

(1991) 12 PAT CK 0008

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 296 of 1991

Radheshyam Tebriwal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 4
Cinematograph Act, 1918 — Section 6B, 7
Constitution of India, 1950 — Article 226, 227

Citation : (1992) 1 PLJR 643

Hon'ble Judges : S.C. Mookherji, J

Bench : Single Bench

Advocate : N.K. Agrawal and A.K. Jain, for the Appellant; B.N. Singh and Ram Priya Sharma Singh, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mookherji, J.—In this application under Articles 226 and 227 of the Constitution of India, the Petitioner has made a prayer for quashing of the police investigation and/or proceedings pending in the court of Sub-divisional Judicial Magistrate, Jhanjharpur arising out of Madhepura (R.S.) P. S. case no 113 of 1991 under Sections 14, 6B and 7 of the Cinematograph Act on the ground inter alia, that the first information report does not disclose any cognizable offence and as such the police has no jurisdiction to investigate the case.

2. The Petitioner is owner of a Cinema Hall fanning in the name and style of "Vaishnabi chitrashala" at Jhanjharpur (R.S.) since 1983. It is stated that he has been regularly submitting necessary applications, etc. for the renewal of Cinema licence and also depositing the entertainment tax. According to the Petitioner Additional District Supply Officer and the Block Development Officer, Respondents 4 and 5 respectively, on 7.5.1991 at 2 P. M. visited the Cinema Hall in absence of the Petitioner for inspection and demanded necessary licence, etc, from his employees but they could not produce any paper as they being employees of the

Cinema Hall, had no knowledge of the papers. Even then, certain papers readily available in the office were seized, the Cinema Hall was sealed and an F. I. R. was lodged with an allegation that it was being run without any valid licence as contained in annexure 1.

3. In the counter affidavit, it is stated inter alia, that although Section 14 of the Act is not a cognizable one, the other two section i.e. Sections 6B and 7 with which the Petitioner has been proceeded against are cognizable and hence, the police is competent to investigate the case. That the licence granted to run the Cinema hall was valid upto 31.10.1988 thereafter, the Petitioner neither obtained any licence nor paid up-to-date entertainment and therefore, Respondents 4 and 5 were competent to inspect the Cinema hall and when the above irregularities were found, they took appropriate action.

4. In reply to the counter affidavit stated that the Collector, who is the competent authority u/s 4 of the Bihar Cinema (Regulation) Act, 1954 had granted temporary licence after obtaining the approval of the State Government and even if it is assumed that he had violated any conditions of the licence, Cinema (Regulation) Act and the Rules framed thereunder, no other (sic) of any other Act or rules were attracted excepting the provisions of section of Bihar Cinema (Regulation) Act, for which the (sic) penalty is only up to 1000/- rupees and in case of continuing offence, with a further fine which may extend to 100/- rupees during which the offence continues. That the provisions of the Act have not empowered the point or Respondents 4 and 5 to lock the cabin of the Cinema Hall where the film had been set up in the projector for exhibition. It has further been stated that the Petitioner had no doubt a licence till 31.10.1988 but thereafter from time to time the same was renewed and as such an application for 1991 was also filed the prescribed time and therefore, Respondent No. 2, the District Magistrate, the any competent authority to take appropriate action against him had not initiated any proceeding. That the Additional District Supply officer or the Block Development Officer had to authority to close the Cinema business.

5. The case of the Petitioner further is the during the relevant period, a film known (sic) Pathar KePhool duly certificated by the censor Board was being exhibited in the hall by reinvesting thousands of rupees and therefore, No. offence in that regard has also been committed.

6. The Petitioner's application for a permanent licence duly recommended by the District Magistrate is under active consideration the State Government. The District Magistrate had never directed the Petitioner to stop Exhibiting any film or close the hall.

7. The learned Counsel for the Petitioner submits that Section 6B of the Cinematograph Act is not applicable in this case because that section inserted by Act 49 of 1981 has been omitted by Section 56 of 1984. It may be indicated that in the old Section the offences were made cognizable but that has now been

omitted. This position has not been disputed by the learned State counsel. Further, it is stated and not controverted by the State counsel that Section 14 of the Act is also not applicable in this case. Therefore the offence allegedly committed by the Petitioner under Sections 14 and 6B of the Cinematograph Act goes away in view of the admitted position.

8. So far as Section 7 is concerned, it only provides penalties for contravention of part I. It is accordingly submitted on behalf of the Petitioner that part II of Cinematograph Act refers to certification of films for public exhibition which has also got no application in the present case. As such, Section 7 of the Act has also no application because there is no allegation that in the Cinema premises of the Petitioner, any other film which has been certified by the Board for a limited purpose, or in violation thereof, was being exhibited. It is also submitted that on the day and time of inspection the film "Pathar Ke Phool" (under exhibition) duly certificated by the Board for public exhibition was going on and, therefore, the said provisions of the Act is also not attracted. The learned Counsel for the State could not place anything to rebut this contention of the Petitioner.

9. The learned Counsel for the Petitioner, however, has very fairly submitted that even if it be assumed that the Petitioner has committed any offence, the same being not cognizable, the police is not competent to investigate it. This position has not also been disputed by the learned State counsel, but it is said that the Petitioner was found running the show without obtaining any valid licence and for that the competent authority was entitled to take appropriate steps.

10. There cannot be two opinions that a Cinema hall cannot be allowed to run without a valid licence but in the instant case, the Petitioner has asserted that he had already applied for permanent licence which has been duly recommended by the competent authority, who never asked him to close the business for want of licence. Further, there is a specific assertion that the Petitioner has been getting his licence renewed from time to time and the application for renewal of the licence for 1991 was also filed in time inasmuch, as he has been paying Entertainment Tax which has been accepted by the department concerned. All these assertions have not been controverted in the counter affidavit. Therefore, it is evident that Respondent No. 2, the Collector, was aware of all these. Still then he being the competent authority had not taken any action, obviously because he was satisfied that the petition, had not violated any of the provisions of the law and his licence matter is pending with the Government.

11. So far as depositing of entertainment tax is concerned, the Petitioner asserts that the amounts have been regularly paid but even then, if on a calculation, it is found that entertainment tax is due, the Petitioner can be called upon to deposit it and on his failure to deposit it, appropriate action can be taken against him. But the criminal prosecution of the Petitioner for the offences alleged cannot be allowed to stand, because even taking a worst view of the matter, that a technical offence has been committed for which only fine is prescribed, the police is not competent to investigate.

12. For the reasons stated above, the criminal prosecution against the Petitioner is held to be bad in law and the same is accordingly quashed.

13. It is, however, open to the authorities concerned, to take appropriate action against the Petitioner, if there has been any violation of Cinematograph Act and rules framed thereunder as there has been non-deposit of the entertainment tax legally payable by the Petitioner.

14. The result is that the application is allowed accordingly. No costs.