
(2007) 07 PAT CK 0090

In the Patna High Court

Case No : Criminal Miscellaneous No. 21621 of 2003

Sri Ram Talkies and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Citation : (2007) 07 PAT CK 0090

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners and learned Counsel for the State.

2. The petitioners seek quashing of the first information report registered as Bhawanipur P.S. Case No. 33 of 2002 u/s 7(4) of the Bihar Cinemas (Regulation) Act, 1954 (hereinafter referred to as "the Act").

3. The first information report came to be lodged on 12.4.2002 alleging that the petitioners were exhibiting films without a valid licence under the Act.

4. Learned Counsel for the petitioners relied upon Section 7(4) of the Act to submit that for an offence under the Act, for alleged running a cinema hall without a licence, there was a bar in institution of a first information report much less of taking of cognizance unless the same was in the form of a complaint made by the District Magistrate or any other Officer duly authorised by him. Learned Counsel further relied upon Section 2(d) of the Code of Criminal Procedure (hereinafter referred to as "the Code") to submit that a Police report is not included within the word complaint. He placed reliance upon a decision of the Supreme Court reported in Daulat Ram Vs. State of Punjab, . The first information report was, therefore, liable to be quashed as without jurisdiction and the order of cognizance accordingly be annulled.

5. Learned Counsel for the State submitted that the offence being cognizable u/s 7(2) of the Act there was no illegality in registration of the first information report as it was the bounden duty of the Police to register a first information

report of a cognizable offence and statutory duty to investigate and to submit the necessary report in terms of Section 173 of the Code. It was a question of fact to be determined during investigation, if actually the petitioners had applied for renewal of licence, which was pending on the date that the prosecution was initiated.

6. This Court does not consider it necessary to deal with the factual submissions of the parties as to whether an application for renewal had been made and was pending or not on the date of initiation of the prosecution.

7. Section 7(4) of the Act reads:

7(4) No Court shall take cognizance of an offence under this Act except on a complaint made by the District Magistrate or any other officer duly authorised by him

8. In view of the specific statutory mandate, the only question for consideration is whether a first information report would have been lodged and the matter investigated by the Police. If this could not be done, is the order of cognizance valid.

9. In the case of Daulat Ram (*supra*) the Supreme Court was considering the effect of the provisions of Section 195 of the Code. The Section 195 reads as follows:

(1) No Court shall take cognizance - (a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;....

10. The similarity of the words between the two provisions has to be noticed. Both of them bar cognizance of an offence under the respective laws except on a complaint made in writing by the District Magistrate or an Officer authorised by him/public servant concerned or some other public servant to whom he is subordinate. It was held that the words "no court shall take cognizance" have been interpreted to mean that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section. The submission of the charge sheet by the Police after registering a case was held to be not due compliance with the provisions of Section 195 in absence of a complaint in writing by the public servant concerned. The order of cognizance was, therefore, held to be bad.

11. A Bench of this Court in a case reported in 1997 (1) PLR 56 (*The Hindustan Lever Limited v. The State of Bihar and Ors.*) was considering the effect of Section 32 of the Drugs and Cosmetics Act, which requires the initiation of a prosecution by filing a complaint by a Drug Inspector. It was held that the prosecution cannot be instituted for an offence under the Act except by a Drug Inspector or by a person aggrieved or by a recognised Consumer Association. The Police was not empowered to register any first information report and

investigate the case to submit charge sheet u/s 173 of the Code. The submission on behalf of the Opposite parties presently was likewise raised therein that since the punishment was for three years, the Police was competent to investigate on the report of the Drug Inspector. It was held that the prosecution can be instituted only by filing a complaint by the Drug Inspector and the Police has no jurisdiction to register a first information report and investigate into the offence under the Act. The investigation by the Police was, therefore, found to be without jurisdiction and first information report was, accordingly, quashed.

12. In view of the aforesaid discussion and the case laws discussed, this Court does not find any reason to arrive at any different conclusion.

13. This application is allowed. The first information report registered as Bhawanipur P.S. Case No. 33 of 2002 is, accordingly, quashed.