provisions of the Unification Order and as such their prosecution is fit to be quashed. Reference in this connection may be made to the cases of [Md. Waizuddin Vs. The State of Bihar](#), and [Most. Girdhari Kuar and Others](#)

[Vs. The State of Bihar,](#) . Due regard being had to the facts and circumstances of the case and the legal position as it stands, the prosecution of the petitioner herein would amount to an abuse of the process of the Court. Accordingly, the application is allowed and the order taking cognizance is hereby quashed.