

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 611 of 2015

Hari Shankar Agarwal,

... **Petitioner**

-Versus-

The State of Jharkhand

... **Respondent**

With

W.P. (Cr.) No. 614 of 2015

Shyam Sundar Agarwal @ Shyam Kumar Agarwal

Sunildeo Nayal, District- Ranchi

... **Petitioner**

-Versus-

1. The State of Jharkhand

2. Vipul Kumar Singh, Marketing Supervisor, Market Committee, Ranchi,
Pandra, P.O. & P.S. Pandra, District- Ranchi

... **Respondents**

With

W.P. (Cr.) No. 615 of 2015

Gopal Khetan.

... **Petitioner**

-Versus-

The State of Jharkhand

... **Respondent**

With

W.P. (Cr.) No. 617 of 2015

Santosh Kumar Agarwal,

... **Petitioner**

-Versus-

1. The State of Jharkhand

2. Vipul Kumar Singh, Marketing Supervisor, Market Committee, Ranchi,
Pandra, P.O. & P.S. Pandra, District- Ranchi

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Nilesh Kumar, Advocate (In all the cases)

For the State : Mr. Gaurang Jajodia, AC to G.P.-II

[In W.P. (Cr.) Nos.611/15, 614/15 & 617/15]

Mr. Binit Chandra, AC to A.A.G.-III

[In W.P. (Cr.) No.615/15]

05/25.08.2022. Heard Mr. Nilesh Kumar, learned counsel for the petitioners and

Mr. Gaurang Jajodia and Mr. Binit Chandra, learned counsel for the State.

2. The common question of facts and laws are involved in these petitions and that is why, all these petitions have been heard together with the consent of the parties.

3. In W.P. (Cr.) No.611 of 2015, the prayer is made for quashing the entire criminal proceeding including the First Information Report i.e. Namkum P.S. Case No.194/15, corresponding to G.R. Case No.5148/15, pending in the court of the learned Sub Divisional Judicial Magistrate, Ranchi, in W.P. (Cr.) No.614 of 2015, the prayer is made for quashing the entire criminal proceeding including the First Information Report i.e. Ratu P.S. Case No.146/15, corresponding to G.R. Case No.5139/15, pending in the court of the learned Sub Divisional Judicial Magistrate, Ranchi, in W.P. (Cr.) No.615 of 2015, the prayer is made for quashing the entire criminal proceeding including the First Information Report i.e. Ratu P.S. Case No.738/15, corresponding to G.R. Case No.5163/15, pending in the court of the learned Sub Divisional Judicial Magistrate, Ranchi and in W.P. (Cr.) No.617 of 2015, the prayer is made for quashing the entire criminal proceeding including the First Information Report i.e. Ratu P.S. Case No.146/15, corresponding to G.R. Case No.5139/15, pending in the court of the learned Sub Divisional Judicial Magistrate, Ranchi.

4. All these cases have been registered under Section 7 of the Essential Commodities Act. In all the cases, it has been alleged that the petitioners have stored the pulses more than the storage limit fixed by the State Government and on these grounds, the cases have been registered against the petitioners.

5. Mr. Nilesch Kumar, learned counsel for the petitioners submits that the only allegation against the petitioners is of keeping pulses not within the storage limit fixed by the Government but the storage limit said to have been fixed is contrary to the provisions of Clause 18 of the Bihar Trade Articles (Licences Unification) Order, 1984. He further submits that nowhere

in the notification dated 09.03.2015, it has been disclosed as to whether prior concurrence of the State Government had been taken before issuance of the said notification and whether the same was published in the Gazette, as such, institution of the FIR was bad in law and subsequent proceeding is also not in accordance with law and, therefore, in absence of compliance of the statutory provisions in terms of Clause 18 of the Unification Order, it would be presumed that there was no storage limit of pulses as on the date of the seizure. He further submits that no licence fee has been prescribed for dealing in pulses and any confiscation or prosecution becomes invalid in absence of fixation of any licence fee for dealing in pulses. He further elaborates his arguments by way of submitting that the First Information Report which has been instituted under Section 7 of the Essential Commodities Act does not disclose as to which order as prescribed under Section 3 of the Act has been violated. He also submits that since there are serious flaws in the prosecution case which is fatal to the prosecution, the entire criminal proceedings as against the petitioners deserve to be quashed by this Court. He further submits that the counter affidavits have been filed on behalf of the respondent-State and these facts have not been denied by the respondent-State.

6. Per contra, Mr. Gaurang Jajodia, learned counsel for the State appearing in W.P. (Cr.) Nos.611 of 2015, 614 of 2015 and 617/2015 and Mr. Binit Chandra, learned counsel for the State appearing in W.P. (Cr.) No.615 of 2015 submit that the Department of Food Public Distribution and Consumer Affairs, Government of Jharkhand had issued a notification dated 09.03.2015 fixing the storage limit of pulses of 500 quintal and the period of operation of the notification was extended from time to time. They further

submit that on the date when the raid was conducted the notification of the State Government was in operation and, therefore, having found the pulses over and above the storage limit fixed by the notification dated 09.03.2015, the articles were rightly seized and criminal prosecutions were instituted under Section 7 of the Essential Commodities Act and in such circumstances, therefore, there is no cause for interference in these criminal proceedings.

7. In light of the above submissions of the learned counsel appearing for the parties, it is necessary to interpret Clause 18 of the Bihar Trade Articles (Licenses Unification) Order, 1984, which is reproduced herein below:

"18. Restriction on possession of trade articles. -
No person shall, either by himself or by any person on his behalf, store or have in his possession at any time any trade article mentioned in Schedule I and Schedule II in quantity exceeding the limits fixed:
(i) under an order issued by the Central Government, or
(ii) by the State Government with prior concurrence of the Central Government by issuing a notification in official Gazette from time to time."

8. Clause 18 specifies fixation of storage limit by the State Government with the prior concurrence of the Central Government by issuing a notification in the official Gazette. The primary requirement of complying Clause 18 of the Unification Order is of prior concurrence of the Central Government and publication of the notification in the official Gazette. None of the requirement seems to have been fulfilled as the State Government has straightway in the purported exercise of its powers under Section 3 of the Essential Commodities Act had issued the notification fixing 500 quintal as the storage limit.

9. Neither the notification nor the counter affidavits filed by the State disclose about the compliance of the statutory requirement as envisaged

under Clause 18 of the Unification Order. Such non-compliance would automatically lead to the conclusion that on the date when the inspection was made and seizure of the pulses were effected there was no storage limit in vogue and such situation would undoubtedly lead to a conclusion that the criminal proceedings instituted against the petitioners are bad in law.

10. In the case of ***Gauri Shankar Saboo v. State of Jharkhand & Anr.***, reported in ***2010 (1) East Cr C 187 (Jhr)***, this Court while considering the provisions of Clause 18 held as under:

"13. Admittedly, the aforesaid notification has neither been published in the official Gazette nor anything is on record to show that said notification has been issued with prior concurrence of the Central Government. Moreover, the said notification as required under the aforesaid clause has never been issued by the State Government, rather it has been issued by the Secretary of the department.

14. The intendment of the notification being published in the Official Gazette is that in case of fixation of stock limit the public must come to know the same. Therefore, it would not be operative unless published in the Official Gazette and mere printing of such notice in the newspaper, as has been done by the authority cannot be equated with the publication in the Official Gazette.

15. Thus, issuance of the notification prescribing stock limit of the food grains including pulses never seems to have been one in accordance with the provisions of the Unification Order and on that account, any prosecution on the ground of having excess food grains/pulses than the stock limit fixed would certainly be quit illegal."

11. In the case of ***Satya Narain Prasad v. The State of Bihar***, reported in ***1998 PLJR 502***, it was held that the prosecution gets vitiated if the confiscation or prosecution becomes invalid on account of the fact that no licence fee has been prescribed for licenses for dealing in pulses.

12. The State of Jharkhand has filed counter affidavits and in course of the arguments, learned counsels for the State have not been able to controvert the contention of the learned counsel for the petitioners that the

prosecution becomes invalid also in view of the fact that no licence fee has been prescribed in dealing in pulses.

13. In light of the above facts, reasons and analysis, entire criminal proceedings instituted against the petitioners are vitiated and in view of non-compliance of the statutory provisions in terms of Clause 18 of the Unification Order and to allow to continue the criminal proceedings as against the petitioners will amount to abuse of process of law. In that view of the matter, entire criminal proceedings as against the petitioners deserve to be quashed. Accordingly, the entire criminal proceeding including the First Information Report i.e. Namkum P.S. Case No.194/15, corresponding to G.R. Case No.5148/15, Ratu P.S. Case No.146/15, corresponding to G.R. Case No.5139/15 and Ratu P.S. Case No.738/15, corresponding to G.R. Case No.5163/15 as against the petitioners in all these petitions, pending in the court of the learned Sub Divisional Judicial Magistrate, Ranchi are, hereby, quashed.

14. Resultantly, these petitions stand allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/