
(1967) 10 PAT CK 0012

In the Patna High Court

Case No : Criminal Miscellaneous No's. 243, 355, 356 and 692 of 1967 and Cr. Rev. No's. 964 and 1136 of 1967

Ratanlal Sultania and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-10-1967

Acts Referred:

Essential Commodities Act, 1955 — Section 11, 3, 5, 7, 9
Penal Code, 1860 (IPC) — Section 21, 420

Citation : (1968) 16 BLJR 353

Hon'ble Judges : S.C. Misra, J;R.J. Bahadur, J

Bench : Division Bench

Judgement

S.C. Misra, J.—This is a batch of six applications filed by the petitioners against their prosecution under Sections 7 and 9 of the Essential Commodities Act, 1955. The prosecution in all these cases has been started at the instance of public servants who visited the premises of the petitioners where they carried on business in various essential commodities and several irregularities were alleged to have been discovered in the maintenance of stock register etc., amounting to contravention of the conditions of the licences held by them. The reports submitted in all the cases by the public servants concerned relate to such irregularities and accordingly the Subdivisional Magistrates to whom the reports were submitted have taken cognizance of the cases started against them under Sections 7 and 9 of the Essential Commodities Act (hereinafter referred to as the Act).

2. In Criminal Miscellaneous No. 243 of 1967, petitioner No. 1, Ratanlal Sultania, is proprietor of Shree Shyam Bhandar, Deoghar and is a wholesale dealer holding a licence under the Bihar Food-grains Dealers licensing Order, 1966, holder of another licence under the Bihar Edible Oil Wholesale Dealers Licensing Order, 1964 as well as holder of a licence under the Bihar Kerosene Dealers Licensing Order, 1966. On the 1st of April, 1967, Sri P.K. Das, Assistant District Supply Officer, visited the shop premises of petitioner No. 1, petitioner No. 2 being an

employee under him, along with the Inspector of Supply Department and other police officers at 6-30 P.M. The raiding party found that the stock register was not properly maintained inasmuch as 199 bags of foodgrains were found in excess of the stock shown in the stock register, 108 tins of edible oil and one tin of Kerosene oil was also in excess of stock register. There was also a shortage of gram dal by two bags and khesan dal by one bag.

3. On the 3rd of April, 1967, report was made u/s 11 of the Act by Sri P.K. Das for prosecution of the petitioner u/s 7 of the Act to the Sub-divisional Magistrate, Deoghar. It is stated that; the entire stock of foodgrains, non-foodgrains, kerosene oil and edible oil found in the premises as also in the bank godown were seized. The Assistant District Supply Officer, however did not give any opportunity to the petitioners to explain the discrepancy and non-completion of the accounts before making report u/s 11 of the Act. It is not necessary to set out the other facts inasmuch as the main contention of the petitioners in all the cases is based upon a report for prosecution being made u/s 11 of the Act, without giving an opportunity to the dealer to explain the alleged discrepancy which might have satisfied the raiding party that what was an apparent irregularity, in fact, was not an irregularity and thus a prosecution could well have been avoided.

4. In Criminal Miscellaneous No. 355 of 1967, the petitioner is a dealer in foodgrains carrying on business under the name and style of Messrs Bhagwan Das Parmanand and holds a food grains dealers licence under the Bihar Food grains Dealers Licensing Order, 1966. He is carrying on business in the town of Barh. In this case, the Assistant District Supply Officer in the company of the second officer and another Deputy Magistrate of Barh raided the business premises of the petitioner and demanded inspection of the account books. The petitioner's Munshi produced the account books and also showed his stock of grains but no irregularity was pointed out to the petitioner by the officers concerned. Since, however, summons was served on him issued by Sri B.M.P. Sinha, Munsif Magistrate, for prosecution u/s 7 of the Act and u/s 23 of the Bihar weights and Measurements (Enforcement) Act, 1959, on enquiry, the petitioner learnt that Sri A. Singh, Sub-divisional Magistrate, Barh, took cognizance against him on the report of the Assistant District Supply Officer on the 14th of April, 1967. From the report made by the Assistant District Supply Officer (Annexure A to the petition), the petitioner learnt that the so-called irregularities pointed out in the petition of complaint were baseless and untenable. If the petitioner were given an opportunity to explain them, he could have satisfied the officers that there was no violation of any law committed by him and as such the apparent irregularities could not constitute an offence. Since, however no opportunity was given to the petitioner, the cognizance taken by the learned Sub-divisional Magistrate is illegal and void and the prosecution should be quashed.

5. In Criminal Miscellaneous No. 356 of 1967, petitioner Lakhan Lal is the proprietor of Ashok Industries Gola Road, Barh. He deals in foodgrains under the

name of Ashok Industries, Barh. He holds a foodgrains dealers licence under the Bihar Foodgrains Dealers Licensing Order. In this case also, the same raiding party as in the case of Criminal Miscellaneous No. 355 of 1967, raided the business premises and godowns of the petitioner and demanded production of account books as also wanted to verify the stock of grains. That was done and neither the Assistant District Supply officer nor anyone of the party pointed out to the petitioner any irregularity. In this case also, on enquiry, the petitioner learnt that cognizance was taken by the learned Sub-divisional Magistrate on the report of the Assistant District Supply Officer and transferred the case to the Court of Sri B.M.P. Sinha, Munsif-Magistrate, Barh, for trial, who issued summons to the petitioner. A copy of the report of the Assistant District Supply Officer was duly obtained by the petitioner and is annexure B to this petition. He alleged in the petition that if an opportunity were given to him, he could have shown that there was in fact no irregularity and unnecessary harassment of the petitioner by launching the prosecution would have been avoided.

6. In Criminal Miscellaneous No. 692 of 1967, the petitioner Vijay Singh Jain, is a licensee under the Bihar Food-grains Dealers Licensing Order and he claims to carry on business as a commission agent, purchasing various kinds of food-grains on orders placed with him by customers in the open market and despatching the same to them. On the 4th of August, 1967, the Supply Inspector, Supaul, along with the District Supply Officer, Saharsa, and others, inspected the business premises of the petitioner in his residential house. They discovered certain shortages and excesses in regard to certain quantities of food-grains in the stock register. The details of the irregularities are mentioned in paragraph three of the petition and relate to various kinds of foodgrains such as moong, Wheat maize, cheena, mdrua and paddy. According to the petitioner, if he were given a chance by the officers concerned to explain the discrepancies, he would have explained that the shortages occurred in the usual course as compared with the opening balance for the day. No opportunity, however, was given to the petitioner to explain the discrepancies. The learned Sub-divisional Magistrate not only took cognizance of the case against him on the 5th of August, 1967, but also ordered the Supply Inspector to take the entire stock to the government godown and arrange for its disposal. Grievance has been made in the petition that not only was the prosecution of the petitioner without giving him an opportunity to explain the so-called discrepancies and the fact that the petitioner was only a purchaser of foodgrains in the open market and as such not liable to be proceeded against, but further that the order for seizure and sale of the food-grains also was illegal.

7. Criminal Revision No. 964 of 1967 has been filed by the petitioners Messrs Parmeshwar Prasad Deoki Lal, carrying on business in foodgrains in the town of Dinapore, who hold two valid licences under the Bihar Foodgrains Dealers Licensing Order. The Assistant Go-down Manager, Dinapore, Sri Brajnandan Prasad Singh, along with the Deputy Superintendent of Police, Dinapore, and the D.S.P. (Food Intelligence), visited the business premises and the godown of the

petitioners and discovered certain irregularities as enumerated in paragraph three of the petition. According to the petitioners, if they were given a chance by Sri Brajnandan Prasad Singh to explain the circumstances in which the apparent irregularities were found, there would have been no occasion for launching a prosecution against them which was done on the complaint made by him on the 15th of April, 1967.

8. In Criminal Revision No. 1136 of 1967, the petitioner, Jaigovind Prasad, is a resident of Madhuban Bazar, police station Pupri, in the district of Muzaffarpur. On the 22nd of July, 1966, the Supply-Inspector of Bajpatti along with the Sub-divisional Magistrate of Sitamarhi visited Madhuban Bazar and inspected the personal godown of the petitioner and found 18 bags of khesari weighing 16 quintals and 74 kilograms and two bags of rice weighing 80 kilograms lying in his godown. These articles were seized by the aforesaid officers. The first information report was lodged by the Supply Inspector on the direction of the Sub-divisional Magistrate, Sitamarhi, at Pupri police station against the petitioner for the alleged contravention of the provisions of the Bihar Foodgrains Dealers Licensing order, 1966 and the Essential Commodities Act, 1955. The case was duly investigated under the supervision of the Deputy Superintendent of police, Sitamarhi, and the Superintendent of police, Muzaffarpur, and a final report was submitted to the Sub-divisional Magistrate on the 7th January, 1967, in which it was stated that no case had been made out against the petitioner. The Sub-divisional Magistrate, however, took cognizance and transferred the case to the Court of Sri M.A. Ansari Munsif-Magistrate, for trial by his order dated the 29th of June, 1967. According to the petitioner, in course of the aforesaid investigation by the police, he made statements that the foodgrains seized were the agricultural produce of the petitioner out of his own land under personal cultivation and it was stored for domestic consumption, both for the members of his family and for his cattle. Independent testimonies of persons examined by the police also supported the petitioner's case. The Supply Inspector also mentioned to the police that the foodgrains in question were not brought from outside nor did they form part of the foodgrains supplied to the ration shop. Several grounds have been urged in support of the application and in one sense this case differs in substance from the other applications and it may be dealt with separately while individual cases will be considered after the determination of the common question of law raised in these applications.

9. The main question, therefore, which is to be considered in disposing of these applications, except Criminal Revision No. 1136 of 1967, is whether a dealer who holds a licence under the Bihar Food-grains Dealers Licensing Order, can be proceeded against for contravention of the terms of the licence without an opportunity being given to him to explain any irregularity which may be found by the authorities on inspection of the account books of the dealer concerned. Our attention has been drawn in this connection by the learned Counsel appearing on behalf of the petitioners, led by Mr. Nageshwar Prasad and by Mr. Balbhadra Prasad Singh, whose argument has been adopted by the learned Counsel

appearing in the other cases, to Sections 3, 7, 9 and 11 of the Essential Commodities Act, 1955 (Act 10 of 1955), Bihar Foodgrains Dealers Licensing Order, 1966 and 1967, and form B, Clause 3, Sub-clause (2), which is form of the licence for purchase, sale and storage for sale of food-grains. Section 3 of the Essential Commodities Act empowers the Central Government to pass an order for regulating the supply of an essential commodity by way of maintaining or increasing the supply or for securing its equitable distribution and availability at fair prices in various manners which has been enumerated in that Section. The grant of licence to dealers is contemplated under this Section. u/s 5, however, it is stated that the powers to be exercised by the Central Government may be delegated either to any officer or authority subordinate to the Central Government or to such State Government or to such officer or authority subordinate to the State Government as may be specified in that direction. Section 7 deals with the penalties to which any person contravening any order made u/s 3 is exposed. Section 11 provides for the taking of cognizance of an offence committed in relation to any provision of the Act and lays down that such cognizance can be taken only on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Penal Code. In pursuance of the powers conferred upon the State Government, Bihar Food-grains Dealers Licensing Order, 1959, was issued and amended from time to time. Form B referred to above, which is the form of licence, is issued under Clause 4(2) of the Foodgrains Dealers Licensing Order. Sub-clause (ii) of Clause 3 of the form provides:

The licensee shall complete his accounts for each day on the day to which they relate, unless prevented by reasonable cause the burden of proving which, shall be upon him.

The main contention of the learned Counsel for the petitioners is that the offence committed by the foodgrains dealers in relation to the contravention of any condition of the licence can only be made out when the failure of the dealer to complete the account for each day is considered by the public servant making the report u/s 11, after giving an opportunity to the dealer concerned to explain the discrepancy. This is so because Clause 3(ii) in itself contains as a condition of the licence that if the accounts are not made up for each day, that will be regarded as an offence, unless it can be shown that the dealer has a reasonable cause for his failure to do so. No doubt, the burden of proving such a reasonable cause will lie upon the dealer concerned, but an opportunity must necessarily be given to him by the officer making the report against him; and in absence of such an opportunity being given, the report will be in violation of the basic requirement of a prima facie offence and as such no cognizance can be taken u/s 11 of the Act on such a report. Our attention has been drawn, in the first instance, in this connection to a single Judge decision of this Court in *Brijbehari Lal v. A. Mukherjee* 1966 B.L.J.R. 432 in which the learned single Judge quashed a prosecution for contravention of the terms of the licence under the Bihar Foodgrains Dealers Licensing Order. The learned Judge observed as follows :

But the petitioner does not appear to have been ever asked any reason for his prevention to have completed his accounts for each day. The aforesaid terms of the licence requires completion of the accounts by a licensee "unless prevented by reasonable cause". This opportunity has indeed to be given to a licensee by the inspecting officer himself and not that, as the learned Government Advocate would argue, such a plea would be open to a licensee only in Court. The term is very clear and it occurs in the form of the licence itself. It is, therefore, for the inspecting authority to get satisfied on taking explanation from the licensee as to the cause for the non-completion of the daily accounts, and any re-port, in absence of such an opportunity being given to the licensee, can well be treated as a denial of natural justice. The report of the inspecting officer for launching a prosecution against a licensee must be a proper report. As I have already pointed out, the inspecting officer did not give an opportunity to the licensee to explain for the non-completion of the accounts and the denial of such an opportunity would render the report invalid, and, in my opinion, no Court should take cognizance on such an incomplete report.

In the case of Mangal Singh and Ors. v. The State of Bihar Cr. Rev. No. 198 of 1966 (an unreported decision of the Court) another learned single Judge has expressed the view referring to Clause 3(ii) of the licence, that-

The aforesaid terms of the licence do not lay down any time limit or the stage at which the licensee is to discharge the burden cast upon him in this regard. It is open to the licensee to prove at any stage of the proceeding, namely, at its inception, during investigation, at the time of taking cognizance by the Subdivisional Magistrate or even during the course of the trial, that he could not maintain the accounts correctly as he was prevented by reasonable cause. What weight will be attached to such a plea of the licensee will be a matter for the authorities concerned to consider. With great respect, therefore, I am of the view that the proposition has been too widely worded in Brij Behari's case 1966 B.L.J.R. 432 .

In this connection, our attention has been drawn by the learned Counsel for the parties to a number of decisions of the Supreme Court. In the case of Bhagwati Saran and Another Vs. The State of Uttar Pradesh, Section 11 of the Essential Supplies (Temporary Powers) Act (1946) came up for consideration. It may be stated that Section 11 of this Act is in same terms as Section 11 of the Essential Commodities Act which has replaced the Essential Supplies (Temporary powers) Act (1946). According to Section 11 of that Act also cognizance could be taken of an offence committed by contravention of any order issued under that Act, only on a statement of facts constituting the offence made by a public servant. Learned Counsel for the State has urged that in that case their Lordships have held:

that the report is required to contain only a statement of facts constituting the offence and its function is not to serve as a charge sheet against the accused. The function or purpose of the second of the above three requirements of Section

11 is to eliminate private individuals such as rival traders or the general public from initiating a prosecution and for this purpose before cognizance is taken the complaint is required to emanate from "a public servant". The two further requirements, viz., that the report should be in writing and regarding the contents of the report, are to ensure that there shall be a record that the public servant is satisfied that a contravention of the law has taken place. If the contravention in question is sufficiently designated in the report, and in the present case that cannot be disputed, since besides a reference to the notification stated to have been contravened, the report states that the accused had effected sales above the maximum prices specified in the notification, the requirements of the Section are satisfied.

According to the learned Counsel for the State, in this case also, the report has been made by a public servant containing the facts making out contravention of the conditions of the licence and as such it cannot be urged that there is any such defect in the report made to the Sub-divisional Magistrate by the inspecting parties which will render the report invalid and upon which no cognizance will be taken u/s 11. of the Act. The complaint has been made by a public servant, the report is in writing and as such the contention of the learned Counsel for the petitioners that reports in all these cases are legally defective cannot be acceded to. Learned Counsel also urged that this decision of their Lordships of the Supreme Court was not brought to the notice of the learned Judge in Brijbehari's case 1966 B.L.J.R. 432 and accordingly the learned single Judge made an observation in that case that unless an opportunity would be given to the dealer concerned to explain any discrepancy in the accounts, cognizance cannot be taken by the Magistrate authorised to take cognizance in the case. Learned Counsel has contended further that according to the above decision the object of making the report is to enable the Magistrate to take cognizance of the case and to contain either a charge sheet or evidence in support of the charge. It may be stated that in this case their Lordships distinguished two decisions, one in the case of Dr. N.G. Chatterji and Another Vs. Emperor, and the other in Rachpal Singh v. Rex AIR 1949 Oudh 66. In these cases, their Lordships had occasion to consider the requirement of Rule 130(1) of the Defence of India Rules, the wording of which was similar to Section 11 of the Act. In those two cases the recital in the report was that the accused was guilty of a "prejudicial act to the interest of the public" and "had prejudiced the success of financial measures with a view to the efficient prosecution of the war". These words were held to be vague and insufficient to enable the Magistrate to take cognizance of an offence under Rule 130(1) of the Defence of India Rules. The observation of the learned Single Judge in the case of Mongol Singh?, therefore, does not seem to be well founded. It is not a kind of report made by the public servant which will enable the Magistrate to take cognizance of the offence, other facts to be brought in evidence to be adduced in course of the trial, but the report must be of such a character as to satisfy the Court taking cognizance that an offence under the Act has been committed. No doubt, the learned Judge in that case had only to

consider whether a report made by the inspecting officer without an opportunity being given to the dealer to offer his explanation, will be a valid report or not. It may be that certain observations made in that judgment may not be held to be relevant as has been contended by the learned Counsel for the petitioners in distinguishing the case. For instance, comment has been made on the following observation:

There may be cases in which the licensee may have no explanation to offer at the spot. He may come out with an explanation at a later stage of the proceeding. Does it mean that, the initiation of the proceeding shall be kept in abeyance till an explanation is obtained?

Learned Counsel for the petitioners has contended that the argument is not that the initiation of the proceeding is to be kept in abeyance till an explanation is obtained, but an opportunity must be given to the dealer charged with the contravention and if he fails to take advantage of the opportunity for any reason and does not offer an explanation within a reasonable time, such a report made by the public servant concerned will not be in contravention of Section 11, but the giving of an opportunity is a sine qua non for making a report which can be regarded as a valid report. It is also true that if an explanation is not offered at the early stage to the officer inspecting the records of a dealer and asking for an explanation, if he finds any irregularity in the accounts, the dealer will not be precluded from offering such an explanation in course of the investigation or in course of the trial. But such a right open to the accused person will not preclude him from getting an opportunity to explain the discrepancy before a report is made. Learned Counsel has contended that the object of giving an opportunity to a licensee charged with contravention of the terms of the licence to explain the contravention is also to save public time by avoiding unnecessary harassment by way of prosecution which is bound to end in acquittal.

10. Upon this matter, the learned Counsel for the parties have addressed a lengthy argument. Learned Counsel for the petitioners have urged that the object of safeguard provided in Section 11 of the Act is set out in the judgment of the Supreme Court and, as mentioned above, is to save unnecessary harassment to the dealer concerned, because wide powers have been conferred upon the authorities even to seize the stock of the dealer which may deprive him of his livelihood altogether and accordingly it is the requirement of natural justice that before prosecution is launched involving such stringent consequence, in fairness, the officer inspecting the records to find out contravention should proceed in a reasonable and equitable manner. This is more so because essential commodities are required by the community at large in general and a large number of licences would have to be issued and administered, the administration of which would necessitate inspection and control. If prosecutions are started merely because some defect is noticed by the inspecting authority not only it might cause great hardship to the dealers in whose case the violation may be merely technical and capable of reasonable explanation, but it may involve considerable waste of

public time. Learned Government Advocate for the State has contended that to require the inspecting authorities to give an opportunity to the dealer in whose transactions irregularities have been noticed to explain might render the officers themselves as judges of the cases in which prosecution should be started. This may also be open to abuse in certain cases. The argument of the learned Government Advocate, however, goes very far and the contention of the learned Counsel for the petitioners is that the provision in law in the nature of a measure of caution takes into account the officers who do their duties properly and, therefore, those officers who will inspect the premises of a man of business to satisfy themselves that the terms and conditions of a licence held by the dealer are being properly observed, will do their duty in a reasonable manner. They can well be expected to examine for themselves whether the discrepancy noticed in the account books of any dealer is discrepancy of a nature which is not capable of a reasonable explanation, in which event alone a report is to be made for launching a prosecution; and if the discrepancy can be explained which is of a venial nature, it is not necessary to start a prosecution at all.

11. There is considerable force, no doubt, in the argument advanced on behalf of the petitioners, but the matter is not free from difficulty and the decisions of the Supreme Court lay down propositions which enable a Court to arrive at a proper determination of this question.

12. Learned Counsel for the petitioners have in this connection laid considerable stress on that part of the observation of the Supreme Court which provides that "The two further requirements are to ensure that there shall be a record that the public servant is satisfied that a contravention of the law has taken place". The emphasis is on the word "satisfied". Learned Counsel has contended that it is not merely a mechanical report containing statement of facts which will be a valid report, but that report must show that the public servant is satisfied about the contravention which lays down that he must analyse in his mind the facts of the case and the report must indicate that he has not merely stated the facts but that he has examined the facts and in his opinion there is reasonable ground for holding that a contravention has taken place. Learned Government Advocate has, however, contended that it is not necessary for the public servant to mention in so many "Words in the report that he is satisfied that a contravention of law has taken place, but that he should only mention the facts which will make out a prima facie case for an offence committed under the Act. In this connection, learned Government Advocate has drawn my attention to Section 190 of the Code of Criminal Procedure which deals with the several modes in which cognizance can be taken by a Magistrate and one of the modes is that cognizance shall be taken on a report made by a police officer. Such a report may be a charge sheet or otherwise as when a police officer is required by the Magistrate to make a report in the case of a non-cognizable offence on which also lie may take cognizance. Such a report will only contain a statement of facts of the case which will make out an offence. Learned Counsel for the petitioners has however, contended that the meaning of the word "report" as used in this

context does not throw any particular light on this matter. The more correct analogy would be report made u/s 202 of the Code of Criminal Procedure by a person whom a Magistrate, before taking cognizance when a complaint is filed before him, directs to enquire into the facts of the case and to submit a report. Such a report contemplates that the person making the enquiry has applied his mind to the facts elicited before him and then to submit a report for consideration of the Magistrate. The satisfaction of the public servant making the report, therefore, is absolutely essential before the report can be regarded as a valid one in terms of Section 11 of the Act. The word used in that Section is not even a complaint filed by a public servant but a report made by a public servant and there is some difference between the meaning of the two words "report" and "complaint". A mere complaint, no doubt, requires only a statement of facts constituting the offence but a report indicates the application of mind by the public servant concerned to the facts of the case. And if that be so, then the condition provided in Sub-clause (ii) of Clause 3 of Form B (the foodgrains dealers licence) contemplates not merely an inspection of the account books of a dealer by the officer scrutinising the account books but, further, that in order to avoid unnecessary prosecution, he should also give a chance to the dealer to explain how a discrepancy was found in the books of account. After all, the dealer knows the account books better than an outsider and certain circumstances may occur, e.g., in the domestic life of the dealer, which on a particular day may prevent him from completing his accounts at the end of the day. If he is given an opportunity to explain the circumstances, it may very well be that the officer inspecting the accounts may be satisfied and unnecessary harassment and waste of public time may be avoided. If the explanation offered by the dealer is not found sufficient, the requirement of law will be fulfilled and a report may very well be made making reference to this fact. If the report shows that a chance was given to the dealer to explain the discrepancy but he gave an explanation which was not found satisfactory by the officer, then a prosecution might as well be started. Even the learned single Judge in Brijbehari's case 1966 B.L.J.R. 432 quashed the prosecution not on the ground that no fresh prosecution might be launched but that it should be started in the proper manner by giving a chance to the dealer to explain the discrepancy.

13. In this connection our attention has, however, been invited to another decision of the Supreme Court in Pravin Chandra Mody Vs. State of Andhra Pradesh, , in which it has been observed that the only requirement of Section 11 of the Act is that the report must be made by a public servant and not by a rival trader and that the prosecution can only be launched on a complaint made by such a public servant. It has been contended that the word "report" in that Judgment has been made interchangeable with the word "complaint" and the only emphasis is upon the complaint being made by the public servant and not that it should necessarily be a document showing that the public servant is satisfied that an offence in the nature of contravention of any of the conditions of the licence has been made out. Mr. Nageshwar Prasad has urged, however, that

that was a case in which the accused person was proceeded against u/s 420 of the Penal Code and along with that there was also an offence disclosed u/s 7 of the Act, and the word "complaint" was used in that context. It is true, no doubt, that on facts that case is clearly distinguishable but, nevertheless, it is clear that while considering Section 11 of the Act, the word "complaint" has been used as having the same meaning as the word "report" although this point was not specifically considered by their Lordships in that Judgment.

14. Mr. Balbhadra Prasad Singh has urged that Sub-clause (ii) of Clause 3 of the Form B (licence to a foodgrains dealer) in itself constitutes an offence not only when there is an irregularity in the maintenance of stock register discovered, but it is also when an explanation has been asked for and no reasonable explanation has been supplied by the dealer that an offence is made out. The gist of an offence, therefore, is not merely a discrepancy in the accounts but such a discrepancy accompanied by a failure on the part of the dealer to furnish a reasonable explanation. In this connection, he has drawn our attention to Glanville Williams' Criminal Law (1953 Edition; 709); Allen's Law in the Making (6th Edition, p. 475); in support of his contention that where an exception is provided in laying down the offence itself, then the gist of the offence is to be understood as comprehending the exception too. Here, as a condition of the licence, it is imperative that if there is a failure to complete the accounts at the end of the day, it is an offence, only when a dealer cannot furnish a satisfactory explanation. In *Rex v. Steane* (1947) 1 K.B. 997, on which reliance is placed by the learned Counsel, the relevant facts were that the appellant, a British subject, was in Germany during world war II and was charged with entering the service of the German system of broadcasting and made utterances likely to assist the enemy and to go against the interest of the British nation. He was charged under regulation 2A of the Defence (General) Regulations, 1939 at the conclusion of the War. It was clear from the evidence that the acts done by the appellant were likely to assist the enemy. The defence of the appellant was that he did so under duress, as he was in Germany with his wife and children and he was compelled to broadcast in the manner alleged at the risk of his wife and children being put in the concentration camp. The case as put to the Jury was that the prisoner must be taken to intend the natural consequences of his acts. If the prisoner, therefore, did an act which was likely to assist the enemy, it must be assumed that he did it with the intention of assisting the enemy. It was in that context that the point for consideration was where the essence of the offence or the necessary constituent of the offence is a particular intent, whether that intent is to be proved by the crown just as much as any other fact to constitute any other offence. It was urged, however, in answer to this contention that this was a situation where the Lord Chief Justice had to deal with the case regarding a direction to the jury and the appeal was allowed, because the direction to the jury given by the Judge was found to be inadequate resulting in misdirection. In the present case, it is not contended on behalf of the State that the specific burden put upon the accused person of showing that there was reasonable cause

for failure to make up the accounts at the end of the day would not be available to him in course of the trial, but the real question is whether before the trial is held the reporting authority must necessarily give him a chance to offer an explanation and in the absence of it, the report itself would be held invalid. Mr. Balbhadra Prasad Singh has, however, drawn our attention to a passage at page 1004 which runs thus:

In many offences it is unnecessary to allege any particular intent. The commonest case is in larceny where the prisoner is simply charged with stealing. If the evidence shows that the prisoner picked a person's pocket, there is no necessity to prove that he intended to steal, although he may give some evidence in defence which would lead the jury to believe that he was not acting with a felonious intent. But, we repeat that where a particular intent must be laid and charged, that intent has to be proved.

Learned Counsel has laid special stress upon the words "laid" and "charged" and has urged that before the report can be made by the public servant u/s 11 of the Act disclosing the commission of an offence, it can be regarded as a document sufficient in law as contemplated under that Section only in a specified manner. The offence of not making up the accounts at the end of the day and the failure of the accused person to give a satisfactory explanation in regard to that irregularity go together and the offence cannot be laid or charged unless both the requirements are fulfilled. Learned Counsel has also drawn our attention to Halsbury's Laws of England (3rd edition, Volume 10, page 389) dealing with statutory offences. In paragraph 705, it is stated:

An indictment for a statutory offence must contain a reference to the Section of the statute creating the offence, and must allege with certainty that the defendant committed or omitted the acts the commission or omission of which is prohibited by statute, and did so in the circumstances and with the intent mentioned in the statute.

Learned Counsel has contended that failure to make up the accounts at the end of the day required in Sub-clause (ii) of Clause 3 of form B, lays down the circumstances in which alone this will be an offence. This is a chapter dealing with the form of indictments and sets out the necessary contents of indictment. But in that very book there is reference to another decision in R.V. James (1902) 1 K.B. 540, C.C.R. in which it was stated that an indictment for the misdemeanour of receiving goods stolen by a wife from her husband need not allege that the goods were stolen by the wife from her husband; it is enough to allege that they were stolen. It may be stated, however, that at page 386, at the end of paragraph 697, it is stated that notwithstanding any rule of law or practice and subject to the provisions of the indictments Act, 1915, an indictment is not open to objection in respect of its form or contents if it is framed in accordance with the rules made under that Act. Reference was also made to Allen's Law in the Making (6th edition) at page 476. That, however, contains the general principle that if the words of the statute are in themselves precise and

unambiguous, then no more can be necessary than to expound these words in their natural and ordinary sense. Reference was also made to the case of Dy. Commr. of Barabanki v. Munshi Ram Prashad 26 I.A. 254 in support of the proposition that according to the amended provision in Sub-clause (b) of Clause 3(i) of form B (the form of licence), it should not amount to any violation of the rule if the entries with regard to the food-grains being received each day are not made at the end of the day.

15. Learned Counsel has also contended that failure to give an opportunity to the dealer concerned to explain the circumstances for violation of a condition of the licence amounts to violation of the principle of natural justice. A party must be heard before he can be reported against for trial u/s 11 of the Act. In my opinion, however, the question of denial of natural justice cannot arise in these circumstances, because the reporting authority is not coming to any final decision in the matter and the principle of the observance of the rules of natural justice only applies to a case where the authority is competent to give a definitive decision affecting the personal liberty or right to property of an individual. That matter, however, can be gone into only in course of a trial. Therefore, the question of a violation of the rule of natural justice cannot arise in these cases. Attention may also be drawn in this connection to Clause 7 of the Bihar Food-grains Dealers Licensing Order, 1963. It provides:

No holder of a licence issued under this Order or his agent or servant or any other person acting on his behalf shall contravene any of the terms and conditions of the licence and if any such holder or his agent or servant or any other person acting on his behalf contravenes any of the said terms or conditions, then, without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by order in writing of his licensing authority.

But a proviso has been added to this which did not find place in the Order issued in 1959. It stands thus:

Provided that no order shall be made under this clause unless the licensee has been given a reasonable opportunity of stating his case against the proposed cancellation or suspension.

It may be stated that form B is a form of licence which is issued in terms of this Licensing Order and it is noticeable that a provision has been made in this clause for cancellation or suspension of the licence of a dealer apart from any other action that may be taken against him, but only when it concerns cancellation or suspension of the licence that an opportunity is to be given to the dealer to state his case against the proposed cancellation or suspension. No such provision has been made in regard to any other action that may be taken against him. If the licensing authority intended to make the giving of an opportunity for furnishing of an explanation in regard to form B, Clause 3(ii), an essential part of it, such a provision could have been made in Clause 7 also, because the essential

conditions for the licensing of a dealer are set out in the Licensing Order itself and not in the form of the licence. From this it appears that so far as the Bihar Foodgrains Dealers Licensing Order is concerned, the furnishing of an explanation by the dealer has not been set down as a constituent of the offence of violation of the terms and conditions of the licence. Mr. Balbhadra Prasad Singh has also contended in his connection that the use of the words in form B, Clause 3(ii) that the commodities received by the dealer must be duly entered in the stock register and failure to do so would be an offence, only when the dealer would fail to furnish an explanation for not doing so, is based on the well-known rule of mens rea, Mens rea is still a necessary element in the constitution of an offence and if an act is not accompanied by a criminal intent, it will not be an offence; so that in the eye of law only when the dealer fails to furnish a reasonable explanation can this be regarded as an offence which alone can be sent up for trial by a Criminal Court. Reference is made in this connection to the case of Nathulal Vs. State of Madhya Pradesh, . That was also a case u/s 7 of the Act and it was held that where storage of foodgrains in excess of the prescribed quantity by Section 3(2), Madhya Pradesh Foodgrains Dealers Licensing Order, 1958, was made by the accused who made an application for grant of a licence but it was rejected, and the applicant was not informed of the rejection, it was held that Mens rea being an essential ingredient of a criminal offence, unless it is excluded by the statute creating the offence, the appellant in that case was not guilty of any offence u/s 7 of the Act. The proposition is well-settled. Mr. Balbhadra Prasad Singh, however, seeks to support his argument in the light of the fact that the irregularity of not making up the accounts at the end of the day would be an offence only if it would be accompanied with the mens rea of failing to do so in a deliberate manner, Whether such omission is deliberate or merely accidental, due to family necessity or otherwise, can only be gathered if an opportunity is provided to the dealer to explain these circumstances. I have already, however, dealt with this matter with reference to the observation of the Supreme Court and Clause 7 of the Bihar Foodgrains Dealers Licensing. Order.

16. It may be stated that the word "report" even according to the dictionary meaning is a term relating to the statement of facts and not necessarily the application of Judgment by the writer of the report to the facts stated therein. It may be that some reports contain both, the statement of facts and the inference to be drawn from the facts, but other reports may be purely factual and merely a presentation of the relevant facts and circumstances of a particular situation. Even in that sense, it may be difficult to accept the contention urged on behalf of the petitioners that the report to be made by the servant u/s 11 must necessarily refer to the fact of an opportunity being given to the dealer concerned to explain the irregularity and then to mention whether the public servant is satisfied with the explanation or not. In the result, therefore, it must be held that the report cannot be held invalid u/s 11 of the Act, merely because the report does not say that an opportunity has been given to the dealer for furnishing explanation with regard to the circumstances of the irregularity, and it can well be regarded as a

valid report for launching a prosecution if it contains necessary facts to show to the Court that the reporting authority had applied its mind and the report prima facie shows what particular acts constitute contravention of law, and the cognizance taken on such report cannot be regarded as a cognizance without jurisdiction.

17. To say this, however, should not be taken to lead to the inference that in every case it is desirable for the reporting authority to report for action against a dealer merely because an irregularity in terms of Clause 3(ii) of form B is detected by him. To allow this to be done would amount to launching prosecutions in many cases which will not stand scrutiny and would amount to sheer waste of public time. It is, therefore, desirable that the officers concerned while inspecting the place of business of a dealer should, as required by Clause 3(ii) of form B, give a chance to the dealer to explain the circumstances. To take recourse to this precaution might in several cases avoid unnecessary "prosecution and harassment to the dealer. Where, however, this has not been done, but the facts otherwise stated do make out an offence, it cannot be held that if the Court taking cognizance has proceeded upon such a report, it is to be quashed as being invalid.

Criminal Misc. No. 355/67:

18. In this case the report u/s 11 was made by the Assistant District Supply Officer, Barh, dated the 14th of March, 1967. It is stated therein that the officer under instruction from the Subdivisional Officer, Barh, raised the shop of the petitioner who is the proprietor of the firm Messrs Bhagwan Das Parmanand and holds licence No. 75/66. He checked the accounts of the firm and found the following irregularities:

- (1) Sale register was not maintained. This offends condition No. 3 of the licence.
- (2) The entries of the Stock register and the cash memos did not tally, which means that accounts have not been maintained properly as laid down in condition No. 3 of the licence.
- (3) The details of the source of receipt has not been indicated in the stock register. This contravenes condition No. 3(1) (b) of the Licensing Order.
- (4) Transaction was done and accounts maintained in weights other than the standard ones, i.e. maunds, seers, chhataks has been used instead of quintal and kilogramme. This offends Section 23 of the weights and Measures (Enforcement) Act.
- (5) As it transpired from an examination of the cash Memo, grain has been sold in large quantities to persons not having any grain dealing license which is against condition No. 7(a) (iii) of the Licensing Order.

These irregularities found by the raiding party of officers have been specifically stated in the report as also how they amount to an offence u/s 7 of the Act.

Learned Counsel contended that if a chance were given to the petitioner to explain, as mentioned in paragraph 5 of the report that a large quantity of grain was sold to persons not having any grain dealing licence, he could have explained that it was not so and, in fact, the persons who were shown as having purchased the grain did have grain dealers licence. Thus if a chance were given to the petitioner, his harassment by way of a trial in the Criminal Court could well have been avoided. In my opinion, however, although no opportunity was given to the petitioner to explain the circumstances which could well have been given to him, as I have already observed, this omission in itself will not render the report invalid. It contains full facts which would make out an offence u/s 7 of the Act and I am unable to hold that this report must be quashed merely for the omission as referred to above. The application, therefore, fails and must be dismissed.

Criminal Misc. No. 356/67:

19. The same would be the position with regard to Criminal Miscellaneous "No. 356 of 1967, in which the petitioner's business premises were raided by a party of officers including the Assistant District Supply Officer, the petitioner's firm being Messrs Ashok Industries and the petitioner being its proprietor. In this case also, in three paragraphs, the facts and the irregularities have been set out, referring in specific terms to the conditions of the wholesale foodgrains dealers licence which was infringed by the petitioner. Learned Counsel has drawn our attention to annexure B in which it is stated that stocks of paddy or rice in the Terai areas of Nepal intended for export to Bihar were not being moved on account of the ceiling imposed on the storage of food-grains in excess of one thousand quintals for more than one week under condition 7(v) of wholesale dealers licence. But with a view to encourage free flow of such rice or paddy from Nepal into Bihar, Government decided to waive the above condition of the wholesale licence in respect, of the stocks of paddy and rice exported into Bihar from Nepal. Learned Counsel contended that if a chance were given to the petitioner, he could have explained that the excess rice above two thousand quintals which he was authorised by the S.O.R., Patna, to store, was the rice imported from the Terai area of Nepal and was in terms of annexure B exempted from this restriction. That may be so. Since, however, I have already held that if the report contains an account of facts constituting an offence and shows that the reporting authority had scrutinised the facts properly, the report will not be regarded as a bad report on which cognizance cannot be taken, merely because by giving a chance to the delinquent the anomaly might be explained, although, as I have already indicated, in several instances it might, be a desirable course of follow. In the result, therefore, this application also must be dismissed.

Criminal Misc. No. 692/67:

20. In this case also the Supply Inspector, Supaul, raided the godown and premises of Messrs Vijoy Trading Company of which the proprietor is the petitioner Vijoy Singh Jain. Here also full details have been given of the various

kinds of foodgrains which were found on verification and how the difference by way of excess or shortage was detected. It appears to be a full report containing a summary of these facts and how an offence was made out u/s x of the Act. I am unable to hold that this report is defective in any manner and, even if a chance were given, the defects or some of them could at least have been explained by the petitioner. But, for the reason given above, this application also cannot be allowed and the report cannot be quashed. It is accordingly dismissed.

Cr. Revision No. 964/67:

21. In this case the report was made by Sri Brijnandan Prasad Singh, Assistant Godown Manager, Pinapore, who raided the business premises of Messrs Parmeshwar Prasad Deoki Lal, foodgrains dealer, Gola Road, Dinapore, on the 29th and 30th of March, 1967. This too is a detailed document wherein the irregularities are mentioned and how they constituted contravention of the various conditions of the licence has also been set out. In the circumstances, this report also cannot be struck down as invalid. This application also, therefore, fails and is dismissed.

Criminal Misc. No. 243167:

22. This is a case in which the Assistant District Supply Officer reported against the petitioner u/s 11 of the Act after he visited the business premises of Shyam Bhandar of which petitioner No. 1 is the proprietor and also holder of a licence of wholesale dealer in food-grains. A detailed account has been given in the report of the various articles as they were found on verification of the stock. The actual quantities were compared with the stock register and a number of irregularities were detected which have been systematically pointed out towards the end of the report under the heading "offences committed". Not only is it a full report but it may be stated that in one of the paragraphs mention is made that an opportunity was given to the wholesaler to explain some of the discrepancies in respect of sale of pulses, maize, mustard oil, vegetable ghee etc. The whole-saler gave an explanation in regard to the sale of these Articles which, prima facie, was found by the officers to be unsatisfactory, which is mentioned in the report. The report in this case, therefore, does not even suffer from the infirmity upon which comment has been made by the learned Counsel for the petitioners in the various cases. Even if it were a defective report in the sense that no opportunity was given to the dealer to explain the circumstances, I have already held that this by itself would not be a ground for holding that the report is invalid. If the facts constituting the offence have been set out in the report, it would make out that an offence u/s 7 of the Act appears to have been committed. This application too has no merit and it must be dismissed.

Criminal Revision No. 1136/67.-

23. The question of law raised on behalf of the petitioner is that his prosecution should be quashed because the report required to be made by a Public servant u/s 11 of the Act has not been made in this case. Since the Supply Inspector of

Bajpatti lodged a first information report at the Pupri Police Station and did not make a report to the Sub-Divisional Officer, it was, obviously, intended for investigation by the police. After the investigation was completed by the police Sub-Inspector under the supervision of the Deputy Superintendent and the Superintendent of Police, Muzaffarpur, a final report was filed on the 7th of January, 1966, to the Sub-divisional Officer of Sitamarhi. The Sub-divisional Officer after perusal of this report, took cognizance and transferred the case to a Munsif-Magistrate for trial by his order dated the 29th of June, 1967. The Police made a final report after taking into consideration a statement by the petitioner that the foodgrains seized by the Supply Inspector and the Sub-divisional Officer, Sitamarhi, were the produce from his own agricultural lands and he stored them for domestic consumption. The Supply Inspector, no doubt, could have made a report and cognizance could have been taken on foot of such report, which would have been in conformity with the requirement of Section 11 of the Act. In the present case, however, this was not done and the only officer thereafter who, if at all, could have proceeded in the matter would have been the investigating officer who could have filed a charge sheet which would have served the purpose of a report u/s 11. Since however, the police did not think it proper to file a report for action but expressed the opinion that there was no case made out against the petitioner, the Sub-divisional Officer was not competent to take cognizance in the case, as has been held in the case of *Bhagwati Saran and Another Vs. The State of Uttar Pradesh*, referred to above. The point is now well-settled that unless there is a report by a public servant who is satisfied that there is a prima facie case of contravention of any of the rules or orders issued under the Essential Commodities Act, no Magistrate can take cognizance of the offence and the prosecution cannot be launched in such a situation. The Sub-divisional Officer had no power to summon the accused person for trial after taking cognizance, as appears to have been done. The Sub-divisional Officer appears to have proceeded u/s 190(1) of the Code of Criminal Procedure which is, not applicable to a prosecution under the Act, because it is governed by the special procedure provided in Section 11. Some decisions have been brought to our notice such as *A.P. Misra Vs. The State*, *Gyasiram Vs. The State*, and *Abdul Halim and Another Vs. State of West Bengal*, for the proposition that the police is not empowered even to investigate any offence under this Act, because the punishment provided under the Act does not exceed the period of one year. It is urged, however, on behalf of the State that in the case of *Bhagwati Saran and Another Vs. The State of Uttar Pradesh*, the Supreme Court has pronounced that cognizance may be taken by a Magistrate even on the charge sheet submitted by the police. This point, however, is not material for deciding the question of merit on behalf of the petitioner.

24. The crucial point, however, is that in this case the police did not submit a charge sheet so that there was no report in any sense before the Sub-divisional Officer for taking cognizance in this case. The Supply Inspector could not be taken to have been satisfied that a prima facie case was made out., for, if it were

so, he would be authorised as a public servant to make a report to the Magistrate for action. The very fact that he did not do so but filed a first information report before the police shows that he was not satisfied by himself that a prima facie case was made out. The matter was left to the discretion of the police thereafter. The police, after investigation, came to the conclusion that no prima facie case was made out and, obviously, the explanation submitted by the petitioner was found acceptable, and hence the prosecution of the petitioner, in the circumstances, would not be justified. What then is the authority on which the Sub-divisional Officer could proceed to take cognizance of the case ? He was in error, therefore, in taking cognizance and transferring the case for trial to another Magistrate.

25. This case, therefore, has to be decided on its own special facts. In my opinion, the prosecution of the petitioner in the circumstances is illegal and it must be quashed.

26. In the result, Criminal Miscellaneous Nos. 243, 355, 356 and 692 of 1967 and Criminal Revision No. 964 of 1967 are dismissed and Criminal Revision No. 1136 of 1967 is allowed as indicated above.

R.J. Bahadur, J.

27. I agree.