District :- Bhagalpur (Bihar)

IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE, BHAGALPUR

Present :- Dipankar Pandey,
Principal Sessions Judge,
Bhagalpur (Bihar).

Dated, the 17th day of June, 2026

Criminal Appeal No. 49/2017

[Arising out of Confiscation Order dated 10.03.2017 passed by the District Magistrate, Bhagalpur in Confiscation Case No. 90/15-16]

Subodh Kumar Gupta S/o Late Babu Lal Gupta
(Prop. of Aman Rice Mill)
R/o – Vill. Rajbandh, P.S. - Dhoriya, Dist. - Banka
At Present – Residing at Hanuman Path, Tilkamanjhi, P.S. - Tilkamanjhi, District – Bhagalpur.

………………**Appellant**

Versus

State of Bihar ……………..**Respondent**

JUDGMENT

1. The present Criminal Appeal has been preferred by the appellant, Subodh Kumar Gupta, proprietor of Aman Rice Mill, under Section 6-C of the Essential Commodities Act, 1955 (hereinafter referred to as the "E.C. Act"), against the order dated 10.03.2017 passed by the Collector, Bhagalpur in E.C. Confiscation Case No. 90/2015-16, whereby and whereunder the learned Collector ordered confiscation of 1,990 sacks of rice weighing 997.85 quintals under the provisions of Section 6-A of the E.C. Act. It is stated that although the seized rice was directed to be released in favour of the appellant in view of the order dated 18.05.2016 passed by the Hon'ble Patna High Court in C.W.J.C. No. 7833 of 2016. Subsequently, vide order dated 10.03.2017 passed in E.C. Confiscation Case No. 90/2015-16, the learned District Magistrate, Bhagalpur directed confiscation of the value of the seized 1,990 bags of rice weighing 997.85 quintals, including the bags, under Section 6-A of the E.C. Act, amounting to Rs. 16,50,000/-. The learned District Magistrate further directed the S.D.O., Sadar, Bhagalpur to receive 10% of the said amount, i.e., Rs. 1,65,000/-, from the District Nazarat and to realize the remaining balance amount of Rs. 14,85,000/- from the appellant, Subodh Kumar Gupta, or from the movable or immovable properties of the sureties namely, Santosh Kumar Gupta & Nilu Devi and

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after such recovery, to deposit the total amount of Rs. 16,50,000/- in the District Treasury, Bhagalpur through challan.

2. Learned counsel appearing on behalf of the appellant has submitted that the order directing confiscation of the value of 1,990 bags of rice weighing 997.85 quintals, including the bags, amounting to Rs. 16,50,000/-, is illegal, perverse and contrary to the facts and circumstances of the case. It has been further submitted that the appellant is the owner of the seized rice and that documents relating to stock registers and other supporting records were duly produced before the learned court below. Learned counsel has further submitted that, being the owner of the seized rice, the appellant had no mens rea and did not contravene any order issued under Section 3 of the E.C. Act. It has also been contended that the notice issued under Section 6-B of the E.C. Act is vague inasmuch as it does not disclose the nature of the alleged violation and proceeds merely on the presumption of black-marketing. Consequently, according to the appellant, the essential ingredients of the offence punishable under Section 7 of the E.C. Act are not attracted.

3. It has further been submitted that contravention of an order issued under Section 3 of the E.C. Act is a condition precedent for initiation of confiscation proceedings under Section 6-A of the Act, whereas neither the F.I.R., nor the report submitted by the S.D.O., Bhagalpur, nor the notice issued under Section 6-B discloses any such contravention. It is, therefore, contended that in the absence of any specific allegation regarding violation of a Control Order issued under Section 3 of the Act, the proceeding itself is not maintainable. Learned counsel has further submitted that there was neither any storage restriction nor any movement restriction nor any licensing requirement in respect of rice or other food grains, inasmuch as food grains had been deleted from the Unification Order vide notification dated 11.10.2002 and no subsisting order under Section 3 of the Act relating to rice was in force on the date of seizure.

4. It has also been submitted that the appellant had duly produced stock registers and other materials to show that the seized rice had been prepared in the course of lawful milling operations under the Government system and was temporarily stored due to shortage of space. According to the appellant, in the absence of any mens rea or contravention of any subsisting order relating to storage, sale or purchase of rice, no offence under Section 7 of the E.C. Act is made out. With regard to the allegation relating to use of FCI-marked bags, learned counsel has submitted that empty FCI bags with removed stitching are freely available in the open market and, therefore, the institution of the case is based merely on suspicion and misconception of

facts despite the appellant being the owner of the seized rice and also the owner M/S Shivangi Food Processing & Co. It has also been contended that the informant failed to specify in the F.I.R. the particular Control Order alleged to have been violated so as to attract Section 7 of the E.C. Act and that such material omission has been overlooked by the learned court below.

5. Learned counsel has further submitted that although the impugned order was passed on 10.03.2017 after conclusion of hearing on 06.01.2017, the appellant was informed of the same only on 29.03.2017. According to him, such delayed communication is contrary to the spirit of Section 6-C of the E.C. Act, which provides a right of appeal to the aggrieved person within one month from the date of communication of the order. It has finally been submitted that the appellant has suffered substantial loss on account of seizure of the rice, which constitutes the source of his business and livelihood, and therefore, the impugned order, being based on presumption and unsupported by proof of any contravention under the Act, is liable to be set aside.

6. On the other hand, learned Special Public Prosecutor appearing on behalf of the State has submitted that the learned District Magistrate, Bhagalpur has passed the impugned order on the basis of the materials available on record and after due consideration of the facts and circumstances of the case. It has been contended that the order of confiscation is legal, proper and in accordance with law and, therefore, does not warrant any interference by this appellate Court. Accordingly, learned Special Public Prosecutor has prayed for dismissal of the appeal.

7. The prosecution case, as disclosed in the F.I.R., is that on 02.02.2016, a raid was conducted at Maniraj Rice Mill-cum-Godown under the directions of the senior officers, pursuant to which Industrial Area (Zero Mile) P.S. Case No. 11 of 2016 dated 04.02.2016 was instituted. It is alleged that during the course of the said raid, suspicion arose regarding Aman Rice Mill-cum-Godown, situated to the east of Maniraj Rice Mill, where rice bearing the tag of "Shivangi" was found and, on that basis, the premises of Aman Rice Mill-cum-Godown were sealed. It is further alleged that after inspection of all the godowns of Maniraj Rice Mill and registration of the aforesaid case, Aman Rice Mill-cum-Godown was opened on 16.02.2016 and the mill as well as the food grains stored therein were inspected. During the course of such inspection, it was found that the mill was completely closed and no bag bearing the tag of Aman Rice Mill was found. Instead, 1,990 bags of rice weighing 997.85 quintals were allegedly recovered, each bearing the tag/sticker of another company, namely, "BSFC M/s Shivangi Food

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Processing & Co., BIADA, Barari, Bhagalpur, Commodity R.R.C., Net Weight 50 Kg, KMS 2014-15 and KMS 2015-16". The recovered food grains were seized in accordance with the seizure list and were subsequently handed over to Shri Maheshwar Prasad Singh, Assistant Godown Manager, BSFC Godown, Bagbari, Bhagalpur on execution of a responsibility bond. It is further alleged that bundles of such stickers/tags were found scattered in the godown along with green thread used for stitching the bags, which, according to the informant, indicated that good quality government-subsidized rice had been brought from different places and illegally stored in Aman Rice Mill-cum-Godown for the purpose of black-marketing. It was further suspected that inferior quality rice was being refilled into the subsidised bags and thereafter dispatched to BSFC godowns for distribution through the Public Distribution System. It is also alleged that the proprietor of Aman Rice Mill, namely, Subodh Kumar Gupta, was a contractor/transporter of BSFC. The informant further alleged that the proprietor of Maniraj Rice Mill, namely, Shekhar Sah, son of Late Vindeshwari Sah, was also involved in Industrial Area (Zero Mile) P.S. Case Nos. 11, 12, 14 and 15 of 2016. According to the informant, Subodh Kumar Gupta, Shekhar Sah and Sanjay Sah, brother of Shekhar Sah, were acting in collusion with each other and were engaged in black-marketing of government-subsidized food grains under the cover of Srijan & Sagar Dharamkanta and rice mills and in refilling inferior quality rice into empty subsidized bags for supply to BSFC godowns and eventual distribution through the Public Distribution System. On the basis of the aforesaid allegations, the informant alleged commission of offences punishable under Section 7 of the Essential Commodities Act, 1955 as well as under the relevant provisions of the Indian Penal Code relating to criminal breach of trust and cheating. Accordingly, the present case was instituted on the basis of the typed application submitted by the informant.

8. On the basis of the application dated 21.02.2016 submitted by the informant, namely, the Supply Inspector, Sabour, addressed to the Officer-in-Charge, Industrial Area (Zero Mile) Police Station, Industrial Area (Zero Mile) P.S. Case No. 18 of 2016 was instituted under Section 7 of the Essential Commodities Act and Sections 406, 409, 419, 420, 467, 468, 471, 308 and 120(B) of the Indian Penal Code. Subsequently, the Block Supply Officer, Sabour, vide Letter No. 16/Aa dated 22.02.2016 addressed to the Sub-Divisional Officer, Sadar, Bhagalpur, reported that on 16.02.2016 at about 03:00 P.M., Aman Rice Mill-cum-Godown had been inspected and a total quantity of 997 quintals and 85 kilograms of rice stored in 1,990 bags had

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been seized. It was further stated that Industrial Area (Zero Mile) P.S. Case No. 18 of 2016 dated 21.02.2016 had been instituted in connection with the said seizure. The seized articles were handed over on Zimmanama to Shri Maheshwar Prasad Singh, Assistant Godown Manager, State Food Corporation, Bhagalpur, and a recommendation was made that the same were liable to be confiscated under Section 6-A of the Essential Commodities Act. Thereafter, on the basis of the aforesaid communication, the Sub-Divisional Officer, Sadar, Bhagalpur, vide Letter No. 123/Aa dated 24.02.2016, requested the District Magistrate, Bhagalpur to initiate confiscation proceedings under Section 6-A of the Essential Commodities Act in respect of the aforesaid seized articles.

9. In pursuance of the aforesaid letter, the Collector, Bhagalpur, vide order dated 29.02.2016, initiated Confiscation Case No. 90/2015-16 under Section 6-A of the Essential Commodities Act for confiscation of 1,990 bags of rice weighing 997.85 quintals including bags, which had been seized from the Aman Rice Mill-cum-Godown of the appellant. By the same order, notice under Section 6-B of the Essential Commodities Act was issued to the appellant. Pursuant thereto, the appellant appeared before the learned Collector, Bhagalpur on 15.03.2016 and filed his show cause on 03.06.2016. It further transpires that the appellant had preferred C.W.J.C. No. 7833 of 2016 before the Hon'ble Patna High Court for release of the seized food grains and vide order dated 18.05.2016, the Hon'ble Court was pleased to direct that: "*seized food-grains be released in favour of the petitioner after proper verification of the ownership by the District Magistrate, Bhagalpur, who happens to be the confiscating authority, within a period of eight weeks from the date of receipt/production of a copy of this order on furnishing sufficient security of 10% of which should be in the form of cash/bank guarantee to the satisfaction of the confiscation authority. However, the release will be subject to the final result of the confiscation case as well as concerned criminal case*".

In compliance with the aforesaid direction, the Collector, Bhagalpur, vide order dated 26.07.2016, directed release of the seized 997.85 quintals of rice kept in 1,990 bags by assessing its value at Rs. 16,50,000/- and further directed the appellant to deposit 10% of the said amount, i.e., Rs. 1,65,000/- (Rupees One Lakh Sixty-Five Thousand) in cash in the District Nazarat, Bhagalpur and to furnish surety bonds for the remaining amount of Rs. 14,85,000/- through two officers of the Government of India or the Government of Bihar of Class-I/Group-A rank who were in service and whose remaining tenure of service was not less than five years.

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10. From perusal of the record, it further appears that on 13.09.2016, the appellant filed a petition before the learned Collector, Bhagalpur for modification in the order dated 26-07-2016 which prayer was rejected by the learned Collector vide order dated 27-09-2016. Thereafter, being aggrieved by the refusal to modify the condition relating to sureties, the appellant preferred C.W.J.C. No. 19781 of 2016 before the Hon'ble Patna High Court. Vide order dated 10.01.2017, the Hon'ble Court was pleased to direct that: *"the said surety should be by a close relative or family member of the petitioner who shall file affidavit before the confiscating authority giving complete genealogy to show his/her relationship with him in place of Class I/Group I Officer of the Central Government or the State Government"*.

Subsequently, the appellant deposited 10% of the assessed value of the seized rice and furnished sureties in terms of the aforesaid direction of the Hon'ble High Court passed in C.W.J.C. No. 19781 of 2016. The same was accepted on 31.01.2017 and an order was passed for release of 997 quintals and 85 kilograms of rice in favour of the appellant. Thereafter, upon hearing the parties, the Collector, Bhagalpur passed the impugned order dated 10.03.2017 directing confiscation of the value of the seized rice.

11. Being aggrieved by and dissatisfied with the aforesaid order of confiscation dated 10.03.2017 passed by the Collector, Bhagalpur in Confiscation Case No. 90/2015-16, the appellant Subodh Kumar Gupta, proprietor of Aman Rice Mill, has preferred the present appeal under Section 6-C of the Essential Commodities Act. This Court is, therefore, required to examine whether the impugned order suffers from any illegality, impropriety or irregularity and whether the same is sustainable in the eyes of law or is liable to be set aside.

FINDINGS

12. I have carefully considered the submissions advanced on behalf of both the sides and have also gone through the materials available on the record. From perusal of the impugned order dated 10.03.2017, it appears that the learned District Magistrate, Bhagalpur, in exercise of powers under Section 6-A of the Essential Commodities Act, directed confiscation of the value of the seized 1,990 bags of rice weighing 997.85 quintals including bags, assessed at Rs. 16,50,000/-. The learned District Magistrate further directed the S.D.O., Sadar, Bhagalpur to receive 10% of the said amount, i.e., Rs. 1,65,000/-, from the District Nazarat and to realize the remaining amount of Rs. 14,85,000/- from the appellant, Subodh Kumar Gupta, or from the properties of the sureties and, after such recovery, to deposit the total amount of Rs. 16,50,000/- in the District Treasury, Bhagalpur through challan. Before examining the legality and propriety of the aforesaid order, it would

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be apposite to refer to the relevant provisions of the Essential Commodities Act governing the issue involved in the present appeal.

13. Before adverting to the rival submissions and examining the legality of the impugned order, it would be appropriate to refer to the relevant provisions of Section 6-A of the Essential Commodities Act, 1955, which reads as follows:-

> *"6-A Confiscation of foodgrains, edible oilseeds, edible oils, etc – (1) Where any essential commodity is seized in pursuance of an order made u/s3 in relation thereto it shall be reported without any unreasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied that there has been a contravention of the order, may order confiscation of – (a) the essential commodities so seized; (b) any package, covering or receptacle in which such essential commodity is found; and (c) any animal, vehicle, vessel, or other conveyance used in carrying such essential commodity"*
>
> ***Provided that,** without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from a producer shall, if such foodgrains or edible oilseeds have been produced by him, be confiscated under this section."*

From a plain reading of the aforesaid provision, it is manifest that before an order of confiscation can be passed under Section 6-A of the Act, the Collector must be satisfied that there has been a contravention of an order issued under Section 3 of the Essential Commodities Act. Thus, existence of an order under Section 3 and its alleged contravention constitute the foundational requirement for exercise of the power of confiscation under Section 6-A of the Act.

14. As per the aforesaid provision Essential Commodities can be seized only u/s 3 of the EC Act and the Collector has to satisfy itself that there has been a

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contravention of such order, only then, he can direct for confiscation of the essential commodities so seized. The Hon'ble Supreme Court in the case of **Kailash Prasad and another versus State of Jharkhand and another [2007 (3) East Cr C 107 (SC)]**has held that:

> *"confiscation of essential commodities is permissible only if the provisions of any order made u/s 3 of Essential Commodities Act, 1955, are violated. Violation of an order made u/s 3 of the Act, thereafter, is the pre-condition for passing an order of confiscation u/s 6- A of the Act."*

Thus, it is well settled that before exercising the power of confiscation under Section 6-A of the Act, the confiscating authority is required to satisfy itself that there has been a contravention of a valid order issued under Section 3 of the Essential Commodities Act. In absence of such contravention, the very foundation for initiation and continuation of confiscation proceedings would be lacking.

15. This Court has also gone through the Judgment of the Hon'ble High Court, Patna in the case of **Ranjit Kumar versus State of Bihar 2009 (4) PLJR 310** in which it has been held that:

> *"right to initiate a confiscation proceeding u/s 6-A is dependent on a prima-facie finding of a violation of any order u/s 3 of the E.C. Act. It is also held that when there is no statutory price fixation for sale of rice and rice under any order issued under the Essential Commodities Act, still allegation of black-marketing is made i.e., not sustainable in view of Division Bench Judgment of this Court."*

16. Similarly, the aforesaid legal position has also been reiterated in the case of **Pritamlal Yadav and Others versus State of Bihar (1982 PLJR 304)**, wherein it has been held that:-

> *"there being no statutory price fixation for sale of rice under any order issued under the Essential Commodities Act, the allegation of black-marketing is not sustainable. The entire proceeding, as stated, is based on the suspicion of black-marketing. Where there is no statutory price fixation for sale of rice*

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under any order issued under the Act, black-marketing is not made out and, therefore, the same is not sustainable".

17. From perusal of the records of the confiscation proceeding, it appears that the seizure of 1,990 bags of rice weighing 997.85 quintals was made on the allegation that the same were government subsidized food grains which were allegedly being stored for the purpose of black-marketing. However, this Court finds that neither in the F.I.R. nor in the report submitted by the Block Supply Officer, Sabour, nor in the recommendation made by the Sub-Divisional Officer, Sadar, Bhagalpur for initiation of confiscation proceeding, any specific order issued under Section 3 of the Essential Commodities Act has been referred to or alleged to have been violated by the appellant. Even the order dated 29.02.2016 initiating the confiscation proceeding and issuing notice under Section 6-B of the Act does not disclose as to which particular order issued under Section 3 of the Act was allegedly contravened by the appellant. Thus, the very foundation on which the confiscation proceeding was initiated appears to be absent from the record.

18. It further appears that while passing the impugned order dated 10.03.2017, the learned Collector has observed that the seized rice was intended for black-marketing and that inferior quality rice was allegedly being refilled in subsidized bags meant for distribution through the Public Distribution System. However, even in the impugned order, there is no discussion as to which particular order issued under Section 3 of the Essential Commodities Act was allegedly violated by the appellant. The impugned order is also silent with regard to the material on the basis of which such contravention was found to have been established against the appellant.

19. As discussed hereinabove, Section 6-A of the Essential Commodities Act empowers the Collector to order confiscation only upon being satisfied that there has been a contravention of an order issued under Section 3 of the Act. The Hon'ble Supreme Court in Kailash Prasad (supra) has categorically held that violation of an order issued under Section 3 of the Act is a pre-condition for passing an order of confiscation under Section 6-A of the Act. Similarly, the Hon'ble Patna High Court in Ranjit Kumar (supra) has held that initiation of confiscation proceeding under Section 6-A is dependent upon a prima facie finding regarding violation of an order issued under Section 3 of the Act.

20. In the present case, from the materials available on record, no such violation of any order issued under Section 3 of the Essential Commodities Act is discernible. Neither the foundation of the confiscation proceeding nor the impugned order itself discloses any specific Control Order alleged to have been violated by the appellant. The entire proceeding appears to have proceeded on the allegation and suspicion of black-marketing of the seized rice. However, in absence of any material and finding regarding contravention of an order issued under Section 3 of the Act, the statutory requirement for exercise of power under Section 6-A cannot be said to have been satisfied.

21. In view of the discussions made hereinabove and having regard to the settled legal position governing the field, this Court is of the considered opinion that the impugned order dated 10.03.2017 passed by the Collector, Bhagalpur in Confiscation Case No. 90/2015-16 is not sustainable in the eyes of law and is liable to be set aside.

22. Accordingly, the impugned order dated 10.03.2017 passed by the Collector, Bhagalpur in Confiscation Case No. 90/2015-16 is hereby **set aside**. Consequently, this Criminal Appeal **stands allowed**. Let the record be consigned to Record Room after due compliance.

(Dictated & corrected by me)

Dipankar Pandey 17.06.26

(Dipankar Pandey)

Principal Sessions Judge, Bhagalpur.

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Date of Judgment/Order	17.06.2026
Date of Reserving Judgment/Order	—
Uploading Date	17.06.2026
Uploaded by	Nitu Kumari