
(1985) 06 PAT CK 0004

In the Patna High Court

Case No : Criminal Rev. No's. 983 and 1034 of 1980

Ram Autar Jalan and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-06-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 158, 173, 190, 36
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 420

Citation : (1985) 33 BLJR 650 : (1985) PLJR 1142

Hon'ble Judges : Surendra Narain Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surendra Narain Jha, J.—Both these cases were heard together as similar questions are involved in both of them and they are being disposed of by this common judgment.

2. Criminal Revision No. 989 of 1980 has been filed by petitioner Ram Autar Jalan to set aside the impugned order, dated 2nd September, 1980 passed in G.R. Case No. 1252 of 1977 arising out of Muzaffarpur G.R.P.S. case No.(7) 77 and Criminal Revision No. 1034 of 1980 has been filed by the five petitioners, namely, Gobind Prasad, Hari Prasad Goenka, Girja Shankar Agarwal, Shiv Bhagwan Khemka and Parmeshwar Lai, for setting aside the impugned order dated 2nd September, 1980/passed in G. R. Case No. 1251 of 1977 arising out of Muzaffarpur G.R.P. Case No. 2 (7) 77.

3. The facts of criminal revision No. 983 of 1980, in short, are that the petitioner is a partner of a firm at Gorakhpur and is a licensee under the Uttar Pradesh Food-grains Dealers Licensing Order and the Licence bear No. 319 renewed up-to-date. By virtue of the licence granted to the petitioner under the aforesaid Licensing. Order, the petitioner carries on business in food grains at Gorakhpur and at the same time does business of financing the negotiable R/R (Railway

Receipt) of foodgrains from out side Uttar Pradesh as well. Similarly, the petitioners of Cr. Rev. No. 1034 of 1980 are partners of the different firms carrying on Business in foodgrains in the State of Uttar Pradesh under a valid licence granted under the aforesaid Licensing Order. The petitioners carry on business in food grains in Gorakhpur and at the same time do business of financing the negotiable R.R. (Railway Receipts) from out side Uttar Pradesh to out side. Uttar Pradesh as well.

4. In Cr. Rev. No. 983 of 1980, it appears that on the 11th July, 1977, a first information report was lodged by Sharda Prasad Shivastava, Assistant Marketing Officer, Muzaffarpur, stating, inter alia, that on a confidential information, he alongwith Madhuban Das, Supply Inspector, Muzaffarpur, enquired into an allegation regarding illegal trade in food-grains by way of consigning food grains out side the State of Bihar by unlicensed dealers in fake names. In course of investigation, it came out that Arhar was despatched to southern States in fictitious names, such as, Ganesh Prasad Baijnath Prasad from Narayanpur Anant, Muzaffarpur and Silohut Railway Stations. The informant visited the railway stations and collected details of despatches. On verification of office records, it was detected that the consignors of these despatches were not foodgrains licenSections It was also alleged that the fictious consignors had. despatched the consignments to the different railway stations in the south and in different names with forwarding notes signed by different persons. It was also alleged in the first information report that the consignors had not obtained prior approval of the District Supply Officer, Muzaffarpur, before despatching the same as contained in Memo. No. 1137, dated 14.4.1977 of the District Magistrate, Muzaffarpur. On the aforesaid allegations, Muzaffarpur G.R.P.S. Case No. 3 (7) 77 against (1) Ganesh Prasad and (2) Baijnath Prasad, Muzaffarpur was registered u/s 7 of the Essential Commodities Act (for short the E.C. Act") and Section 420 of the Indian Penal Code (for short" the Penal Code").4. In Cr. Rev. No. 1034 of 1980 it appears that on the 11th July, 1977, a First information report was lodged by the same Sharda Prasad Shivastava, Assistant Marketing Officer, Muzaffarpur, alleging, "inter alia, that he along with Shri Madhusudan Das, Supply Inspector, Muzaffarpur, visited Silout railway station on 29.5.1977 to collect information to find out the truth about the despatch of food grains in fictitious names outside the State of Bihar and while they were collecting informations, they came to know from the Station Master that a wagon was ready to leave Silout railway station for Salem Market in Tamil Nadu State with 235 bags of Arhar. They verified the Railway Receipt (R/R) and labelled seal of wagon No. P. R. 68373. The labelled seal disclosed the name of a firm M/s. Hira Singh Ramchandra Singh, Muzaffar pur, as addresed to "Self, and it contained 235 bags of Arhar booked for Sales Market in the State of Tamil Nadu. The first information report futher disclosed that on verification of the office records, it appeared that M/s Hira Singh Ramchandra Singh, Muzaffarpur, had no licence to deal in food grains and it also appeared that the said firm was itself a fake one. The aforesaid 235 bags of Arhar were seized by the order of the District

Magistrate, Muzaffarpur, and kept in the godown of the Bihar State Food and Civil Supplies Corporation at Muzaffarpur as the deal was in contravention of the direction of the District Magistrate, Muzaffarpur vide Memo. No. 1167 dated 14.4.1977, which required every consignor to send prior intimation to the District Supply Officer, Muzaffarpur, of any proposed consignment relating to the despatch to outside the State. From the first information report, it also appears that under the Bihar Foodgrains Dealers Licensing Order, 1967 (for short "Licensing Order, 1967") no one can deal in foodgrains (Purchase, sale or storage for sale) except for personal consumption, without licence. On the basis of the aforesaid facts, Muzaffarpur G.R.P.S. Case No. 2 (7) 77 against M/s Hira Singh Ramchandra Singh and Ors. was registered u/s 7 of the E.C. Act and Section 420 of the Penal Code, after completing investigation,

5. In Cr. Rev. No. 9x3 of 1980, it appears that police submitted final report on 2.6.1978 in Muzaffarpur G.R.P.S. Case No. 3 (7) 77 which was accepted by the Chief Judicial Magistrate, Muzaffarpur, on 6.7.1978 shows that there was no protest petition filed.

6. Similarly, in Cr. Rev. No. 1034 of 1980, it also appears that the police also submitted final report in Muzaffarpur G.R.P. Case No. 2(7) 77, which was accepted by the Chief Judicial Magistrate, Muzaffarpur, on 14th July, 1978. It appears from the order sheet, dated 14th July, 1978, that there was no protest petition filed.

7. It appears that on 27.8.1980, two petitions were filed by the Inspector, C.I.D. (Food), Patna, camp Muzaffarpur, one each in G.R. Case No. 1252 of 1977 arising out of the Muzaffarpur G.R.P.S. Case No. 3 (7) 77, which is annexure-2 in Cr. Rev. No. 988 of 1980 and in G. R. Case No. 1251 of 1977 arising out of Muzaffarpur G.R.P. S. Case No. 2 (7) 77, which is annexure-2 in Cr. Rev. No. 1034 of 1980, in the court of the Chief Judicial Magistrate, Muzaffarpur, seeking permission for re-opening the investigation of the case noted above on the ground that same new clues had, by then, come and the fresh facts were coming into light which warranted the reopening of the investigation of the cases in the ends of justice. In paragraph 8 of the aforesaid petition, it is stated that in view of the fresh facts coming into light, the authorities had ordered the C.I.D. to take up investigation of the case. On the aforesaid petitions, the learned Chief Judicial Magistrate, on the 2nd September, 1980, passed the following order-

Original record has been received. Heard A. P. P. I. The case is re-opened.

A petition has been filed on behalf of the Inspector (See) C.I.D. Food, Patna, Camp Muzaffarpur, praying to issue W/A (N/B) and processes u/s 82 and 83 Cr.PC against the accused persons noted in the petition.

Heard. Issue W/A (N/B) against the accused persons noted in the petition.

The very order has been brought under challenge in these two revision applications.

8. A rejoinder has been filed on behalf of the State in Cr. Rev. No. 1034 of 1980, stating, inter alia, that the petitioners have suppressed important and material facts of the present case and have mentioned wrong and incorrect facts in the revision application and on this ground alone, the revision application is fit to be dismissed. It is stated in the rejoinder that on the basis of the aforesaid first information report, G.R.P. Muzaffarpur, instituted a case u/s 7 of the E.C. Act and u/s 420 of the Penal Code and started investigation and, after completing investigation, submitted final report stating "Final Report True, No Clue" on 2.6.1978. It was further stated in the rejoinder that after submission of the final report by the G.R.P. Muzaffarpur, an M.L.A. and a Press Correspondent filed petitions giving valuable clue regarding the offences committed. On receipt of the aforesaid clue, G.R.P. Muzaffarpur, filed a petition as far back as 16.8.1978 in the court of the Chief Judicial Magistrate, Muzaffarpur seeking direction to re-open the investigation. But, it appears that the order was passed on the same. The rejoinder also reveals that in course of investigation, G.R.P. collected some informations from the District Magistrates North Arcot, Vellore and Tuticorine districts regarding the names of traders who had received consignments from Muzaffarpur,. From the rejoinder, it appears that the Superintendent, Railway Police, Muzaffarpur, requested the C. I. D. (Food) to take charge of investigation, so that proper investigation out side state may be successfully made, and accordingly, the C. I. D. (Food) of the State of Bihar took up investigation of the case and after making local investigation of the case, also proceeded to South India and collected important and relevant materials in support of the prosecution case. In paragraph 13 of the re-joinder, it is also mentioned that in course of further investigation, the Investigating Officer verified the registers of some of the firms mentioned in paragraph 12 of the rejoinder and their Bank account and also seized some of the papers concerning the case and the same were returned to them in their Jummanama which are relevant materials to establish the commission of the offences, as alleged in the first information report. It is also mentioned in the re-joinder that although a petition for re-opening of the investigation had already been filed by the investigating Officer, G.R.P. Muzaffarpur, on 16. 8. 1978, but as no order was passed on the same and the Investigating Officer, C. I. D. (Food), in course of investigation felt some difficulty, against filed petitions (annexure 2 in Cr. Rev. No. 983 of 1980 and annexure-4 in Cr. Rev. No. 1034 of 1980), for obtaining permission to reopen the investigation on which the impugned order, as quoted above, has been passed, which is under challenge, as stated above, in both these revision applications. It is relevant to mention here that the facts stated in the rejoinder have not been controverted by the petitioners,

9. Mr. N. K. Agrawal, learned Counsel for the petitioners in both the revision applications, has contended that no offence u/s 7 of the Ex. C. Act or u/s 420 of the Penal Code has been made out in the first information report, therefore, the order of re-opening the investigation is bad and illegal and, thus, fit to be set aside. He has further contended that there has been no contravention of any

Order made u/s 3 of the E.C. Act. According to him, the direction issued by the District Magistrate, Muzaffarpur, vide Memo, No. 1137 dated 14.4.1977 to inform the District Supply Officer, Muzaffarpur, before despatch of Arhar and Moong outside the State of Bihar is no Order passed u/s 3 of the E.C. Act. therefore, this contravention is not an offence punishable u/s 7 of the E.C. Act.

10. In support of his contention, Mr. Agrawal has relied on a decision [in *Nakul Chandra Banerjee v. The State* 1970 P. L. J. R. 431. where it was held that where the allegations in the first information report even if they are taken to be true on their face value and are accepted, as such, its entirety, do not make out an offence, the police has no authority to proceed with the investigation and to "allow it to proceed with the investigation will amount to mala fide exercise or an abuse of power. I have gone through the afore-said decision minutely and I find that the facts of that case reported (supra) are entirely different from the facts of the instant case. Therefore, this decision is not at all relevant for consideration in the present case.

11. Mr. N. K. Agrawal, learned Counsel for the petitioners in both the applications has also relied on the decision in *Hara Krishna Sahay v. The State of Bihar* 1981 B. B. C. J. 350. In my opinion, on the facts and circumstances of the instant case, this decision also is of no help to the petitioners. In those cases, the petitioners had come for quashing of the first information report on the ground that no offence had been made out in the first information report, but in the instant cases, the sole question for consideration is as to whether the Magistrate can order re-opening of the investigation of the cases when the final-report had already been submitted by the investigating Agency u/s 173(2) of the investigating Agency u/s 173(2) of the Code of Criminal Procedure (for short "the Code") before the Magistrate having jurisdiction to try the cases and the Magistrate having jurisdiction to try the cases has committed any illegality in passing the impugned order, brought under challenge in both these applications, on the petitions filed by the Inspector, C. I. D. (Food) on the ground that in view of certain facts coming into light the authorities had ordered the C.I.D. to take up the investigation of the cases.

12. In order to determine the aforesaid question, it is relevant to refer to the provisions of Section 156 of the Code, which deals with the power of the police officers to investigate into a cognizable case. Section 156 reads as follows:

(1) Any officer-in-charge of a police station may, without the order of the Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII,

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above

mentioned.

Section 156 of the Code enables the Officer-in-charge of a police station to investigate without the order of a Magistrate into a cognizable case committed within the area of the police station.

13. From the rejoinder filed on behalf of the State, it appears that final report was submitted u/s 173 of the Code stating, "Final Report True, no clue", which was accepted, and on receipt of certain clues, G.R.P. Muzaffarpur, re-opened the investigation and informed the Chief Judicial Magistrate, Muzaffarpur, by filling a petition on 16.8.1978 in both the cases in this connection. It is relevant to mention here that Sub-section (8) of Section 173 of the Code lays down "(8) Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate, and, where upon such Investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to such report forwarded under Sub-section (2)."

Reading Sub-section (8) of Section 173 of the Code, it is manifest that even after the submission of the final form under Sub-section (2) of Section 173 of the Code, the police can investigate into a cognizable case, if some fresh materials could come to the knowledge of the investigating Officer during investigation. In the instant cases, from the rejoinder, also find that the Superintendent, Railway Police, Muzaffarpur, requested the C. I. D. (Food), Patna, to take charge of investigation so that proper investigation outside the State might successfully be made and on the request of the Superintendent, Railway Police Muzaffarpur, who is, no doubt, a superior authority in rank to that of an Officer-in-charge of a police station, the (C. I. D. Food) took up the investigation of the cases. Here, I may point out that Section 36 of the Code confers power on all police officers superior in rank to an officer-in-charge of a police station to exercise the same powers, throughout the local area to which they are posted, as may be exercised by such officer-in-charge within the limits of his station,

14. So far as the power of the Magistrate to direct further investigation is concerned, I may point out here that the power of the Magistrate u/s 158(3) of the Code to direct further investigation clearly an independent power and does not stand in conflict with the power of the police officer. The power conferred upon the Magistrate u/s 156(3) of the Code can be exercised by the Magistrate even after submission of a report by the investigating Officer, which would mean that it would be open to the Magistrate not to accept the conclusion of the Investigating Officer and direct further investigation. This provision does not, in any way, affect the power of the Investigating Officer to further investigate the case even after submission of the report as provided in Sub-section (8) of Section 173 of the Code. Therefore, considering all these provisions, in my view,

the Magistrate can order re-opening of the investigation even after acceptance of the final report stating "the non-availability of the clue". In the instant cases, the Magistrate has passed the impugned orders on the petitions filed by the Investigating Officer, Inspector, C.I.D. (Food), Patna. It is now clear that Sub-section (8) of Section 173 of the Code gives power to the investigating Officer to re-open the investigation in the case in which final form had been submitted earlier and after completing the investigation, a fresh report has to be submitted before the Magistrate under Sub-section (2) of Section 173 of the Code. Of course, this can be done only on such fresh materials which could not come to the knowledge of the investigating Officer while he was conducting the investigation and, in my view, exactly the same situation prevailed in these cases. Earlier the police submitted final form on the ground that no clue was available although the police found the case to be true. The same view has also been taken in the decision of a Division Bench of this Court in *Phulena Rai v. State of Bihar and Ors.* 1979 B.B.C.J. 219. wherein it was held that re-opening of a police investigation can be done on such materials which could not come to the knowledge of the Investigating Officer during investigation and not as a routine affair.

15. On the other hand, Mr. S. N. Sahay, learned Counsel appearing on behalf of the State in both these applications, has contended that there is no legal bar to the re-opening of the investigation of any case in which final report has been submitted if there are sufficient cogent materials to proceed against the accused persons. Having considered the rival contentions of both the parties, I am of the opinion that in view of the facts that the Inspector, C. I. D. (Food), Patna Camp Muzaffarpur, has collected some fresh materials connected with the cases, which were not available to the investigating Officer earlier, it cannot be said that the court below has acted beyond its jurisdiction by ordering reopening of the investigation of the cases. For the reasons stated above, I find full force in the contentions raised by Mr. Sahay. I, therefore, do not find any illegality in the impugned orders, which warrant any interference by this Court in its revisional jurisdiction.

16. Having considered and examined the questions very closely and the arguments advanced on behalf of the parties and having considered the matter in all its ramifications, I do not find any merit in these revision applications, which are accordingly dismissed.

Before parting with this judgment, I must say that all-round efforts should be made to get these cases disposed of as early as possible since they relate to the year 1977 and by now, these cases have become too old. Let the records of the cases be sent down at once to enable the court below to proceed with the matters without any further delay.