
(1993) 02 PAT CK 0003
In the Patna High Court
Case No : Criminal W.J.C. No. 191 of 1985

Regent Cinema

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 7
Civil Procedure Code, 1908 (CPC) — Section 26, 4
Police Act, 1861 — Section 34

Citation : (1993) 2 BLJR 1014 : (1993) 2 PLJR 279

Hon'ble Judges : Nagendra Rai, J;G.C. Bharuka, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The petitioner has filed the present writ application for quashing the order dated 7-5-85 passed by the District Magistrate, Patna, in Cr. Misc. Case No. 2/64 by which he had directed the Licensee of the Regent Cinema Hall to pay a fine of Rs. 1, 000 u/s 7(1) of the Bihar Cinema (Regulation) Act, 1954 (hereinafter referred to as "the Act1).

2. The case of the petitioner is that one Sushil Kumar Sinha is the managing partner and the licensee of the. Regent Theatre popularly known as Regent Cinema. On 29-2-1984 M/s Regent Cinema was exhibiting the film "Inquilab" which was holding "A" certificate meaning thereby that the film was to be shown/ only to adults and not to be minors. At about 8.30 p. m. Shri Yogendra Prasad, Cinema Magistrate, inspected the cinema premises when the film "Inquilab" was being exhibited and found persons between the age group of 10 to 20 seeing the cinema in the cinema hall. The said persons were arrested u/s 34 of the Police Act and were produced before the District Magistrate for necessary action. Mr. R.P. Singh, Executive Magistrate, imposed fine on them. 15 persons out of them paid fines and were released and two of them could not pay fine and accordingly they were detained till payment of fine.

3. Thereafter a notice dated 1-3-84 (Annexure-3) was issued to the petitioner to show cause as to why action be not taken u/s 7(1) of the Act for the violation of the terms and conditions of the Licence as well as the direction of the licensing authority for not permitting minor to see film holding "A" Certificate.

4. A show cause was filed on behalf of the petitioner by one of the partners wherein the allegation made in the show cause notice was denied and it was stated inter alia that the Partners, Manager, and employees of the theatre were always vigilant and alert in checking and stopping the non-adults from seeing the said film. It was also asserted that minors were not seeing the Cinema at the relevant time.

5. The District Magistrate, Patna, by the impugned order imposed a fine of Rs. 1, 000 upon the petitioner u/s 7(1) of the Act.

6. The learned Counsel appearing on behalf of the petitioner contended that no provision have been prescribed/under the Act for the trial of the offences under the Act and as such the provision for trial as provided under the Code of Criminal Procedure would apply for the trial of the offences under the Act and in that view of the matter District Magistrate was not a competent authority to hold trial and impose fine on the petitioner and accordingly the order passed by him is without jurisdiction. The counsel appearing for the State tried to justify the impugned order on the ground that District Magistrate is a competent authority to impose fine u/s 7(1) of the Act.

7. Jurisdiction to try an offence is conferred upon a court by Statute which either creates the offence or creates the court. The Code of Criminal Procedure (hereinafter referred to as "the Code") contains provisions for the investigation, inquiry and trial of offences under the Indian Penal Code and the other penal laws. So far as the offences under other penal laws are concerned, if the particular Act enacting on offences also provides procedure for investigation, inquiry or trial then the same will exclude the application of the Code. It is apt to quote Section 4 of the Code which reads as follows:

Section 4 : Trial of offences under the Indian Penal Code and other laws.- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contain.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

8. From perusal of the Sub-section? (1) of Section 4 it is clear that the all the offences under the Indian Penal Code shall be investigated, enquired into, trial or otherwise dealt with according to the provision of the Code. According to Sub-section (2) offences under the other laws shall be also dealt with according to the

provisions of the Code except in cases where Special procedure has been provided by the Act creating an offence for dealing with the offences. In other words if the Special law creating an offence provides a Special procedure for the investigation, inquiry or trial of the offence then the special procedure shall exclude the operation of the Code.

9. In the present case licensee is alleged to have committed the offence u/s 7(1) of the Act which reads as follows:

7. Penalties. - (1) If the owner or person in charge of a cinematograph uses, the same or allows it to be used, or if the owner or occupier of, any place permits that place to be used in contravention of the provisions of this Act or if the rules made thereunder, or of the conditions and restrictions or subject to which any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees and in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

10. The question for determination is as to whether there is any provision under the Act with regard to the trial of the offence under the said Act. From the perusal of the provision of the Act it is clear that no provision has been made for the trial of the offence under the Act. In that view of the matter provision under the Code with regard to trial of offences shall apply to the trial of the cases under the Act.

11. Section 26 of the Code contains a provision with regard to the courts by which offences are triable. Relevant provision for the present case is Section 26(b) which runs as follows:

(b) any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such court and when no court is so mentioned, may be tried by:

(i) the High Court, or

(ii) any other Court by which such offence is shown in the first schedule to be triable.

12. As noticed above as no Court has been specified for the trial of offences under the Act the offence will be tried by the courts as mentioned in Section 26(b) (i) and (ii) of the Code. The District Magistrate is not one of the Courts under the Code and as such he has no jurisdiction to try an offence under the Act.

13. In this view of the matter the trial of the offence and imposition of fine by the District Magistrate is wholly without jurisdiction.

14. In the result the application is allowed. The impugned order is quashed.