

(2007) 01 PAT CK 0166

In the Patna High Court

Case No : Criminal Miscellaneous No. 47741 of 2006

Smt Nitu Prasad @ Nitu Chaudhary

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7

Citation : (2007) 3 PLJR 87

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Judgement

Ghanshyam Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed to quash the order dated 19.9.2006 passed by the Chief Judicial Magistrate, Motihari in Turkoulia (Banjaria) Rs. Case No. 176/05 Tr. No. 3106/06 thereby and thereunder cognizance has been taken u/s 7 of Essential Commodities Act against the petitioner. It appears that the petitioner is an authorised distributor/dealer of Indane L.P.G. (annexure-6) for rural area, Panchrukha. She has been prosecuted u/s 7 of Essential Commodities Act on the basis of fardbeyan lodged by the Block Supply Officer dated 9.7.2005 The allegation is with regard to irregularity in storage and distribution of gas cylinders.

2. Learned Counsel for the petitioner challenges the impugned order of cognizance mainly on two grounds; the first is that neither the impugned order nor the Fardbeyan mentions violation of any order or notification issued under the Essential Commodities Act. The other point is that the provision of Bihar Trade Articles (Licences Unification) Order, 1984 does not fix any storage limit and it is also neither workable nor enforceable as far as L.P.Gas is concerned. In support of his contention he has relied upon several decisions of this Court including 1999 BLJR 115 as well as the order passed in Criminal Revision No. 322/91 and Criminal Miscellaneous No. 559 of 1994.

3. I have gone through the several decisions of the Hon''ble Court cited above.

On perusal of the aforesaid decisions it is quite clear that the provision of Bihar Trade Articles (Licences Unification) Order, 1984 is neither workable nor enforceable as far as L.P.G. is concerned. Therefore, the prosecution of the petitioner u/s 7 of the Essential Commodities Act is not tenable in the eye of law. Learned Counsel for the State has also conceded this fact and has failed to show any order or notification in order to show that in case of any irregularity with regard to storage or distribution of L.P.Gas cylinder, the authorised dealer can be prosecuted u/s 7 of Essential Commodities Act. Thus, having regard to the facts and circumstances of the case, this application u/s 482 of the Code of Criminal Procedure is allowed and the impugned order is hereby quashed.