IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38058 of 2016

CNR No. BRHC010385632016

Arising Out of PS. Case No.-161 Year-2013 Thana- SHEKHPURA District- Sheikhpura

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Shashi Kant Kumar, son of Saryug Prasad Singh, resident of village - Hathiyawan, P.S.- Sheikhpura Hathiyawan O.P., District - Sheikhpura.

... ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

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Appearance :
For the Petitioner/s : Mr.Pramod Kumar, Advocate
For the Opposite Party/s : Mr.Surendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

Date : 18-11-2026

Heard learned counsel appearing for the petitioner and learned APP for the State.

2. The present application has been filed for quashing of the order dated 29.07.2016 passed by the learned Sub-divisional Judicial Magistrate, Sheikhpura in connection with Sheikhpura (Hathiyawan O.P.) P.S. Case No.161 of 2013, G.R. Case No. 499 of 2013, whereby the prayer for discharge of the petitioner under Section 239 of the Code of Criminal Procedure has been rejected.

3. The prosecution case, in brief, is that on the basis of a written report submitted by the Block Supply Officer,

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Sheikhpura, alleging lifting of P.D.S. grains and its transportation to Jaishri Krishan Rice Mill, the aforesaid case was instituted for the offences punishable under Sections 420, 409 and 120-B of the Indian Penal Code as well as Section 7 of the Essential Commodities Act.

4. Learned counsel appearing for the petitioner submitted that the petitioner has neither been named in the F.I.R. nor is he the owner of the concerned rice mill. The petitioner is merely a driver and has no concern with the alleged business of food grains. It is further submitted that paragraph 50 of the case diary itself records the petitioner to be the driver of the tractor bearing Registration No. BR-52-8720. It is, thus, submitted that except his being a driver, there is no material connecting him with the alleged lifting, sale or misappropriation of P.D.S. grains.

5. Learned APP for the State opposed the prayer for quashing.

6. Having considered the submissions advanced on behalf of the parties and upon perusal of the materials available on record, this Court finds substance in the

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submission advanced on behalf of the petitioner.

7. In **Arvind Kumar Vs. State of Bihar, Cr. Misc. No.21936 of 2011**, decided on 14.08.2014, this Court, while considering prosecution under Section 7 of the Essential Commodities Act, has held:

> ***"It has been settled by several decisions of this Court that no prosecution under the Essential Commodities Act could be launched as against a private person. The petitioner, admittedly, is not a dealer under the Public Distribution System."***

The Court further held:

> ***"For any violation of the provisions of the Essential Commodities Act or the Control Orders, promulgated under the authority of the Essential Commodities Act, only the agents or the P.D.S. Dealers could be prosecuted. However, since the petitioner is not a P.D.S. Dealer, he cannot be tried for the offence under Section 7 of the Essential Commodities Act."***

The aforesaid principle was also recently noticed and applied by this Court in **Md. Qaiyum & Anr. Vs. State of Bihar, Cr. Misc. No.13560 of 2023**, decided on 04.03.2025.

8. In the present case, the position of the petitioner is

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even more distinguishable, as the material collected during investigation, particularly paragraph 50 of the case diary, shows him only as the driver of the tractor. There is no material to suggest that he was a P.D.S. dealer, agent, owner of the rice mill or a person entrusted with the stock of P.D.S. grains. Accordingly, the essential foundation for proceeding against him under Section 7 of the E.C. Act is absent.

9. So far as Sections 409 and 420 of the Indian Penal Code are concerned, the Supreme Court in **N. Raghavender Vs. State of Andhra Pradesh, CBI, (2021) 18 SCC 70**, has reiterated that for Section 409 IPC, entrustment of property and dishonest misappropriation or use thereof are *sine qua non*. The Court further held that under Section 420 IPC, deception, dishonest inducement and the requisite *mens rea* are essential ingredients. In the present case, there is no material to show that any property was entrusted to the petitioner or that he dishonestly misappropriated the same. There is also no allegation of any deception or dishonest inducement on his part.

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10. Likewise, the offence under Section 120-B of the Indian Penal Code cannot be sustained merely on the basis of suspicion or the fact that the petitioner happened to be the driver of the tractor. In **Esher Singh Vs. State of Andhra Pradesh, (2004) 11 SCC 585**, the Hon'ble Supreme Court has held that the essence of criminal conspiracy is an agreement between two or more persons to do an illegal act and that the circumstances relied upon must disclose a meeting of minds. A few isolated circumstances cannot be treated as sufficient to establish such agreement.

11. In the present case, there is no material showing any prior meeting of minds or agreement between the petitioner and the other accused persons for committing the alleged offences. His alleged connection with the occurrence rests essentially upon his status as a driver. Such circumstance, by itself, cannot constitute the ingredients of criminal conspiracy.

12. The principles governing exercise of jurisdiction under Section 482 of the Code of Criminal Procedure have been authoritatively settled by the Supreme Court in **State**

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of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335, particularly paragraph 102, where it has been held that the inherent jurisdiction may be exercised where the allegations, even if taken at their face value, do not constitute an offence or where the uncontroverted allegations and material collected during investigation do not disclose the commission of any offence.

13. Tested on the aforesaid principles, this Court finds that the materials available against the petitioner do not disclose the basic ingredients of Sections 409, 420 or 120-B of the IPC. The petitioner is admittedly reflected in paragraph 50 of the case diary as the driver of the tractor and there is no material indicating his entrustment with the P.D.S. stock, dishonest misappropriation, deception, inducement or participation in any conspiracy.

14. In view of the aforesaid facts and settled legal position, continuation of the criminal proceeding against the petitioner would amount to an abuse of the process of the Court.

15. Accordingly, the impugned order dated

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29.07.2016 passed by the learned Sub-divisional Judicial Magistrate, Sheikhpura in connection with Sheikhpura (Hathiyawan O.P.) P.S. Case No.161 of 2013, G.R. Case No.499 of 2013, along with all its consequential proceedings, is hereby set aside and quashed *qua* the petitioner.

16. The application stands allowed.

17. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**NA**
Uploading Date	**19.11.2026**
Transmission Date	**19.11.2026**

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