

(2016) 06 PAT CK 0034

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 551 of 2016 (Arising out of PS. Case No.-null Year-null Thana-null District-Bhabhua (Kaimur))

Pankaj Chhabra @ Pankaj

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Food Safety and Standards Act, 2006 — Section 3(1)(zz), 59, 60, 63, 66, 67
Penal Code, 1860 (IPC) — Section 269, 272, 273, 284, 34

Citation : (2016) 166 AIC 555 : (2016) 2 BBCJ 415 : (2016) 3 BLJud 114 : (2016) 4 ECRC 482 : (2016) 3 PLJR 242

Hon'ble Judges : Mr. Navaniti Prasad Singh, J.

Bench : Single Bench

Advocate : Sri Prabhat Ranjan, Advocate, for the Appellant; Sri Rai Shivajee Nath, A.A.G.-III, for the Respondent

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J. (Oral) - Heard Sri Prabhat Ranjan, learned counsel for the petitioners and Sri Rai Shivajee Nath, learned Additional Advocate General-III for the State and with their consent the writ petition is being disposed of at this stage itself.

2. The present writ petition under Article 226 of the Constitution has been filed for restraining the police from taking any action in furtherance to and pursuant to Bhabhua P.S. Case No. 334 of 2016 (G.R. No. 1332/2016) instituted on 21.05.2016 under Sections 269, 272, 273, 284/34 of the Indian Penal Code and Sections 60/63/66/67 of the Food Safety and Standards Act (hereinafter referred to as the "Act"), 2006.

3. The facts, as emanating from the F.I.R., are that a public carrier Truck bearing Registration No. HR-55/K-0678 with a consignment of Pan Masala and chewing tobacco (Jarda) entered in Bihar from Mohania check-post on 21.05.2016, and

soon thereafter, it is alleged to have been intercepted by the Bhabhua Police.

4. According to the First Information Report, the occupants of the Truck tried to escape but the driver was apprehended, who could not produce any papers for the said consignment. According to the Police, the driver of the Truck made a statement that the consignment was being taken by the petitioners namely, Pankaj Chhabra @ Pankaj and Manoj Dora @ Raju, illegally for sell at Patna. Accordingly, the Truck and entire consignment of Pan Masala and Jarda were seized and the First Information Report was lodged under Section 60/63/66/67 of the Food Safety and Standards Act, 2006 and Sections 269, 272, 273, 284/34 of the Indian Penal Code.

5. Learned counsel for the petitioners submits that without much dispute, so far as the sections, as referred to in the Indian Penal Code, are concerned, they have no application. This position is not contested by the State. He further submits that no cognisable offence at all is mentioned to have been committed, that position is also not contested.

6. We may now come to the provisions of the Food Safety and Standards Act, 2006. Learned counsel for the petitioners relies on the judgment of this Court in the case of Dharmendra Kumar @ Raja v. State of Bihar and others in Cr.W.J.C. No. 119 of 2016, which was allowed vide judgment and order dated 08.04.2016; wherein under similar circumstance when the Food Safety Officer along with police raided a godown at Patna and seized Pan Masala and Jarda and lodged the F.I.R. and, ultimately, charge-sheeted the person as well, this Court quashed the First Information Report and all proceedings, clearly holding that, the Food Safety Act, under the facts and circumstances as noted above, did not permit such inaction. It further held that there was no authority of the police to act in those facts and circumstances.

7. Learned counsel for the petitioners submits that in this case the situation is worse. In fact, the goods were being transported from New Delhi to Bhubaneswar (Orissa), police deliberately did not look into the documents, all the documents were there including SUVIDHA Form "D-VII", which is a Form prescribed under the provisions of the Bihar Value Added Tax, 2006, a permit for transporting goods across the State, it is mandatorily required. It was obtained at the check-post before entry in the State and had to be deposited when exiting from the State. All these documents were there, without which the Truck could not have entered the State of Bihar and cross the Mohania check-post, but, for mala fide reasons, these documents were ignored and the case has been lodged.

8. Here, the Food Safety Officer was also not involved. In the case of Dharmendra Kumar @ Raja (supra) it was the Food Safety Officer, who along with police raided, which action was held to be without jurisdiction by this Court. Here, only the police seized the moving vehicle without authority.

9. In fairness to the State, the learned Additional Advocate General-III refers to Section 59 of the Food Safety and Standards Act, 2006, and submits that Section

59 of the Act creates the offence of which police is competent to take action, which is quoted hereunder:

"59. Punishment for unsafe food. - Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable, -

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees."

10. In my view, the submission is not to be accepted. Section 59 is in various parts. It starts with an offence which is punishable by six months of imprisonment only i.e. where by sale, storage for sale or manufacturing unsafe food. If no injury is caused the punishment is six months with a fine that may extend to rupees one lakh. What is unsafe food, as defined by Section 3(1)(zz), which is quoted hereunder:

"3.(1)(zz) "unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health - (i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substances, or

(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or

(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

(v) by addition of a substance directly or as an ingredient which is not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, favoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations."

11. A combined reading of Section 59(i) and Section 3(1)(zz) would clearly show that what was being transported was not "unsafe food" article. In any view of the matter, the allegation being only of transportation, there was no injury to anybody. In that case, the punishment is of six months imprisonment only, and thus, the offence was noncognizable. Police, thus, had no jurisdiction in the matter. If we see other sub-clauses of Section 59, they operate only when grievous injury or death is caused, which is not the case here. Thus, there being no cognisable offence or any offence for which the police had the authority to take any action, the very detention of the Truck, muchless on the plea, as noted above, was wholly illegal and without jurisdiction. It accordingly follows that the first information accepting the allegation as made therein does not constitute any offence much less a cognisable offence.

12. That being so, the very seizure and institution of the First Information Report and all the subsequent acts are wholly without jurisdiction, and are, accordingly, quashed.

13. However, police and the authorities, whosoever may be, are directed to forthwith release the Truck of the petitioner along with all the goods within six (6) hours of production of a copy of the order of this Court.

14. The writ petition is, accordingly, allowed.