(1995) 04 PAT CK 0046

In the Patna High Court

Case No : Cr. Misc. No. 3242 of 1995

Lakshmi Narayan and Ratan Kumar — APPELLANT

Vs

The State of Bihar and Sri. Ram Ekbal Singh — RESPONDENT

Date of Decision : 17-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0046

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—This application has been filed for quashing of the order taking cognizance of the offences u/s 279, I.P.C. and Sections 47A and 55 of the Bihar Excise Act, 1915 (in short ''the Act'').

2. Learned Counsel for the Petitioners has raised a short question. It is contended that the order taking cognizance is wholly without jurisdiction inasmuch as from perusal of the First Information Report and charge sheet, it is clear that the case was instituted and investigated and charge sheet was submitted by the Officer-in-Charge of Pakaribarawan Police Station, who is not an Excise Officer u/s 87 of the Act. According to the learned Counsel, the prosecution of the Petitioners cannot be allowed to continue on the basis of such cognizance taken upon the charge sheet submitted by the Officer-in-Charge, namely, the Sub-Inspector of Police, who is not an Excise Officer. In this connection learned Counsel has placed reliance on an order of the learned Single Judge of this Court in the case of Kamla Devi v. State of Bih 1994 (2) East Cr.C. 358 (Pat).

3. It appears that in the said case the application was filed for quashing the prosecution of the Petitioner of the said case u/s 47 of the Act. The Court, after noticing the fact that the cognizance has been taken upon the charge sheet submitted by the Sub-Inspector of Police, who is not an Excise Officer as required u/s 87 of the Act, held that the prosecution of the Petitioner cannot be allowed to continue and, accordingly, quashed the prosecution.

4. In order to appreciate the point raised by the learned Counsel for the Petitioners it is useful to quote Section 87(a) of the Act, which runs as follows:

87. Initiation of certain prosecutions.-No Magistrate shall take cognizance of an offence referred to-

(a) In Section 47, Section 49, Section 55, or Section 56, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the State Government,

5. From reading of the said provision it appears that the Magistrate has been precluded from taking cognizance of the offence punishable under Sections 47, 49, 55 and 56 of the Act, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the State Government.

6. Learned Counsel for the Petitioners has referred to the statement made in paragraph 6 of the petition wherein it is stated that Sub-Inspector of Police and an Officer-in-Charge of a police station is not at all Excise Official or empowered by the State Government to function as an Excise Official. According to the learned Counsel, in view of the aforesaid, statement, the whole investigation made by the Officer-in-Charge (opposite party No. 2) is illegal, void, erroneous and without jurisdiction and submission of charge sheet by him is also quite illegal and without jurisdiction and thus, the order taking cognizance on the basis of the aforesaid is wholly without, jurisdiction and fit to be quashed.

7. On repeated queries, learned Counsel for the Petitioners could not bring to my notice any statement that the Officer-in-Charge/Sub-Inspector of Police has not been empowered in this behalf by the State Government.

8. In the case of Ram Prasad Singh v. The State 1957 B.L.J.R. 342 similar question was raised and the Court, after taking note of the Government Notification No. 470-F, dated the 15th January, 1919 which was published in Part II of the Bihar and Orissa Gazette dated the 22nd January, 1919, at pages 136 to 146 as well as various provisions of the Act, held that an Officer-in-Charge of a Police Station can investigate an offence u/s 47 and some other sections of the Act and can make a complaint or report on the basis of which a Magistrate can take cognizance because, for these purposes, the Officer-in-Charge of a Police Station exercises the powers of an officer of the Excise Department.

9. Mr. Sudarshan Sharma, learned Counsel for the Petitioner has also submitted that the charge sheet submitted by the Officer-in-Charge/Sub-Inspector of Police is u/s 173 of the Code of Criminal Procedure and that it is not a report as contemplated in Section 87 of the Act. This argument has also been repelled by this Court in the case of Ram Prasad Singh (supra) and it was held that "In view of the statement of fact contained in it that a prima facie case for an offence u/s 47(a) of the Excise Act has been made out against the Petitioner, it must be deemed to be a ''report'' as provided for in Section 87 of the Excise Act."

10. The said law laid down by this Court is also supported by the decision of the Supreme Court in the case of Satya Narain Musadi and Others Vs. State of Bihar, In the said case, the Supreme Court was considering the scope of Section 11 of the Essential Commodities Act which also precludes a Court from taking cognizance of the offence punishable under the said Act except upon 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 Penal Code and held that if a Police Officer investigating into an offence which the Act has declared as cognizable submits a report in writing u/s 173(2) Code of Criminal Procedure disclosing an offence under the Act and requesting for proceeding further into the matter it would satisfy the requirement of Section 11 for taking cognizance of the offence so disclosed. In the said decision it is stated by the Supreme Court that the report as envisaged by Section 173(2) has to be accompanied as required by Section 173(5) by all the documents and statements of the witnesses therein mentioned and that 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). The whole of it is submitted as a report to the Court. Thus, according to the Apex Court it follows that the Court can look at the report in prescribed form along with its accompaniments for taking cognizance of the offence.

11. Lastly, it has been submitted by the learned Counsel for the Petitioners that the order taking cognizance u/s 279 of the Indian Penal Code, is also bad as no offence under the said provision is made out.

12. After perusing the F.I.R. and the copy of the charge sheet, which have been annexed as Annexures 1 and 2 respectively, I do not find any substance in the said submission also.

13. Accordingly, I do not find any merit in this application and it is dismissed.

