

(2001) 11 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 17598 of 2000

Sada Nand Bhagat @ Sada Nand

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 48, 49
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 406, 409, 420, 467
Prevention of Food Adulteration Act, 1954 — Section 7

Citation : (2002) 1 PLJR 183

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. Kotwali (Kasim Bazar) PS Case No. 373/93 was instituted by Officer. Incharge of the said police station giving rise to GR case No. 1367/93. The substance of the allegations was that in the premises of Agricultural Produce Market Committee of Safiabad, the gate-keeper and other employees of the Market Committee were indulging in various illegal acts such as issuance of fake receipts so as to cheat the Market Committee of Its lawful revenue. The illegally collected market fee used to be distributed between concerned employees. After investigation, charge sheet was submitted against 13 accused persons including the Petitioner who claims in this petition that at the relevant time he was functioning as the correspondence clerk at Agricultural Produce Market Committee, Safiabad and was deputed as gate-keeper. The learned Chief Judicial Magistrate by order dated 29.11.1995 took cognizance of the offences under Sections 420, 406, 409, 467, 468/34 of the IPC and summoned the accused to face trial.

3. The Petitioner filed an application before the Judicial Magistrate for discharge on the ground that, provisions of IPC cannot be applied in this case in the light of Section 48 of the Bihar Agricultural Produce Markets Act (hereinafter referred, to as "the Act"). The Petitioner's contention was that Section 48 of the Act provides penalty for a maximum term of one year and with a fine upto Rupees one thousand or both for contravention of any provision of the Act or any rule or by-laws or order issued there under and hence, such special provision under the Act must by implication prohibit application of any offence under the Indian Penal Code. Reliance was also placed upon Section 49 of the Act which prescribes that no Court inferior to a Magistrate of the second class shall take cognizance or try any offence under the Act or under the Rules or by-laws made there under and no cognizance shall be taken of such offence except with the previous sanction of prescribed authority, which as per rules under the Act is the Market Committee or Assistant Director or Director or any officer authorized by him.

4. The learned Magistrate by order dated 23.6.1999 rejected the prayer for discharge and held that the offence alleged against the accused persons including the Petitioner are not offences covered under the provisions of the Act and there was no legal impediment in framing charge for the offences defined under the Indian Penal Code. Against the said order contained in Annexure-2 the Petitioner preferred a criminal revision before the Sessions Judge, Munger which was rejected by a reasoned order dated 9.5.2000. Learned Sessions Judge rejected the Petitioner's contention that for fraud, cheatings and misappropriation etc. no trial could be held under the provisions of the IPC because of special provision by way of Section 48 of the Act and because of requirement of sanction u/s 49 of the Act.

5. The same contention has been advanced before this Court through a petition u/s 482 of the Code of Criminal Procedure and by changing the prayer to one for quashing of entire criminal proceeding with regard to the Petitioner.

6. This Court has no hesitation in holding that interest of justice which is sine qua non for exercise of power u/s 482 of Code of Criminal Procedure does not require interference with the criminal proceeding against the Petitioner. The present petition although labelled u/s 482 Code of Criminal Procedure amounts to an attempt for second revision against the order of the Magistrate dated 23.6.1999 which is not permitted by the Code of Criminal Procedure.

7. So far as merits of the Petitioner's contention is concerned, it may be mentioned that learned Counsel for the Petitioner has placed strong reliance upon a judgment of this Court in the case of Yamuna Sah and Others Vs. The State of Bihar, in support of his contentions which have already been noticed above. The judgment in the case of Yamuna Sah related to a prosecution instituted u/s 7 of the Prevention of Food Adulteration Act and Section 420 of the Indian Penal Code. The parties advanced arguments on the footing that the proceeding was mainly u/s 7 of the Adulteration Act. In that judgment it was presumed and accepted without discussion that Section 420 of the Indian Penal

Code had no independent application or was not material and the prosecution was quashed because no written consent of the prescribed authority in terms of the Adulteration Act had been obtained for initiation of the prosecution nor the samples had been sent to Public Analyst as per procedure prescribed by the Adulteration Act. The said judgment has laid down that where complaint suffers from fundamental legal defects, such as want of mandatory sanction for prosecution, or absence of complaint by legally competent authority, the High Court may quash the proceeding in exercise of its inherent jurisdiction.

8. In the present case there is no quarrel with the aforesaid proposition but the judgment in the case of Yamuna Sah (supra) cannot be accepted as an authority for the proposition advanced by learned Counsel for the Petitioner in the present case. In this case, there is no allegation that any offence has been committed which may be punishable u/s 48 of the Act and which may require previous sanction of the prescribed authority u/s 49 of the Act. In such circumstances, there is no violation of any law or of legal principle in prosecution of the Petitioner for offences under the Indian Penal Code. In fact, the very foundation of submissions advanced on behalf of the Petitioner is misconceived because Section 48 of the Act merely provides for penalty for contravention of provisions of the Act or any rule or by-laws or orders issued there under and does not define any specific offence which may in substance substitute the general offences of forgery, cheating, criminal misappropriation etc. In such circumstances, the general principle that special provisions shall replace the general provisions cannot have any play. The theory of replacement can be considered only where the special provisions substantially relate to the same matter as covered by general law and not otherwise. This point can be well appreciated on the basis of a simple illustration. Suppose the Market Committee issues an order that its employees should maintain peace and should not violate any law in the premises of the Market Committee. This general order may stand violated on account of an employee indulging in verbal abuse or simple assault or on account of his committing a serious offence like murder attracting the provisions of the Indian Penal Code. If the argument advanced on behalf of the Petitioner is accepted then on account of violations of general order of the Market Committee the prosecution must be confirmed to one u/s 48 of the Act and that also only after necessary sanction u/s 49 of the Act and no prosecution of any employee of the Market Committee will be permissible under the Indian Penal Code even if the factum of murder be admitted. Such proposition does not have sanction of any legal principle and is clearly unacceptable.

9. For all the aforesaid reasons, this Court agrees with the reasoning's given by the learned Magistrate as well as the Sessions Court and finds no merit in this application which is accordingly dismissed.