

(1998) 05 AHC CK 0074

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P.No. 102 of 1997

Indra Vikram Singh and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : (1998) 05 AHC CK 0074

Hon'ble Judges : D.P.Mohapatra, CJ and G.P.Mathur, J

Final Decision : Partly Allowed

Judgement

G.P. Mathur, J.—This petition under Article 226 of the Constitution has been filed for quashing the FIR under Section 3/7 Essential Commodities Act lodged on 241296 at P.S. Rauza district Shahjahanpur on the basis of which case crime No. 236 of 1996 has been registered and also the seizure memo dated 231296.

2. Petitioners contend that they are farmers and they had stored wheat which had been cultivated by them. Petitioners have filed copies of khataunis to show that they own agricultural land. In the counter affidavit filed on behalf of the State, it is asserted that in fact the petitioners are traders who carry on business of sale and purchase of wheat and they had illegally stored the wheat. The quantity of wheat found in stock of the petitioners was far in excess of what can normally be grown and produced from the land owned by them. It is also pleaded that the petitioners had not filed copies of khasra of the relevant year which alone could show the area over which wheat was grown. Learned Standing counsel has also urged that an agriul turist normally does not store his produce in the godowns of State Warehousing Corporation and this is done only by businessmen.

3. We have carefully considered the submissions made by the learned counsel for the parties and have also examined the record. In our opinion, the question as to whether the petitioners are farmers and they had stored the wheat produced by

them or they are in fact traders who had stored the wheat purchased by them in the course of their business activity is a pure question of fact which can not be decided in the present proceedings under Article 226 of the constitution. A finding on this question can only be recorded after appraisal of oral and documentary evidence which may be adduced in trial.

4. In writ petition No. 162 of 1997 (Bankey Lal Agarwal and others v Station House Officer and others), decided today, we have held that prosecution of a manufacturer or dealer for violation of U.P. Foodgrains (Procurement and Regulation of Trade) Order, 1982 as amended by U.P. Foodgrains (Procurement and Regulation of Trade) (Fifteenth Amendment) Order, 1996 will be illegal if no further stock of wheat had been acquired after the enforcement of the said order on 10121996.

5. In the result, the writ petition is partly allowed. A writ of mandamus is issued to the respondents not to prosecute the petitioners under Section 3/7, Essential Commodities Act in connection with the FIR lodged on 24121996 at P.S. Rauza distict Shahjahanpur on the basis of which case crime No. 236 of 1996 has been registered if the petitioners have not acquired wheat after the enforcement of U.P. Foodgrains (Procurement and Regulation of Trade) (Fifteenth Amendment) Order, 1996 which came into force on 101296.