(2007) 09 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 48615 of 2006

Om Prakash Mandal APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 272, 273, 406, 409

Citation : (2007) PLJR 699

Hon'ble Judges : Subhash Chandra Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Subhash Chandra Jha, J.—The petitioner Om Prakash Mandal, son of Sri Hari Das Mandal, presently posted as Excise Superintendent, Nalanda (Biharsharif) and Nawadah, has filed this application for quashing the FIR of Laheri P.S. case No. 121/2006 registered under Sections 272, 273, 406, 409, 120B I.P.C. and 47A of Excise Act. Heard learned counsel for the petitioner and learned APP for the State.

2. Sri Laxman Ram lodged information with the Officer-in-charge of Laheri P.S. in the district of Biharsharif on 30.8.2006 regarding the occurrence dated 29/30.8.2006 at 0.10 hours. On the instruction of the District Magistrate, Nalanda, premises of Ally Food Warehouse, Katra, was raided wherein one tanker bearing registration No. MP-09-KB-6566 was found parked inside the premises of the said warehouse and the employees of the depot and some labourers were found engaged in taking out some liquid material from the said tanker. The Excise Superintendent (Petitioner) was called in there and queries were made in this regard and it was found that there did not exist any valid paper in the tanker and driver of the tanker failed to produce any valid paper. After being satisfied that the spirit has been brought there with illegal motive with a view to cause loss to the State exchequer, the Depot Manager and the driver of the tanker were taken into custody. Some papers were also seized. No paper could be produced by the Depot Manager. The Depot was accordingly sealed in presence of Excise

Superintendent. The FIR was drawn against the proprietor, Depot Manager, Employees of the said warehouse besides this petitioner Excise Superintendent.

3. Contention has been advanced that petitioner is innocent, who was at the relevant time in duel charge of Nalanda and Nawadah districts. FIR reveals that no offence is made out against this petitioner. Only suspicion has been raised against him. Petitioner''s performance in collecting the revenue has exceeded previous years target.

4. As a matter of fact, on 29.8.2006 at 11.30 P.M. on getting secret information about unloading of illegal spirit from a tanker at the warehouse in question, the petitioner with other Excise Officials raided the premises of the warehouse. Such telephonic message was received on his mobile phone from Sri Manendra Kumar, Secretary to the Excise Commissioner, Patna. He found aforesaid tanker near the gate of warehouse, The driver and the incharge of warehouse could not produce any paper. In the meantime, Officer-in-charge of Laheri P.S. also reached there and helped the petitioner in raiding the warehouse and the petitioner accordingly informed Sri Manendra Kumar, Secretary to the Excise Commissioner on his mobile phone from the warehouse itself about the detection of the truck carrying illegal spirit. The Officer-in-charge of Laheri P.S. also talked to Excise Commissioner. The Secretary to the Excise Commissioner also told the petitioner that warehouse will be inspected by the headquarter. The registers recovered from the office of the warehouse were handed over to the Officer-in-charge of Laheri P.S. and the tanker was also sealed and kept at Laheri P.S. for safe custody. The process of raid took four hours and thereafter petitioner was asked by Officer-in-charge of Laheri P.S. to come down to police station on the next date, i.e., 30.8.2006 at 9 A.M. for lodging FIR. Excise Commissioner and Joint Excise Commissioner had also talked to the petitioner. The petitioner along with Excise Inspector prepared a written report for lodging FIR and on the next date, i.e., 30.8.2006 he submitted report to the Officer-in-charge for institution of FIR but no such FIR was drawn at the Laheri P.S. on the instruction of District Magistrate.

5. It has also been submitted that various other important locations were also raided and large quantity of illegal spirit were recovered at the behest of the petitioner. Instead of institution of FIR on the written report of the petitioner, the present case was registered on the statement of Sri Laxman Ram, Executive Magistrate, Nalanda. The petitioner also reported the entire matter to the Secretary, Excise, Govt. of Bihar on 31.8.2006.

6. It has further been submitted that petitioner has been made accused without previous sanction of the State Government. No sanction order was obtained from the State Government for prosecution of the petitioner. Moreover, reliance has been placed on the report of S.P., Nalanda, sent under his Memo No. 542 dated 8.2.2007 in connection with this case wherein it has been clearly stated that on the basis of investigation and supervision, involvement of this petitioner has not been found. Thereafter, further report in this regard was sought but no such

report has been sent.

7. In the facts and circumstances, it has been submitted that, as a matter of fact, there is complete absence of any tangible evidence and material in the entire case diary so as to infer involvement of this petitioner. The occurrence, as alleged, took place on the night of 29-30/8/2006 but inspite of lapse of more than a year nothing has been submitted against this petitioner.

8. The very continuance of the proceeding, in the facts and circumstances, against this petitioner, against whom no sanction order up-til now could be said to have been obtained rather petitioner himself had given all such information to high officials of the Excise department and presented written report for institution of the FIR coupled with the fact that S.P. has not found complicity of the petitioner, would only amount to an abuse of process of law.

9. Learned A.P.P. has also been heard, who has in ail fairness submitted that up-til now there is absence of collection of any material against the petitioner, who happens to be Excise Superintendent.

10. In the facts and circumstances, the element of any conspiracy and dereliction of duty is lacking. In the result, the proceeding against the petitioner would only amount to an abuse of process of law and, so, the same stands quashed and, in turn, the petition is allowed only in respect of this petitioner Om Prakash Mandal.

