

(1978) 03 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 537 of 1977 (R)

Googan Lal Marwari and Mahendra Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-03-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 11, 7

Citation : (1979) PLJR 136

Hon'ble Judges : Manoranjan Prasad, J;B.S. Sinha, J

Bench : Division Bench

Advocate : S.B. Sanyal, N.K. Agarwal and K.K. Jhunjhunwala, for the Appellant;
R.N. Sahai Sinha, G.P., for the Respondent

Judgement

Manoranjan Prasad, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 for quashing the Criminal proceeding against the petitioners in the Court of the Subdivisional Judicial Magistrate, Dhanbad, in G.R. case No. 1806 of 1976 u/s 7 of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act") on the ground that taking of cognizance of the offence by the Chief Judicial Magistrate Dhanbad, by order dated 21.7.1977, on the basis of the charge sheet dated 4.7.1977 submitted by the Officer-in-charge of Dhanbad Police Station, which did not disclose the facts constituting the offence, was bad in law and without jurisdiction in view of the mandatory provisions of Section 11 of the Act which lays down that no court shall take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code. The short facts leading to the filing of the present application are that on 2.6.1976 Shri Karu Ram; Marketing Officer, Dhanbad, had inspected the business premises of M/s. Googan Lal Marwari of which the petitioners are partners and on the basis of the said inspection, he had submitted a written report to the Officer-in-charge of Dhanbad Police Station for prosecution of the petitioners u/s 7 of the Act, and, on the basis of the said

written report, which was treated as the first information report, Dhanbad P.S. Case No. 15 dated 6.7.1976 was registered and, after investigation, the Officer-in-charge of Dhanbad Police Station had submitted charge-sheet dated 4.7.1977 against the petitioners for their prosecution u/s 7 of the Act which contained only the following statements of facts:-- (Sic)

2. It was on this basis of the said charge-sheet containing only the aforesaid statements of facts that the Chief Judicial Magistrate, Dhanbad, took cognizance of the offence u/s 7 of the Act against the petitioners on 21.7.1977 by passing the following order:--

""Received charge sheet; Perused it. Cognizance of the offence u/s. 7 E.C. Act is taken against the accused Googan Lal Marwari and Mahendra Kumar named in Co. 4 of C.S. and case transferred to the file of Shri P.S. Yadav, J.M. Dhanbad for disposal. Accused Binod Kumar named in Co. 2 of the C.S. as not sent up for trial is discharged.

3. It is quite obvious from what has been stated above that the charge-sheet which, as the order of the learned Chief Judicial Magistrate quoted above shows, was the only document perused by the Chief Judicial Magistrate and on the basis of which alone he has taken cognizance of the offence u/s 7 of the Act against the petitioners, did not disclose the facts constituting the offence and consequently taking of cognizance of the offence on the basis of such a charge-sheet was bad in law in view of the provisions of Section 11 of the Act which lays down that no court shall take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code.

4. Mr. Ram Nandan Sahal Sinha, Government pleader, appears for the State, had contended that the facts of the case are to be found in the report of the informant, Sri Karu Ram, Marketing Officer; Dhanbad, submitted to the Officer-in-charge of Dhanbad Police station which was treated as the first information report and on the basis of which Dhanbad P.S. Case No. 15 dated 8.7.1976 was registered u/s 7 of the Act against the petitioners which sufficiently complied with the requirements of Section 11 of the Act and hence there was no illegality in taking cognizance of the offence by the Chief Judicial Magistrate. There could have been some force in the aforesaid contention of Mr. Sinha had the order of the learned Chief Judicial Magistrate taking cognizance on the basis of the said first information report of Shri Karu Ram, Marketing Officer, Dhanbad, or that he had perused it before taking cognizance, but, as the order of the learned Chief Judicial Magistrate quoted above shows, he had only perused the charge-sheet, which did not disclose the facts constituting the offence u/s 7 of the Act, that he had taken cognizance of the offence. In such circumstance, the contention of Shri Sinha must be rejected and it must be held that taking of cognizance of the offence u/s 7 of the Act against the petitioners by the Chief Judicial Magistrate on the basis of such a charge-sheet which do not disclose the facts constituting the offence was bad in law in view of Section 11 of the Act.

5. In this connection a reference may be made to a decision of the Oudh High court in the case of (1) AIR 1947 36 (Oudh) in which, while dealing with rule 130 of the Defence of India Rules, 1939, which was similarly worded as Section 11 of the Act, it had been held that the failure to mention facts constituting the contravention of a rule in the charge-sheet, on the basis of which cognizance had been taken, means the absence in the report of the very first of the numerous steps in course of the trial of some thing which is vital and goes to the very root of the case, and such an error in the report means that there was no proper report on which the machinery of the law could be set in motion and the case could proceed. In other words, the very foundation of the prosecution are defective and the entire super structure must fall. It had further been held therein that the first information report, made at the Police station containing facts constituting the contravention of the rule cannot be deemed to be sufficient compliance with Rule 130, when cognizance was not taken upon the first information report but upon the charge-sheet submitted which did not disclose the fact constituting the contravention of the rule.

6. Again in the case of (2) Jiwan Agrawal and others V. The State of Bihar (1976 BBCJ 818) decided by this court it has been held, while dealing with Rule 183(1) of the Defence and Internal Security of India Rules, 1971, which is similarly worded as Section 11 of the Act, that taking of cognizance on the basis of charge-sheet which does not contain the statement of facts constituting the offence is bad in law, and for the purpose of ascertaining the facts of the case the first information report cannot be looked into when the Magistrate himself did not claim to have looked into the first information report before taking cognizance and he had taken cognizance solely on the basis of the charge-sheet. A similar view has also been taken in another decision of this court dated 11.1.1977 in (3) Criminal Miscellaneous No. 4020 of 1973 (Shri Narain Prasad Khirwal V. The State of Bihar) wherein, on a consideration of the decision of the Supreme Court in (4) Deo Karan Das Agrawal and others v. The State of Bihar (Criminal Misc. No. 38 of 1968), it has been held that the charge-sheet submitted in a case under the Act must be held to be the report of public servant as contemplated in Section 11 of the Act and such a charge-sheet which does not disclose the offence complained of, the taking of cognizance is bad in law, and it is not permissible in such a case to look into the first information report to find out what offence had been committed of which cognizance can be taken. The aforesaid view taken in the case of Shri Narain Prasad Khirwal V. The State of Bihar had been followed in another decision of this court dated 11.8.1977 in (5) Criminal Misc. No. 123 of 1975 (Ram Yodhya Singh V. The State of Bihar).

7. I find myself in respectful agreement with the aforesaid decisions, and, consequently, I held that taking of cognizance of the offence u/s 7 of the Act against the petitioners by the learned Chief Judicial Magistrate, Dhanbad on the basis of the charge-sheet which did not disclose the fact constituting the offence, was bad in law, and the report of the Marketing Officer, Dhanbad, to the Officer-in-charge of Dhanbad Police station which was treated as the first information

report and on the basis of which Dhanbad P.S. Case No. 15 dated 8.7.1976 was registered, cannot be looked into or pressed into service to find out the facts constituting the offence, specially when the order of the learned Chief Judicial Magistrate shows that he had only perused the charge-sheet before taking cognizance and he had taken cognizance only on the basis of the same which did not disclose the, facts constituting the offence and had not claimed to have perused the said first information report of Marketing Officer, Dhanbad, or to have taken cognizance on the basis of the same. For the aforesaid reasons, the application is allowed; and the order dated 21.7.1977 of the Chief Judicial Magistrate, Dhanbad, in C.B. Case No. 1906 of 1976 taking cognizance u/s 7 of the Act against the petitioners on the basis of the charge-sheet dated 4.7.1977 is quashed being in contravention of Section 11 of the Act, and, consequently, the criminal proceeding in that case presently pending in the court of Subdivisional Judicial Magistrate, Dhanbad, are also quashed.

B.S. Sinha, J.

I agree.