
(2013) 08 PAT CK 0058
In the Patna High Court
Case No : Criminal Writ No. 70 of 2011

Raghubir Prasad Agarwal and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 4(2)
Penal Code, 1860 (IPC) — Section 120B, 307, 34, 420, 468

Citation : (2013) 08 PAT CK 0058

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Aditya Prakash Sahay, Mr. Prabhat Kumar Singh and Mr. Manoj Kumar Sinha, for the Appellant; Namrata Mishra (G.P. 17) and Mr. Chhotelal Mishra (A.C. to G.P. 17) for State, for the Respondent

Final Decision : Disposed Off

Judgement

Akhilesh Chandra, J.—Supplementary affidavit has been filed on behalf of the petitioners during the course of the day enclosing the copy of enquiry report. Heard the learned counsels appearing on behalf of the parties.

2. This is an application seeking quashing of Purnea Sadar P.S. Case No. 393 of 2010 registered for the offence under Sections 420, 468, 471, 307 and 120B/34 of the Indian Penal Code and under Prevention of Food Adulteration Act, 1954.

3. It is contended on behalf of the petitioners that on basis of some taking of samples and seizure already eleven cases are going on against the petitioners at the instance of competent authority, wherein, cognizance has already been taken without awaiting for report of analyst, this immature First Information Report was lodged before the police, who is not at all competent to entertain such cases and proceed.

4. Reliance is placed upon the decision of this Court in a case of Satish Mishra Vs. State of Bihar and Others, , wherein, it is held in paragraph nos.- 6 & 7 as such:-

6. Having heard counsel for the parties, in my view, Prevention of Food Adulteration Act is a complete Code in itself with regard to manufacture, sale of food articles and contravention in respect thereof. It has its own set of authorities, which are authorised to conduct investigation, search, seizure and/or launch prosecution in respect thereof including enquiry into the matter. Same is the provision of Drugs and Cosmetic Act. Both are special statutes making out special offence and providing for its enquiry and prosecution.

7. In that view of the matter, in view of the provision of Section 4(2) Cr.P.C. the procedure as prescribed in these special statute will have to be followed in derogation to the procedure, as prescribed under Cr.P.C. Special authorities have been conferred on special officers under the two Acts, which authorities are not on the police officer. The action of the police is wholly without jurisdiction, in all aspect of the matter. Merely by writing Section 420 and other Sections of IPC the police cannot make out an offence where there is none, if fact, in terms of those sections and intendment to cheat and intendment to commit criminal breach of trust is not enough to be an offence under IPC and preparation to commit, an attempt to make offence is not punishable under IPC.

The ratio decided in the aforesaid case is equally applicable in the instant case. Hence, the First Information Report of Purnea Sadar P.S. Case No. 393 of 2010 is hereby quashed. Further, it is made clear that this decision will have no bearing upon remaining eleven cases pending against the petitioners before the competent authority. With the above observation, this writ application stands disposed of.