

(1984) 01 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 3004 of 1978

Sri Niwas Sultania

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 409

Citation : (1988) PLJR 500

Hon'ble Judges : Ram Nandan Prasad, J; Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : N.K. Agrawal and Jagdish Prasad Bhagat, for the Appellant; G.P. Jaiswal, for the Respondent

Judgement

Nagendra Prasad Singh and Ram Nandan Prasad, JJ.—This application has been filed on behalf of the petitioner u/s 482 of the Code of Criminal Procedure, 1973 for quashing an order dated 2.6.1979 passed by the learned Sub-divisional Judicial Magistrate, Patna City, taking cognizance of the offence u/s 7 of the Essential Commodities Act (hereinafter to be referred to as "the Act") and summoning the petitioner to stand trial for the said offence. It appears that the Assistant Rationing Officer filed a petition of complaint before the said court stating therein that the firm Aruna Stores on 11.8.1978 sold 5 bags of washing soda to one Jagat Narain and 2 bags to one Debi Charan, but on enquiry it transpired that they had not purchased the same from the firm of the petitioner, and, as such, the firm had contravened the provisions of the Bihar Essential Articles (Display of Prices and Stocks) Order, 1977 (hereinafter to be referred to as "the Order") and the firm was liable for prosecution u/s 7 of the Act along with section 409, 420, 471 of the Indian Penal Code. In the column meant for the accused, the name of the petitioner is mentioned. The validity of the order taking cognizance of an offence u/s 7 of the Act against the petitioner has been challenged on the ground that the prosecution has been launched against the

petitioner for contravention of the said Order without there being an order sanctioning such prosecution by the State Government or the Special Officer Incharge Rationing or from any of the authorities mentioned in the said Order. The proviso to clause 6 of the Order is as follows:--

Provided that no prosecution shall lie against a person for contravention of any of the provisions of this Order unless the same has been sanctioned by the District Magistrate or Special Officer incharge Rationing or Additional District Magistrate (Supply) or Sub-divisional Magistrate with in limits of their respective local jurisdiction.

2. From a copy of the order dated 6.4.1979 sanctioning the prosecution in exercise of the powers under the proviso to clause 6 aforesaid, which is Annexure-3, it appears that the Special Officer Incharge Rationing had sanctioned prosecution for contravention of the said Order in respect of Messrs Aruna Stores. In that order there is no mention in respect of the petitioner who is the proprietor of the said firm. As such, it was urged that in view of the clear language of the proviso to clause 6 of the Order no prosecution can lie against a person for contravention of any of the provisions of the Order unless the same has been sanctioned by the authorities named in the proviso. As the proviso to clause 6 says in clear and unambiguous words that no prosecution shall lie against a person for contravention of any of the provisions of the Order unless the same has been sanctioned, there is no scape from the conclusion that the prosecution must be sanctioned by the authorities vested with said power in respect of each person who is made an accused for contravention of the provisions of the said Order. This question has been considered by a Bench of this Court in connection with sections 20 and 20A of the Prevention of Food Adulteration Act where it was pointed on construction of aforesaid section that sanction required was not only in respect of the offence but offender as well. A learned Judge of this Court in the case of Purnamal Vs. The State of Bihar, ; has also held that in view of the proviso aforesaid the prosecution must be sanctioned with reference to the accused concerned. We are in respectful agreement with the aforesaid view. In the instant case, it is an admitted position that in the order sanctioning prosecution, there is reference only about Aruna Stores. Learned counsel appearing for the State submitted that it is just possible that a separate order sanctioning the prosecution of the petitioner might have been passed by the. Special Officer Incharge, Rationing. In the above situation, we are left with no option but to allow this application and quash the order taking cognizance of an offence u/s 7 of the Act for having contravened the provisions of the said Order so far as the petitioner is concerned. However, we direct that learned Sub-divisional Judicial Magistrate shall peruse the records and if there is separate order sanctioning the prosecution so far as the petitioner is concerned then it will be open to him to proceed against the petitioner again in accordance with law. The order impugned is being quashed so far as the taking of cognizance of an offence u/s 7 of the Act is concerned If any other offence under any Act or the Indian Penal Code which does not require sanction has been disclosed in the

petition of complaint, it will be open to the learned Sub-divisional Judicial Magistrate to apply his mind in accordance with law in respect of those offences.