

(1986) 01 PAT CK 0011

In the Patna High Court

Case No : Criminal Miscellaneous No"s. 260 of 1980

Anirudh Prasad Agrawal

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 27-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 173(2), 173(5), 190
Essential Commodities Act, 1955 — Section 10

Citation : (1986) PLJR 558

Hon'ble Judges : S.S. Sandhawalia, C.J.;Shamsul Hasan, J

Bench : Division Bench

Advocate : A.N. Sahay, Bipin Behari Sinha and Man Mohan, for the Appellant;
G.P. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

S. Shamsul Hasan, J.—These three applications are being disposed of by this common judgment. Criminal Misc. Nos. 260 and 261 of 1980 are on behalf of two partners of the two firms and the third petition, namely, Cri. Misc. No. 2984 of 1980, on behalf of the two firms. In all there applications the petitioners have come to this Court after framing of charge and they sought to quash the entire criminal proceeding, including order by which cognizance has been taken.

2. The short facts leading to the institution of the present case are that on enquiry it was found that the two firms, at mentioned in Cri. Misc. No. 2, 84 of 1980, had shown sale of certain quantities of diesel and petrol to Mrs. Upendra Brothers, Mashrakh, but that Firm denied to have purchased any quantity of diesel and petrol from them. It further transpired that the two Firms made cuttings, over-writings and interpolations in their registers in that connection. Accordingly, first information was lodged. The police after investigation submitted final form under section, 173 of the Code of Criminal Procedure (in short, "the Code") stating that the offence had been committed by the petitioners in Cri. Misc. 260/80 and 261/80 and sent them up for trial but it did not send up the

Firms, as mentioned in Cri. Misc. No. 2984/80, for trial. The final form was accepted by the court, cognizance was taken and the two accused persons-petitioners, summoned and the two Firms were discharged. Consequently, at the stage of framing of the charge the prosecution prayed for inclusion of the Firms also as accused and for framing of the charge against them also. This prayer was allowed and charge was also framed against the firms.

3. Points raised by the learned counsel for the petitioners are:

(i) The first information report does not state specifically that the two petitioners, namely, Anirudh Prasad Agrawal and Bindeshwari Prasad, were in charge of and responsible to the affairs of the firms at the time when the offence is alleged to have been committed, thus violating section 10 of the Essential Commodities Act, 1955;

(ii) The two firms could not have been made accused at the stage of charge having once been discharged by the Court; and,

(iii) Since prosecution under the Essential Commodities Act, 1955, (hereinafter to be referred to as "the Act") emanates on the basis of a report by a public servant, though a report u/s 173 of the Code has been held to be a report by a public servant, yet the procedure of trial in a complaint case must be followed and, therefore, the charge could not be framed before examination of witnesses.

4. I would like to dispose of the third point first. In my view, this point is entirely devoid of substance. Firstly, while stating that the prosecution can only be initiated on a report by a public servant the statute does not lay down any specific procedure that may be followed. Under the Code trial on the basis of a police report has to be held in accordance with the procedure prescribed for such prosecution, in counter-distinction to a prosecution based on a complaint where a different procedure has been prescribed. Illustrating this by an example, if a person is tried for murder on the basis of a complaint, the procedure for trial of the case as envisaged for a complaint case will be followed and not the procedure prescribed for trial on the basis of a police report. The method of initiation is the pivotal point. Inclusion of a report by the police in the category of reports by public servants under the Act merely clarifies the situation and does not create any procedure alien to the Code. Significantly the word "report" preceded by a public servant, instead of "complain" is of valuable significance." The fact that cannot be lost sight of is that in a complaint case charge is framed after the recording of evidence because there is no evidence available till that date except u/s 202 of the Code but when police submits report u/s 173 of the Code it has already collected material during investigation, which is stated in the case diary and therefore, there can be no justification for further examination of witnesses in Court before framing of charge. It is abundantly clear from 190 of the Code that proceeding can be initiated on three grounds two of which are relevant for the purpose of this point. One empowers taking of cognizance on the basis of police report and the other on the basis of complaint. In a case under

the Essential Commodities Act authorities can adopt either of the two procedures. Public servant can file a complaint straight in Court or lodge F.I.R. before the police. The procedure of trial will depend on the basis of initiation of the case, A case initiated on the basis of a police report will be tried in accordance with the procedure laid down for trying cases on police report and that initiated on the basis of complaint, the procedure for trial on complaint shall be followed. The third class of cases are where complaint is filed but before cognizance is taken and summons are issued, the complaint is sent for investigation to the police u/s 156(3) of the Code. In that event the police after investigation submits final form u/s 173 of the Code and the trial will be held in accordance with the procedure laid down for a case arising out of police report. Since, in the instant case the prosecution was initiated on the basis of the F.I.R. lodged by a public servant, there is no merit in this point at all.

5. Coming to the first point in regard to the two petitioners in Cri. Misc. 260 and 261 of 1980, it has been held by the Supreme Court in the case of Satya Narain Musadi and Others Vs. State of Bihar, that the report as envisaged u/s 173(2) has to be accompanied as required by section 173(5) by all the documents and statements of witnesses therein mentioned. One cannot divorce the details which the report must contain as required by section 173(2) from its accompaniments which are required to be submitted u/s 173(5). It was also held that the Court can look at the report in prescribed form along with its accompaniments for taking cognizance of an offence. Thus, a report by a public servant, on the basis of which cognizance can be taken, includes all the materials as mentioned in Section 173(5) of the Code. In the counter affidavit filed on behalf of the State it is stated that there is material in the diary to show that the alleged offence was committed by the petitioners and they were in charge of and responsible to the affairs of the Firm. In this view of the matter, the prosecution of the petitioners in Cri. Misc. Nos. 260 and 261 of 1980 cannot be quashed and the charge has been rightly framed against them.

6. There is another aspect of the matter. It has now been held by the Full Bench of this Court, of which Hon'ble the Chief Justice and myself were members, in Cr. Misc. 5948 of 1983 (Mahmud Ali Vs. State of Bihar and Another,), disposed of on 23-11-1985, that the absence of the words "in charge of and responsible to" in a complaint or police report will not justify the quashing of the entire proceeding u/s 482 of the Code. Even if these words were totally absent from the complaint, police report or the materials under Sec. 173(5), yet prosecution could not be annihilated at the threshold and it would proceed to trial. The total effect of the two Supreme Court decisions i.e., Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, , is that persons could be prosecuted *per se* designet vicariously. The Supreme Court in Rohtagi case had agreed with the High Court which had quashed the prosecution against the Directors in the absence of the materials in the complaint, but directed that they could be summoned at a later stage if there was sufficient evidence for the coming under Sec. 319 of the Code.

I quote the relevant portion of para 15 of the said decision;

So far as the Manager is concerned, we are satisfied that, from the very nature of his duties it can be safely, inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any not committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable...

It, however, held that the Manager by the very nature of his employment would be deemed to be in charge of and responsible to the affairs of the Company and these words need not be stated about him. In the case of Jhun jhunwala, however, the Supreme Court set aside the order of the High Court on the ground that in paragraph 5 of the complaint here was sufficient initial justifying the prosecution of the Director, Managing Director and the Chairman also. I may cite the relevant paragraph of the decision.

4. Unlike the other cases, para 5 of the complaint of this case gives complete details of the role played by the respondents and the extent of their liability. It is clearly mentioned that Ram Kishan Bajaj is the Chairman and R.P. Neyatia is the Managing Director and respondents 7 to 11 are the Directors of the mill and were in charge of and responsible for the conduct of its business at the time of the commission of the offence whereas in the case the complaint has merely drawn a presumption without any averment.

5. In the instant case, a clear averment has been made regarding the active role played by the respondents and the extent of their liability. In this view of the matter, it cannot be said that para 5 of the complaint is vague and does not implicate respondents 1 to 11. As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for the purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further.

5. From a perusal of the various clauses of the complaint, including para 5, it is quite clear that a prima facie case for summoning the accused has been made out and the High Court was absolutely wrong in holding that the allegations made in para 5 are vague. The High Court failed to consider that the allegations were quite clear and explicit so as to be sufficient for taking cognizance of the offence against the accused.

7. Further details would have to be given in the shape of evidence when the trial proceeds and in view of the clear allegations made in para 5 of the complaint, we are not in a position to agree with the High Court that it is a fit case in which it should have exercised its discretion u/s 482 of the Code of Criminal Procedure, 1973, in order to quash the proceeding against the accused-respondents.

In these cases, therefore, emphasis was on the facts in the complaint and not on mere description "in charge of and responsible to". Thus the aspect which is highlighted from these decisions is that the complaint must contain allegation on which the complaint wishes to prosecute the accused. However, in this application this point was never Urged by the petitioners, Thus, the earlier decisions of this Court having been overruled by the aforesaid Full Bench Decision in the light of the two decisions of the Supreme Court, mentioned above, there is no merit in this point at all.

7. In regard to the second point relating to the summoning of the firm as accused, the matter has now become completely irrelevant and the inclusion of the firm is a mere exercise in futility, because, even if an offence is committed by the Firm, it is not essential to arraign it as an accused, except that it must be stated that the offence has been committed by the Firm. The decision on this point is : Sheoratan Agarwal and Another Vs. State of Madhya Pradesh, . I, therefore, do not feel inclined to interfere with the order of the Magistrate summoning the Firms.

8. In the result, all the three applications are dismissed. Before I part with this judgment, I may observe that the court below will not treat the dismissal of the applications as an expression of any opinion on the merit of the allegations themselves.