

(2011) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2434 of 2011

Avinash Tantia and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 438, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468
Rajasthan Excise Act, 1950 — Section 18, 54(d), 54(e)

Citation : (2012) 2 RLW 1651

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Arvind Kumar Gupta and Rinesh Gupta, for the Appellant; Pradeep Shrimal, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This misc. petition has been filed by the petitioners u/s 482 Cr.P.C. for quashing of the FIR No. 280/2010 registered at Police Station, Ajitgarh for the offence under Sections 420, 467, 468, 471, 406 and 120-B IPC and for quashing of the subsequent proceedings pending before the Additional Chief Judicial Magistrate No. 2 Shri Madhopur District Sikar in respect of FIR No. 280/2010 and further direct that no further investigation shall be carried out qua the petitioners in the impugned FIR. Brief facts of the case are that an FIR No. 280/2010 was registered at Police Station Ajitgarh in which it was stated that M/s. Agribiotech Industries Pvt. Ltd. moved a written application in the office of Excise Inspector, Neem Ka Thana stating that M/s. Premier Distilleries Pvt. Ltd. Puducheri has placed an order for supply of 40000 ltrs. extra neutral alcohol and in support thereof it had produced a "No objection Certificate" of Deputy Commissioner (Excise) Puducheri dated 3.11.2010. According to this No Objection Certificate 40,000 Ltrs. Extra neutral alcohol was permitted to be exported. On the basis of aforesaid imported permit the District Excise Officer

Sikar has issued import permits SKR 016490 dated 22.11.2010 and SKR 016491 dated 22.11.2010. Thereafter on the basis of the aforesaid import permit transportation permit No. SKR 012791 dated 22.11.2010 and SKR 012792 dated 22.11.2010 were issued. On the basis of these export and transport permits in two tankers 20,000 ltrs. each extra neutral alcohol (total 40,000 ltrs.) were loaded for onwards delivery to M/s. Premier Distilleries Pvt. Ltd. RS No. 62/08 Madukarai Road Manglam, Village Villianur Commune Puducherry. Thereafter the Deputy Commissioner Puducherry has informed to the Excise authorities that the alleged aforesaid "No Objection Certificate" was not issued by his office and the same is forged. In this manner the accused persons deceived to the department and obtained the export permits and transportation permits.

2. It may be mentioned that the petitioners Avinash Tantia and Vinay Jhunjhunwala, who are petitioners 1 and 2 in this misc. petition filed S.B. Cr. Misc. bail Application No. 4166 of 2011 on 4.5.2011 after rejection of anticipatory bail by the Addl. Sessions Judge (Fast Track) No. 2, Sikar, Headquarter Srimadhapur vide order dated 17.1.2011. This Court vide order dated 24.5.2011 rejected the bail application u/s 438 Cr.P.C. and they have been directed to surrender before the Court below.

3. It is stated in the petition that on 21.12.2010 the Asstt. Excise Officer and Officer in charge of the company M/s. Agribiotech Industries Ltd. lodged a complaint against the company with the Excise Inspector Neem ka Thana for violation of Section 18 and 54(d) and 54(e) of the Rajasthan Excise Act, 1950 and rules made thereunder. On 22.12.2010 the Rajasthan Police started separate case vide FIR No. 280 of 2010 as mentioned above. On 22.10.2010 the Excise authorities issued demand notice on the Company M/s. Agribiotech Industries for depositing a sum of Rs. 1,14,24,000/-. On 23.12.2010 the company deposited the said demanded amount of Rs. 1,12,24,000/- under protest. On 21.12.2010 the employees of the company were arrested under the Excise FIR. Meanwhile while they were in custody they were arrested in the case filed by the State being FIR No. 280 of 2010. M/s. Agribiotech Industries on 4.1.2011 also lodged FIR and it is stated that the petitioners are not aware about the stage of the investigation in the said FIR of the company. It is further stated that during the course of trial of the accused employees of M/s. Agribiotech Industries Ltd. in Police FIR No. 280 of 2010 it has been clearly admitted in the statements made by the complainant that no case is made out against the petitioners, who are independent directors of the company.

4. Mr. A.K. Gupta, learned counsel appearing for the accused petitioner has contended that the offences if any committed was in respect of identified definite transaction of export of 40000 Litres of ENA and the State may in the present trial initiated by virtue of Excise FIR take resort to other provisions of the Code to add accord or supply and further evidence but should not proceed with another FIR being FIR No. 280 of 2010. There is complete bar in terms of Article 20(2) of the Constitution against prosecution and punishment for the same offence more

than one. It is further submitted that the entire allegations in the FIR No. 280 of 2010 alleged are for the violation of Sections 18 and 54(d) and 54(e) of the Excise Act, 1950 and thus the continuance of the proceedings in terms of the FIR No. 280 is bad and illegal and the second FIR should be quashed and/or set aside. The allegations in the FIR do not constitute any offence and thus the second FIR should be quashed. It is further submitted that in any event two cases on the self same matter cannot be allowed to proceed. In these circumstances it was prayed that the FIR No. 280 of 2010 may kindly be quashed and set aside including the proceedings pending before the Addl. Chief Judicial Magistrate. Reliance has been placed on Ramchandra vs. State of M.P. 2001 (3) Crimes 166 (SC), Jacob Mathew Vs. State of Punjab and Another, , Central Bureau of Investigation Vs. Akhilesh Singh, , Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , and Mahesh Choudhary Vs. State of Rajasthan and Another, .

5. On the other hand, Mr. Pradeep Shrimal, Public Prosecutor for the State has argued that the investigation u/s 173(8) Cr.P.C. is pending against the directors of the company. In the above case charge sheet has been filed against the employees of the company and charge has been framed and the trial Court recorded the statements of three witnesses and only four or five more prosecution witnesses are to be produced and the prosecution is ready to complete the trial at the earliest and at this stage the quashing of FIR, and the proceedings before the trial Court, cannot be questioned in the inherent jurisdiction of this court u/s 482 Cr.P.C. at this stage, particularly when the investigation is pending u/s 173(8) Cr.P.C. against the directors of the company. It has been brought to the notice of this Court the investigation u/s 173(8) of the Cr.P.C. is pending against the Directors of the Company namely Asutosh Bajoriya, Gopal Bajoriya, Avinash Tantia and Vijay Jhunjhunwala. Even the investigation u/s 173(8) is also pending against the officers of the Excise Department. At this stage it is not a case wherein the FIR should be quashed. There is no question of abuse of process of law in the instant matter.

6. I have heard the learned counsel for the petitioners and the public Prosecutor and has also gone through the material available on record and the cases cited by the learned counsel for the petitioners. The FIRs were registered at Police Station Excise Department Neem ka Thana District Sikar on 21.12.2010. The FIR No. 280 of 2010 was also registered at Police Station for the offence under Sections 406, 420, 467, 468, 471 and 120-B IPC. The petitioners have filed the above misc. petitions only on 2.9.2011. The investigation u/s 173(8) Cr.P.C. is still pending against the petitioners. In the instant matter, charge-sheet has been filed against the accused persons and thereafter charge has been framed. The accused persons denied the charge and the trial Court started recording the statements of the prosecution witnesses. Statements of three prosecution witnesses have been recorded and the Public Prosecutor has made a statement before this court that only four or five more witnesses of the prosecution are to be produced and the prosecution will fully cooperate in completing the trial

expeditiously. The learned counsel for the petitioners has not been able to point any abuse of process of law or any material on record to show that it is a case in which at this stage when statements of three witnesses have already been recorded, this court should exercise inherent jurisdiction to quash the FIR and the proceedings u/s 482 Cr.P.C. The investigation against the directors of the company is still pending u/s 173(8) Cr.P.C. and it is too early to comment on any facts which will affect the proceedings pending before the investigating agency or the criminal proceedings. The application u/s 438 Cr.P.C. for anticipatory bail moved by the petitioners Avinash Tantia and Vinay Jhunjhunwala was rejected by the Addl. Sessions Judge vide order dated 17.1.2011 by the co-ordinate Bench of this Court on 24.5.2011. Thus the petition filed by the petitioners deserves to be rejected for quashing of the FIRs and the criminal proceedings pending before the trial Court. The inherent power could be exercised on the following points:

- (i) to prevent the abuse of the process by the Court
- (ii) or otherwise to secure the ends of justice.

Meaning thereby that the jurisdiction should be exercised in exceptional circumstances of the case. The rulings cited by the counsel are not applicable to the facts of this case. The petitioner has every right to raise the points raised in this petition before the trial Court or before the investigating agency. Any comments on the merits of the case will prejudice the trial before the trial Court and the proceedings pending before the investigating agency, hence without commenting upon the merits of the case, at this stage, the prayer of the petitioners for quashing the FIR and the proceedings before the trial Court cannot be quashed in the inherent powers of this Court u/s 482 Cr.P.C. and the criminal misc. petitions deserve to be rejected.

For these reasons, the misc. petition filed by the petitioners for quashing of the FIR No. 280 of 2010 dated 22.12.2010 Police Station Ajitgarh, Sikar for offence under Sections 406, 420, 467, 468, 471 and 120-B IPC stands rejected. The stay application also stands rejected.