

(1977) 07 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous Application No. 2619 of 1975

Mareshwari Oil Mills

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-07-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482

Citation : (1977) 25 BLJR 462

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Judgement

Madan Mohan Prasad, J.—This is an application for quashing a proceeding arising out of a report by the Supply Inspector against the petitioner and further for quashing an order by which the Magistrate has refused to release certain goods seized from the petitioner's business premises.

2. The petitioner is said to be a licensee under the Bihar Food grains Dealers' Licensing Order (hereinafter to be referred to as "the Food grains Order") and also under the Bihar Edible Oil Wholesale Dealers' Licensing Order, 1966 (hereinafter to be referred to as "the Edible Oil Order"). On the 1st July, 1975 it is said, the Supply Inspector, along with some others raided the business premises of the petitioner and found excesses and shortage in respect of maize, mustard oil, mustard seeds and salt. It is alleged that there was an excess of 6 kilograms of mustard oil kept in 41 tins; a shortage of one quintal 20 kilograms of maize kept in 70 bags. And also a shortage of 245 quintals 75 kilograms of mustard seeds and an excess of salt kept in 442 bags. The aforesaid figures are said to have been arrived at after physical verification with reference to the Stock Register in respect of mustard oil, maize and mustard seeds. No Stock Register however, it is said was maintained by the dealer in respect of salt. Further allegation is that there was no display of stocks and prices of mustard oil and salt as required by the Bihar Essential Commodities other than Food grains--Price and Stocks (Display and Control) Order, 1967 (hereinafter to be referred to as "the

Display Order"). Upon these allegations, the petitioner is said to have violated the provisions of the Food grains Order, Edible Oil Order, Display Order and Rules 114 and 116 of the Defence of India Rules.

3. On the aforesaid information, the police started investigation. A copy of the first information report, as usual, was placed before the Magistrate also. The investigation is yet pending and no final form has been submitted. Before the Magistrate, however, an application was filed for the release of the articles seized by the police during the raid. Having heard the parties, the Magistrate refused to release the goods aforesaid. Hence the present application.

4. In the present application, a prayer is made for quashing the aforesaid order of the Magistrate as also the entire proceeding on the ground that accepting the entire prosecution case, no offence has been committed.

5. According to the petitioner, the prosecutors had failed to take into account that one of the tins seized was opened and actually it contained only 10 kilograms of mustard oil unlike the other which contained 16 kilograms each; on the contrary they had taken 41 tins into account as in each tin as contained the standard weight of 16 kilograms. Thus, it is said that there was no excess. With regard to maize, it is said that there was no shortage but it appeared so because each of the bags was not separately weighed and only the standard weight of a full bag WPS taken into account. With regard to mustard seeds and salt, it is said that there is no law controlling the trade in such commodities and thus the petitioner was not bound to give account in respect of these two items. Further the case of the petitioner is that the non-display of stock and price of mustard seeds and salt is not an offence the aforesaid two articles not being covered by the provision of the aforesaid Display Order.

6. With regard to the order passed by the Magistrate refusing to release the articles in question, the learned Magistrate found that since there was an allegation of hoarding of those articles, it was not proper to hand over or release the articles to the petitioner. I do not find it to be a good reason. It appears, further, that when this application was admitted, the learned Judge who heard it, allowed the articles to be released on the petitioner's furnishing security to the satisfaction of the Sub-divisional Judicial Magistrate. The question thus becomes academic as to whether the order of the learned Magistrate was proper. Further, obviously until the case is decided finally the security furnished by the petitioner remains the subject-matter of the final order of the Court.

7. As indicated earlier prayer has been made to quash the entire proceeding on the basis of the First Information Report. It means really the quashing of the investigation by the police, which is still pending.

8. With regard to the case against the petitioner in respect of the mustard oil and maize, is obvious that the petitioner has stated certain facts in defence so as to show that there was no offence in respect of those two items. It is well known that in the matter of quashing, this Court does not enter an inquiry of disputed

facts and thereafter hold in favour of the accused. Upon the First Information Report it is not contended that it discloses no offence in respect of those two items. The investigation cannot, therefore, be said to be in respect of allegations which do not disclose any offence. For that reason the investigation by the police into these allegations made, cannot be quashed.

9. With regard to the other allegations in respect of the mustard seeds and salt, a question arises whether the investigation so far as the offences relating to these two commodities are alleged, should be quashed on the ground alleged by the petitioner. In other words whether there should be a partial order stopping the investigation partially and that too under the inherent powers of this Court u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

10. Investigation as defined in the Code means collection of evidence. What the police at present are doing is to collect the evidence in respect of the allegations. Provisions regulating an investigation by the police contained in Chapter XII of the Code show that after having collected the evidence, the police has to apply its mind as to whether an offence appears to have been committed and there is evidence in this behalf and ultimately the police submits a final form either for sending up the accused for trial or to the contrary. As stated earlier, investigation is going on the basis of the allegations as a whole. Nothing has been produced before me to show that the police officer is doing anything in particular with regard to the allegation regarding mustard seeds and salt, which act has no relation to the alleged offences in respect of mustard oil and maize. In other words, no basis has been alleged for dividing the investigation into two different exclusive compartments so far as the aforesaid offences are concerned and the time has not yet arrived that the police is called upon to make its final decision as to whether the offence appears to them to have been committed for which the accused ought to be tried. This will arise when the police has to submit the final form. Dividing investigation into two parts and quashing it in respect of the two commodities seems to me to be something difficult in the circumstances of the present case and meaningless too for ultimately the police may not submit any charge-sheet in respect of the two commodities, namely, mustard seeds and salt if they are not hit by law. There would be no point thus in quashing the police investigation in part.

11. Besides the aforesaid reason it is well settled that the Court in exercise of its inherent power u/s 482 of the Code cannot quash an investigation by the police. See the cases of AIR 1945 18 (Privy Council) *State of West Bengal v. S.N. Basak* AIR 1963 S.C. 443 *Jehan Singh Vs. Delhi Administration*, , Counsel for the petitioner has, however, drawn my attention to the decision of Shambhu Prasad Singh, J. in the case of *Nakul Chandra Batierjee and Ors. v. The State* 1970 PLJR 431. In this case the learned Judge found that the First Information Report in that case did not disclose any offence at all and held that the observation of the Judicial Committee and the Supreme Court in the cases of *Emperor v. Khwaja*

Nazir Ahmad (supra) and the State of West Bengal v. S.N. Basak (supra) did not lay down the law that the High Court acting u/s 561A of the Code would not interfere with the police investigation even though a complaint on a first information did not disclose any offence. The learned Judge on the other hand relied upon the observation in the case of R.P. Kapur Vs. The State of Punjab, to the following effect

Cases may also arise where the allegation in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises; it is a matter of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

and held

These observations, though they do not expressly speak of quashing an investigation, do impliedly support the contention of Mr. Agarwal that where the allegations in the first information report do not disclose an offence, the investigation can be quashed by this Court.

It will, however, appear that in the case of Jehan Singh v. Delhi Administration (supra) the very same observations of the Supreme Court in Kapoor's case were relied upon by the counsel in support of the proposition that the Court could interfere with the police investigation but Sarkaria, J. who delivered the judgment of the Court, after noticing the aforesaid observation in Kapoor's case, upheld the objection to the maintainability of the application. Their Lordships further observed as follows:

Might be, after collecting all the evidence, the police would itself submit a cancellation report. If, however, a charge-sheet is laid before the Magistrate Under-Section 173, Cr.P.C., then all these matters will have to be considered by the Magistrate after taking cognizance of the case. We cannot, at this stage, possibly indicate what should be done in purely hypothetical situations which may or may not arise in this case.

12. The facts before my learned brother in the case of Nakul Chandra Banerji and Ors. v. State (supra) were different from the facts in the instant case, inasmuch as, the First Information Report in the case before him disclosed no evidence at all. I am not called upon in the present case to decide as to whether where a First Information Report discloses no offence at all, the police investigation can be stopped by this Court acting u/s 482 of the Code. I have already indicated that the Supreme Court and the Privy Council have laid down the law in this connection, as stated above.

13. In the circumstances of the present case investigation has to go on. The

proceeding is not divisible and at this stage the prayer for quashing it in part is meaningless, because the police have not yet come to a decision as to whether any offence has been committed in respect of the two commodities of mustard seeds and salt. In the present case what the petitioner really wanted was the quashing of the order refusing to deliver the articles to him and the petition itself asked for the quashing of the order dated the 29th July, 1975 passed in G.R. Case No. 550 of 19/5. Asstated earlier merely a copy of the First Information Report has been placed before the Sub-divisional Magistrate. He has not yet taken cognizance of any offence, as no final form has yet been submitted before him. There is thus no judicial proceeding before the Magistrate against the petitioner, which can be quashed.

14. In the circumstances mentioned above and for the reasons given, I am not inclined to allow the prayer in respect of the quashing of the investigation.

15. The order of the learned Magistrate refusing to deliver the articles to the petitioner is, however, quashed.

16. In the result this application is allowed in part.