

(2009) 01 PAT CK 0067

In the Patna High Court

Case No : Criminal Miscellaneous No. 36086 of 2007

Rakesh Kumar

APPELLANT

Vs

The State of Bihar and Sri Laxman Ram, Executive Magistrate

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 47(A)
Penal Code, 1860 (IPC) — Section 120B, 272, 273, 406, 409

Citation : (2009) 57 BLJR 1059

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Sakil Ahmad Khan and Ashok Kumar, for the Appellant; Jharkhandi Upadhaya, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—This application by the petitioner whose name cropped up in course of investigation of Laheri P.S. Case No. 121 of 2006 registered under Sections 272, 273, 406, 409, 420 and 120B I.P.C. and Section 47(A) of the Bihar Excise Act is for the quashing of the entire criminal prosecution arising therefrom.

2. Briefly stated the prosecution case is that under the order of the District Magistrate, Nalanda at Biharsharif the raiding party was constituted for verification in connection with illegal sale of illicit liquor and on receipt of confidential information a sudden raid at about 12.10 A.M. in the night of 29/30-8-2006 was made in the godown of Ally Food Warehouse, Kantapar, Biharsharif where a tanker, bearing Registration No. MP-09KB-6566 was found parked, from which labourers were draining out spirit. On verification, it was found that there was no valid papers for the spirit, following which the Excise Superintendent was called for at the spot and query was made in this regard and it was found that there did not exist any valid papers in the tanker and the driver of the tanker failed to produce any valid papers. After being satisfied that the spirit had 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 and some papers were also seized. No paper could be produced by the Depot Manager and, accordingly, the Depot was sealed in presence of the Excise Superintendent and the F.I.R. was drawn up against the proprietor. Depot Manager, employees of the said Warehouse besides the Excise Superintendent.

3. It has been submitted on behalf of the petitioner that he is not named in the F.I.R. and his name cropped up in course of investigation on the basis of the statements of two labourers, who stated that he was also present at the place and unfortunately he happens to be the brother-in-law (Sala) of the Excise Inspector Madan Babu. It was next submitted that the Excise Superintendent, Haridas Mandal had filed Cr. Misc. No. 48615 of 2006 praying for the quashing of the F.I.R. of Laheri P.S. Case No. 121 of 2006 and a Bench of this Court vide order dated 18.9.2007 having considered all materials on the record and the submissions advanced by the learned Counsel for the parties quashed the F.I.R. and the case so far as the petitioner was concerned stands on a better footing than that of the petitioner of Cr. Misc. No. 48615 of 2006.

4. A perusal of the order dated 18.9.2007 reveals that the Court has quashed the F.I.R. of the Excise Superintendent primarily on the ground that no prior sanction order had been obtained for his prosecution and the absence of proper sanction would amount to an abuse of the process of the court.

5. There is another aspect of the matter. Apart from the statements of the two labourers regarding the presence of the petitioner at the place of occurrence, there is no other material on the record to connect him with the commission of the overt acts, and as such, the entire complicity of the petitioner in the crime falls in doubt.

6. In the facts and circumstances of the case and due regard being had to the facts of the case that no overt act has been attributed to the petitioner and there is nothing on record to show his complicity with the nefarious activities going on in the Warehouse, his prosecution, in the instant case, would amount to an abuse of the process of the court.

7. Accordingly the proceeding against the petitioner herein is hereby quashed and the application is allowed.