

(2023) 10 PAT CK 0055

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1281 Of 2021

M/S Majhaulia Sugar Industries Pvt. Ltd

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 21

Indian Penal Code, 1860 — Section 34, 284, 285, 379, 403, 406, 407, 408, 409, 420, 462

Bihar Prohibition and Excise Act, 2016 — Section 30(a), 30(f), 31, 32, 36, 38, 41(1), 47

Code of Criminal Procedure, 1973 — Section 162, 169, 170, 173

Citation : (2023) 10 PAT CK 0055

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Ashish Giri, Riya Giri, Sumit Kumar Jha, Vivek Prasad, Supragya, Roona

Final Decision : Dismissed

Judgement

1. The present writ application has been filed for quashing of the First Information Report bearing Majhauliya P.S. Case No. 230 of 2020 dated 26-04-2020 contained in (Annexure- 6) registered for the offences under Sections 284, 285, 403, 406, 407, 408, 409, 420 and 34 of the I.P.C. read with Sections 30 (a), 31 of the Bihar Prohibition and Excise Act 2016.

2. The factual matrix of the case is that the petitioner no. 1 is a company in the name and style of M/s Majhaulia Sugar Industries Pvt. Ltd. and the petitioner no. 2 is its Chief General Manager. The petitioners are holding N.O.C. / license and have a distillery at Majhauliya, which is engaged in production of ethanol. The ethanol is being transported by the petitioners from its distillery to various oil companies through M/s Indian Tankers Pvt. Ltd. after due verification of G.P.S. and digital seal / lock. According to the petitioners the electronic locks are being provided by M/s M.S.D. Telemematrix Pvt. Ltd.

3. On 25-04-2020 a team constituted by the Superintendent [Excise], East Champaran reached near N.H. 28 and found one tanker near an old hotel bearing Registration No. UP-53-AT-1786 whose one of the seals from five of its chambers was found broken, which was being used for siphoning of ethanol in a pick-up van bearing Registration No. BR-02-GA-1445. Upon search 200 liters container fully loaded with ethanol and another container which was connected through a pipe having 20 liters of ethanol and 04 empty containers of 35 liters each were found in the pick-up van. In the tanker three chambers were found without seal and the chamber rod was also found not related to the digital lock. Accordingly, on 26.04.2020, an F.I.R. bearing Excise P.S. Case No. 195 of 2020 was registered on the basis of information given, under Section 30 (a) (f), 31, 32, 36, 38, 41(1) & 47 of the Bihar Prohibition and Excise Act, 2016 against eight accused persons i.e. the owner of the tanker, tanker driver, owner of the pick-up van etc.

4. Subsequently, one another F.I.R. was registered bearing Majhauliya P.S. Case No. 230 of 2020 on 26.04.2020 against the petitioners and others for the offences under Sections 284, 285, 403, 406, 407, 408, 409, 420 and 34 of the Indian Penal Code read with Sections 30 (a) and 31 of the Bihar Prohibition and Excise Act wherein the allegations are with regard to several violations / infirmities on the part of the accused persons due to which illegal business of ethanol was taking place. The petitioners have filed the present case for quashing of Majhauliya P.S. Case No. 230 of 2020.

5. It is further case of the petitioners that on getting information about the occurrence dated 25.04.2020 and being unaware about Majhauliya P.S. Case No. 230 of 2020 the petitioner no. 2 lodged an F.I.R. bearing Majhauliya P.S. Case No. 232 of 2020 dated 27.04.2020 for the offences under Sections 409, 462, 379, 34 of the I.P.C. read with Section 30 (a), 31 of the Bihar Prohibition and Excise Act 2016 against the transporter i.e. M/s Indian Tankers Pvt. Ltd. and its driver for causing loss to the tune of Rs. 11,66,287.50/- for their act of indulgence in illegal siphoning of ethanol

6. Learned counsel for the petitioners contended that in relation to one occurrence two FIRs have been lodged. The FIR against the petitioners has been instituted for the offences for which an FIR filed earlier already existed. The 1st FIR is Excise Case No. 195 of 2020 in which petitioners are not accused and thereafter 2nd FIR came to be lodged vide Majhauliya PS Case No. 230 of 2020 in which the petitioners have been made accused for the same facts and occurrence. The 2nd FIR is not maintainable and is violative of Article 21 of the Constitution of India.

7. He further argued that just because the name of petitioners came in the process of investigation the Police is not empowered to lodge another FIR but can include the accused persons in the earlier FIR at the time of filing of charge sheet. The 2nd FIR is impermissible as it will amount to improvement of the facts as alleged in the 1st FIR in respect of an offence committed in course of same transaction. The continuation of the 2nd FIR is abuse of the process of law and

hence liable to be quashed. Learned counsel further argued that 2nd FIR under quashing includes offences under the IPC as well as under the Bihar Prohibition and Excise Act, 2016 [hereinafter referred to as the "Excise Act"] and is not maintainable on the ground that the whole transaction involving production and transportation of ethanol is governed by the special enactment i.e. Excise Act.

8. Section 30 (f) of the Excise Act is already there in the 1st FIR. The petitioners have been made accused on the basis of allegation that the tanker was not locked / sealed by them and web camera was not working and hence there is connivance of the petitioners in black marketing but in actuality the sealing of tanker is the work of Excise Department as per notification [Annexure- 2]. If the ethanol transaction had not caught then the warehouse would not have been investigated and so the 2nd FIR would not have been lodged. The illegal siphoning of ethanol is which sets the criminal investigation into motion and the 2nd FIR arose from the 1st FIR as such it does not have its independent stand. He further contends that if the Police had inspected the warehouse in a separate cause of action then 2nd FIR would have been maintainable but the case in hand is that since there was siphoning of ethanol and in that regard warehouse was raided and 2nd FIR was lodged which is in continuation of the 1st illegal act therefore 2nd FIR should not have been lodged and is fit to be quashed. In support of his argument he relies upon the judgment of the Hon'ble Apex Court rendered in Krishna Lal Chawla vs. State of U.P. reported in (2021) 5 SCC 435; Amitbhai Anilchandra Shah vs. Central Bureau of Investigation reported in (2013) 6 SCC 348 ; Babubhai vs State of Gujarat reported in (2010) 12 SCC 254 and T.T. Antony vs. State of Kerala reported in (2001) 6 SCC 181.

9. Per contra, Ms. Supragya, learned AC to GP-7 for the State argued that there are two FIRs because the cause of action of both FIRs are different. The informants are different persons, accused are different individuals and the offences alleged are different from that of 1st FIR. The cause of action for the 1st FIR arose when the accused named in the 1st FIR were caught trying to siphon illegal liquor / ethanol from the tankers; however, the cause of action in the 2nd FIR arose when the petitioners breached the terms of the license / N.O.C. as well as subsequent directions with respect to certain provisions to be made to safeguard ethanol but did not comply with the same. There is a clear breach of the terms of license agreement and the subsequent directions issued by the Excise Department viz. lapses in the installation of "dharmkanta", "CCTV cameras" as well as "digital locks" were already there i.e. much before the incident leading to 1st FIR.

10. She further argued that there is no specific bar to applicability of the provisions of the Indian Penal Code with the provisions of the Excise Act even if it is a special act. Lastly she submitted that petitioners will be absolved of all the liabilities towards the State and the licensing authority if FIR is quashed and detail investigation is not done on the 2nd FIR which may lead to larger conspiracy having broader ramifications. The 1st FIR covers smaller field on

narrow dimension in which ethanol was being illegally siphoned by tanker owner, tanker driver, pick up van owner etc. Learned counsel relied upon the judgments rendered in *State (NCT of Delhi) vs. Sanjay* reported in (2014) 9 SCC 772, *Babubhai vs. State of Gujarat* reported in (2010) 12 SCC 254, *Nirmal Singh Kahlon vs State of Punjab* reported in (2009) 1 SCC 441, *Varshaben Kantilal Purani vs State of Gujarat* reported in (2019) 11 SCC 774; *Rakesh Kumar vs. State of Bihar* reported in 2022 (3) PLJR 490.

11. I have heard learned counsel for the parties and have gone through the materials on record. It is not disputed that two FIRs have been lodged on the same date i.e. 26-04-2020. The informant of both the FIRs are different persons of different districts inasmuch as the informant of the 1st FIR being Excise PS Case No. 195 of 2020 is one Vijay Kumar Chaudhary, Inspector (Excise), Sikrahna Region, East Champaran and informant of the 2nd FIR vide Majhauriya PS Case No. 230 / 2020 is one Raj Kumar Chaudhary, Inspector (Excise), West Champaran, Bettiah.

12. 1st FIR was lodged inter alia on the fact that on 25-04-2020 the Excise Team at the back side of the old hotel "Hajar Bis" situated at East Champaran found that seal of one of the tankers out of five tankers having ethanol stored in it was broken which was being used for siphoning of ethanol in a pick up van. 200 liter container fully filled with ethanol and another container which was connected to a pipe having 20 liters of illicit ethanol and 04 empty container of 35 liters each capacity were found in the pick up van. Three chambers were found without seal and also the chamber rod was found not connected which related to digital lock.

13. The 2nd FIR bearing Majhauriya PS Case No. 230 of 2020 has been lodged on the basis of inspection conducted on 25/04/2020 in which in the warehouse of the petitioners- company various irregularities in relation to digital lock, non availability of CCTV camera near the low meter, non installation of "dharmakanta", non availability of the connecting rod and other several irregularities in violation of the condition of licence / N.O.C. and the circular issued by the Department of Excise, Government of Bihar were detected. Several irregularities / illegalities found during the course of inspection are mentioned in the First Information Report under quashing in which it has been alleged that the management of warehouse/company, authorized agency responsible for putting digital lock and tanker operators deliberately and in connivance with each other are promoting black marketing of ethyl alcohol / ethanol.

14. Section 30 of the Excise Act is quoted hereinbelow for ready reference:-

"30. Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor.-Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder-

(a) Manufacturers, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or

(b) constructs or establishes or works in any manufactory, distillery, brewery or warehouse; or

(c) Manufactures, uses, keeps or has in his possession any material, utensil, implement or apparatus, or uses any premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or

(d) Manufactures any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine, for the purpose of packing any liquor or intoxicant; or

(e) Removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or

(f) Manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation made with or without the use of any intoxicant or liquor which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purpose of getting intoxicated;

shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.

Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees."

15. From perusal of the F.I.R. under quashing it appears that various contraventions / breaches / irregularities were found after inspection done by Excise Officials which are allegedly in violation of the terms of license / N.O.C. and the notification / circular issued by the Government under its Excise Department vide Annexure-2. Further in the 2nd FIR the informant has alleged the connivance of three agencies i.e. petitioners- company, authorized agency for putting digital lock and the tanker operators who are allegedly engaged in black marketing of ethanol. Learned counsel for the petitioner relied upon paragraph nos. 20 & 21 of the judgment reported in (2010) 12 SCC 254 Babubhai vs State of Gujarat which say that FIR sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police

station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All the other information given orally or in writing after the commencement of the investigation into the facts mentioned in the First Information Report will be statements falling under Section 162 Cr.P.C. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out as to whether both the FIRs relate to the same incident in respect of same occurrence or in regard to the incidents which are two or more parts of the same transaction. If the answer is in affirmative, the second FIR is liable to be quashed.

16. The respondents / State also relied upon paragraph nos. 16, 17, 18 & 21 of the same judgment i.e. Babubhai case (supra) which say that more than one FIR in respect of same transaction are not permissible but if the two FIR pertains to two different crimes / incident or incident are in two or more parts of the same transaction then 2nd FIR is permissible.

17. The petitioner also relied upon Amitbhai Anilchandra Shah vs. Central Bureau of Investigation reported in (2013) 6 SCC 348 specially upon paragraph nos. 37 & 58.3 to 58.6. Paragraph no. 37 of the aforesaid judgment says that the second FIR in respect of an offence or different offences committed in the course of same transaction is not only impermissible but it violates Article 21 of the Constitution of India. In T.T. Antony vs. State of Kerala reported in (2001) 6 SCC 181 the Hon'ble Apex Court has held that registration of second FIR (which is not a cross -case) is violative of Article 21 of the Constitution of India. Paragraph 58.5 of the said judgment says that First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence / event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

18. The respondent / State relied upon Anju Chaudhary vs State of Uttar Pradesh & Anr. reported in (2013) 6 SCC 384 for the proposition that the merits of the each case is to be examined whether a subsequently registered FIR is a second FIR about the same incident or offence or is based upon distinct or different facts and whether its scope of inquiry is different or not. It will not be appropriate for the court to lay down one straight jacket formula uniformly applicable to all cases. In Nirmal Singh Kahlon vs State of Punjab reported in (2009) 1 SCC 441 the Hon'ble Apex Court has held that 2nd FIR or subsequent FIR is permissible where the conspiracy discovered later is found to cover a much larger canvas with broader ramifications and it cannot be equated with the earlier conspiracy which covered a smaller field on narrow dimension. The same proposition has been laid down by the Hon'ble Supreme Court in (2019) 11 SCC 774 Varshaben Kantilal Purani Vs State of Gujarat & Ors.

19. Now coming back to the present case as discussed above the 1st & 2nd FIR differ fundamentally from each other inasmuch as the informants of both the FIRs are different officers belonging to two different districts; accused persons

are also different and the scope of investigation is also substantially different. In the 2nd FIR the possibility of larger conspiracy after inspection of the warehouse of the company has been alleged which may have broader ramifications which cannot be equated with the contents of the 1st FIR in which tanker driver, owners of tanker and the pick up van were found indulged in theft / siphoning of ethanol, as such, the 1st FIR cannot be equated with the 2nd FIR, which are distinct and different from each other having separate cause of action at different places, having different accused persons.

20. In view of the aforesaid discussions on facts as well as on law, this Court is of the considered opinion that the two FIRs are different fundamentally from each other and the petitioners are not able to make out a case for quashing of the 2nd FIR contained in Annexure-6. Accordingly, I find no merit in this petition. Hence, the same is dismissed.