(1998) 08 PAT CK 0015

In the Patna High Court

Case No : Criminal Miscellaneous No''s. 5863 of 1993

S.K. Kishorpuria — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 47, 47A, 49, 55, 56
Penal Code, 1860 (IPC) — Section 120B, 272

Citation : (1998) 3 PLJR 365

Hon'ble Judges : Ravi Nandan Sahay, J

Bench : Single Bench

Advocate : Y.V. Giri, Jyoti Sharan and Dina Bandhu Mishra, in Cr. Misce Nos. 5863 of 1993, Braj Kishore Prasad, Pankaj Kumar Sinha and Rishi Raj Sinha, in Cr. Misce Nos. 5978 of 1993 and G.P. Bimal, in Cr. Misce Nos. 7367 of 1993, for the Appellant; Ashwini Kumr Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nandan Sahay, J.—All the three quashing applications arising from Bihar sharif Police Station Case No. 161 of 1992 relating to offences under Sections 47A and 49 of Bihar Excise Act, 1915 and Sections 272/120B of the Indian Penal Code, are being disposed of by this common order.

2. Cr. Misc. No. 5863 of 1993 has been filed by S.K. Kishorpuria, who is resident of Bhagalpur and is proprietor of the firm, namely, M/s Shiv Shankar Chemicals Industry (Bihar) Ltd. Petitioner in Cr. Misc. No. 5978 of 1993 is Maharana Pratap Singh, who is an employee of the firm M/s Shiv Shankar Chemicals Industries Ltd. Petitioner in Cr. Misc. No. 7367 of 1993 is Shashi Kumar of Samastipur. He is also an employee of the firm, M/s Shiv Shankar Chemicals Industries Ltd.

3. On 9.4.1992 the Superintendent of Excise, Nalanda submitted a written report to the officer in-charge of Biharsharif Police Station, on the basis of which a case was registered and investigation commenced. According to the First Information Report, in Nalanda district wholesale supply of. country liquor was being done

from the warehouse situated at Biharsharif and Hilsa to the vendors (retail dealers). The contractor of the said warehouse was M/s Shiv Shankar Chemicals Industries (Bihar) Ltd. The vendors wore supplied country liquor in poly pack (sachets). The sacheting plant had been established in Biharsharif warehouse where sacheting was being done. The country liquor in sachet was also sent from Biharsharif warehouse to Hilsa warehouse from where it was being supplied to the vendors/retail dealers. Aforesaid two warehouses were maintained by the representative of the contractor M/s Shiv Shankar Chemicals Industries Ltd. and two Inspectors of Excise Department, who were called as warehouse officers. They keep the country liquor in joint lock and key with the representative of the contractor. At Biharsharif warehouse a sachet plant is in joint charge of Sub-Inspector of Excise, Warehouse Officer and the representative of the Contractor, namely, Maharana Pratap Singh, who is called Warehouse clerk. There is one another Warehouse clerk posted by the contractor, namely, Shashi Kumar. Naresh Ram is the Sub-Inspector of Excise who has been appointed as Warehouse Officer for Hilsa warehouse and the name of Warehouse clerk is Munesh Sharma, who is representative of the contractor. Country liquor was being manufactured under the supervision of the Warehouse officer with the help of the police and thereafter sacheting was being done in his supervision and the country liquor was being packed in three kinds of poly pack containing 400 Ml., 200 ml. and 100 ml and thereafter it was being supplied to the vendors in pouches.

4. On 31.3.1992 certain vendors reported to the Superintendent of Excise that some sachets (poly packs) were smelling. The complainant went to the Warehouse and took out the samples of spirit and some sachets and sent it to the Excise Chemist at Patna vide Memo No. 488 dated 31.3.1992 for examination. There was no complaint In relation to sachets on 31.3.1992 by any of the vendors. Samples were taken on subsequent dates also. On chemical analysis of the samples, it was found that country liquor in vat No. 3 and sachets essence which had been found was not fit for human consumption. Copy of the analysis report was enclosed along with the F.I.R. According to the analysis report country liquor and sachets contained Acetone. The complainant complained that the Warehouse Officer was liable to be prosecuted on account of presence of Acetone in the liquor which rendered unfit for human consumption which was also against the statute and violation of the licence granted to the Contractor, and the action of the accused persons constitute offence u/s 49 and 47A of the Excise Act.

5. It is contended on behalf of the Petitioners that no infirmity was found in the spirit, which was supplied by the distillery to the Warehouse. However, some acetones have been found either in the country liquor or in sachets. It was contended that the country liquor was manufactured under the supervision of Warehouse Officers, who are officers of the Government of Bihar and then it is sent through pipe in sacheting machine and there it is put. in sachets. It is also done in presence of Warehouse Officers. The representative of the Petitioner

makes arrangement for utensils etc. It is submitted that in the sample which was taken on 31.3. 1992 no acetone was found in rectified spirit. It was found to be correct and full proof and therefore, the rectified spint which had been supplied by the distillery (contractor) was full proof. So far sachet of 400 ml. and 100 ml. is concerned, no infirmity was found. Only sachet containing 200 ml. country liquor was found to be defective. From the sample dated 4.4.1992, no defect was found which was taken from one Parwalpur Country Liquor Shop which is owned by the vendor and the contractor has got no concern. The sample taken on 5.4.1992 in the pouch of 200 ml. and 100 ml. were found to be correct but the pouch of 400 ml. was found to be not upto mark which contained acetone. The sample taken on 8.4.1992 from Vat No. 3 was also examined by the Chemical Analyst and he in his report said that it was defective. It is pointed out that Vat No. 3 was used for mixing water in the rectified spirit to convert into country liquor which was being done under the supervision and control of Warehouse Officer.

6. Mr. Y.V. Girl, learned senior counsel for the contractor S.K. Kishorpuria, submitted that the Petitioner being owner and contractor of the firm and he has nothing to do with the affairs of the warehouse business. His prosecution, therefore, is illegal and abuse of the process of the court. Mr. Giri further submitted that there is no material against his client to suggest his involvement. The only material on the basis of which his client has been made accused has been mentioned In para 90 of the case diary. According to which the Petitioner company was requested by the Excise authority through Memo No. 479 dated 30.3.1992 that their authorised representative for the Warehouse Maharana Pratap Singh was local person and had been working since long at one place and therefore he should be transferred, but the Management did not transfer Maharana. Pratap Singh. Mr. Giri submitted that the Petitioner company cannot be prosecuted only because the Petitioner S.K. Kishorepuria being one of the Directors of the company did not transfer the accused Maharana Pratap Singh on the request of the complainant. There is no other material against the Petitioner.

7. Mr. Giri further submitted that it is undisputed that the warehouse has been established under the Excise Act and is under the control and supervision of Excise Department and managed by its officers posted therein by the Excise Department known as Warehouse officers. Warehouse Officers have been authorised to take delivery after being satisfied that the spirit supplied by the distillery is perfect. After taking delivery the spirit is stored in the warehouse and lock is put by the Warehouse Officer and the key is kept by him and the other key is kept by the Superintendent of Excise. Biharsharif Warehouse Officer received rectified spirits from the distillery on 9.3.1992 and neither he nor the Superintendent made any complaint with regard to any infirmity in the said spirit. Under the Excise Act it is the responsibility of the warehouse officer to reduce the strengh of spirit by mixing required quantity of water. Mr. Giri has referred to licence In Form No. 27 for the period from 15.7.1989 to 31.3.1993. The relevant conditions of the licence has been extracted in para-19 of Cr. Misc.

No. 5863 of 1993. Mr. Giri contended that the licensee has been given right to set up sachet plant but he has no control over the mixing of water in the required quantity with the rectified spirit for reducing its strength to 60 U.P. This. is done by the Excise Officers by giving them special training for this purpose.

8. Mr. Giri next submitted that unless duty is paid the intoxicant remains in warehouse under bond. All such sachets packed with country liquor remains under the control of warehouse officer and sold only when the licenced retail vendors deposit the duty in treasury through challans showing payment of the duty thereof. Learned Counsel submitted that the written report and report of the analyst sent to the Superintendent of Excise dated 9.4.1992 confirms the fact that the rectified spirit supplied by the distillery to the warehouse was not adulterated with any denaturant. The analysis report has not reported anything abnormal so far rectified spirit is concerned. Therefore, it was contended that the liability of the Petitioner with regard to presence of aceton in 200 ml. pouch cannot be fastened on the distillery because there was no infirmity or any denaturant was present in the sample of rectified spirit supplied by the contractor distillery.

9. The main argument is that the Petitioner being contractor of the company cannot be fastened with any criminal liability because firstly even according to the analyst''s report the rectified spirit supplied by the distillery was of required standard and secondly even though the company holds licence for sacheting machine, no responsibility has been cast on the contractor for reducing the strength of the spirit by mixing water. The only responsibility of. the Petitioner company was to depute one clerk conversant with English for assisting the warehouse officer and to provide coolie to help the warehouse officer for reducing spirit to liquor. Therefore, the Petitioner as a Director of the company has been made accused on false grounds. The Petitioner was never physically present nor was required under the law to be present at the site of the sachet plant at Biharsharif.

10. The contention on behalf of other Petitioners is that they were merely clerks deputed to the warehouse and the warehouse is in direct control of the Warehouse Officer and not the potitioner Contractor.

11. Learned Counsel for the Petitioner also submitted that in this case, cognizance has ben taken on the report of the offlcer-in-charge of the police station, hence the cognizance on such a report was illegal in view of Section 87 of the Excise Act, which lays down that no Magistrate shall take cognizance of an offence referred to in Section 47, Section 49, Section 55 or Section 56, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the State Government. Learned Counsel for the Petitioners has referred to an unreported decision of this Court in Cr. Misc. No. (sic) in which the learned single Judge has held that the Magistrate had no jurisdiction to take cognizance on the charge sheet. His contention is tenable.

12. In Ram Prasad Singh v. State 1957 B.L.J.R. 342, Sahai, J. held that Clause (d) of Section 7(2) empowers the State Government to order that "all or any of the powers and duties assigned by or under this Act to any officer appointed under Clause (c) of this section shall be exercised arid performed by any Government officer or any other person". The State Government in pursuance of the power conferred under the said clause referred to above, authorised the police officer not below the rank of an officer in charge of a police station to exercise the powers of an officer of the Excise Department, an officer in charge of a police station can investigate an offence u/s 47 and some other sections of the Act and can make complaint or report on the basis of which a Magistrate can take cognizance because, for these purposes, the officer in charge of a Police Station exercises the power of an officer of the Excise Department. It was further held that Where a charge sheet contains a statement of fact to the effect that a prima facie case for an offence u/s 47(a) of the Excise Act has been made out, it must be deemed to be a "report" as provided for In Section 87 of the Excise Act. This decision was not placed before the learned single Judge.

13. So far Cr. Misc. No. 5863 of 1993 is concerned, the Petitioner is the proprietor of the firm which was given contract for the manufacture of liquor. The Petitioner has no concern with the day to day operation of the warehouse in the manufacture of liquor in sacheting.

14. Section 47A of the Bihar Excise Act is applicable to an offence committed by the company but it is permissible only when there is evidence that the offence has been committed with the connivance or in collusion with the Director of the Company. But in the instant case there is only allegation that the Petitioner of Cr. Misc. No. 5863 S.K. Kishorpuria was requested by the Superintendent of Excise to transfer his employee Maharana Pratap Singh. This is the only allegation against the Petitioner S.K. Kishorpuria in para-90 of the case diary. It is not, disputed that the Petitioner S.k. Kishorpuria was no coming enter the warehouse which was controlled by the the officers of Excise Department and the employees of the Petitioner.

15. In my opinion, the prosecution of the Petitioner S.K. Kishorpuria is wholly unwarranted and therefore, the order of cognizance so far this Petitioner is concerned, deserves to be quashed and is accordingly quashed. Cr. Misc. No. 5863 of 1993 is accordingly allowed.

16. So far other Petitioners of Cr. Misc. No. 5978 of 1993 and 7367 of 1993 are concerned, these Petitioners were connected with day to day affairs of the warehouse and they have not made out dear case for quashing the proceeding. They may raise all the questions raised before this Court at the time of framing of the charges and if prima facie no case is found against them by the trial court, they shall be discharged. However, if they are not discharged, they will be permitted to challenge the order of the trial court before the Sessions Judge. Cr. Misc. Nos. 5978 of 1993 and 7367 of 1993 are dismissed with above observations.

