(2008) 02 JH CK 0035

In the Jharkhand High Court

Case No : Criminal M.P. No. 1466 of 2007

Jai Prakash Rai @ Om Prakash Rai — APPELLANT

Vs

State of Jharkhand — RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 87
Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 274, 275, 276, 285, 414

Citation : (2008) 02 JH CK 0035

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Rajan Raj, for the Appellant; A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application has been filed u/s 482 of the Code of Criminal Procedure whereby and whereunder prayer has been made to quash the first information report of Nirsa P.S. case No. 214 of 2007 instituted under Sections 274/275/276/285/419/420/414 of the Indian Penal Code and Section 47A of the Excise Act against the petitioner and others.

2. Learned Counsel appearing for the petitioner submitted that the instant first information report has been lodged by the Officer-in-Charge of Nirsa Police Station on amongst the other offences u/s 47A of the Excise Act, though by virtue of the provision as contained in Section 87 of the Bihar Excise Act, the police officer is not competent to lodge the case u/s 47A of the Excise Act and hence, any cognizance taken on the basis of charge sheet submitted upon the allegation levelled in the first information report would be bad and hence, the first information report is liable to be quashed. Learned Counsel in support of his submission has referred to a decision rendered in a case of Kamla Devi v. State of Bihar 1994 (2) E Cri. C 358 Pat holding therein that prosecution instituted by Sub-Inspector of Police, who is not an Excise Officer in terms of provision of

Section 87 of the Excise Act is liable to be quashed.

3. Learned Counsel appearing for the State by filing counter affidavit submitted that when this petitioner and others were found by the informant - Officer-in-charge of Nirsa Police Station carrying something in 23 drums in a vehicle, they were apprehended, who disclosed that drums contain Spirit and it was being carried from Raniganj to Dhanbad. When he was asked to produce documents, he failed to do so and thereupon, a case was instituted not only u/s 47A of the Excise Act but also under various sections of the Indian Penal Code and, hence, there is no illegality in lodging the first information report.

4. Thus, the question falls for consideration as to whether police officer is competent to lodge the case u/s 47A of the Excise Act or not?

5. Way back in the year 1957 itself similar question fell for consideration in a case of Ram Prasad Singh v. The State 1957 BLJR 342 and the court after taking into note of the Government Notification No. 470-F dated 15.1.1919 which was published in Part II of the Bihar and Orissa Gazette dated 22.1.1919 at pages 136-146 as well as various provisions of the Act, held that Officer-in-Charge of a police station can investigate an offence u/s 47A and some other sections of the Bihar Excise Act and can make a complaint or report on the basis of which a Magistrate can take cognizance and for these purposes Officer-in-Charge of a police station exercises the power of an officer of the Excise Department. In that case it was further held that any report submitted by the Officer-in-Charge/Sub-Inspector of Police u/s 173 of the Code of Criminal Procedure would be deemed to be a report in terms of Section 87 of the Excise Act.

6. In view of the notification, as referred to above, a case lodged even by Officer-in-Charge/Sub-Inspector of Police u/s 47A of the Excise Act never suffers from any illegality and hence, I do not find any merit in this application. Accordingly, it is dismissed.