
(2011) 02 PAT CK 0082
In the Patna High Court
Case No : CWJC No. 17979 of 2010

Vikash Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 19, 19(1), 19(6), 20(2)
General Clauses Act, 1897 — Section 26
Motor Vehicles Act, 1988 — Section 113, 113(3), 114, 115, 138
Penal Code, 1860 (IPC) — Section 409, 425
Prevention of Corruption Act, 1947 — Section 5(2)
Prevention of Damage to Public Property Act, 1984 — Section 2, 3, 3(2), 6

Citation : AIR 2011 Patna 72 : (2011) 59 BLJR 1354 : (2011) 1 PLJR 1153 : (2011) 8 RCR(Civil) 2294

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Anand Kr. Ojha and Ashok Kr. Karna, for the Appellant; Ram Balak Mahto, J.P. Karn and Ashok Kr. Dubey for State, Chittranjan Sinha and Rajeev Shekhar and Abhanjali for Intervener, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—LA. No. 10324 of 2010 has been filed by the President, Bihar Truck Owner's Association, Patna for being impleaded as a party Respondent to the writ petition. Although learned Counsel for the Petitioner vehemently opposes the impleadment of intervener as party Respondent, but from the facts and circumstances of the case it is quite apparent that the intervener Applicant as well as his Association is vitally interested in upkeep and maintenance of the roads of this State and the damage caused to the roads of the State adversely affects their business and hence the outcome of this writ petition is bound to have immense effect one way or the other upon intervener's Association and its members. Accordingly, this interlocutory application is allowed and the intervener Applicant Sri Bhanu Shekhar Prasad Singh, President, Bihar Truck Owner's

Association, Patna S/o Late B.P. Sinha, resident of Village and P.O.-Majhaulia Estate, District-Sitamarhi (Bihar) is added as Respondent No. 5 to the writ petition.

2. Petitioner is the owner of the Truck bearing Registration No. JH-02M-2857 registered with the authorities of the Transport Department at Hazaribagh Jharkhand and has filed this writ petition for quashing Letter No. 4047 dated. 10.8.2010 (Annexure-4) issued by the Secretary-cum Commissioner of Transport, Government of Bihar (Respondent No. 2) by which directions were issued for prosecution of persons plying overloaded vehicles on the roads of the State of Bihar under the Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as the PDPP Act for the sake of brevity) and also for directing the Respondents to provide adequate weighing facilities with trained hands to undertake the exercise of weighing of the vehicles for invoking the powers u/s 194 read with Section 200 of the Motor Vehicles Act, 1988 (hereinafter referred to as the M.V. Act for the sake of brevity) subject to the option of the transporter, without initiating any proceeding as per the impugned letter dated 10.8.2010 (Annexure-4) and for other ancillary reliefs.

3. The grounds taken by the Petitioner in his writ petition was that the impugned letter which was an executive instruction from the authorities was violative of the provisions of the M.V. Act, which made the offence of overloading a compoundable offence u/s 200 of the M.V. Act and hence the direction of criminal prosecution for the offence of overloading without satisfying the condition precedents for invoking the provisions of the PDPP Act amounted to violation of the Fundamental Rights guaranteed under Article 19(1)(g) of the Constitution of India to practice Trade and Commerce including the Transport business without any unreasonable obstruction. It was also claimed that initiation of proceedings under the M.V. Act and the PDPP Act amounts to double jeopardy causing unreasonable and arbitrary restriction on the business of transportation which is an established trade of the Petitioner. Petitioner has also taken the ground that despite noticing the facts that there may be possibility of damage to the road surface, pollution and safety hazard, the Hon'ble Supreme Court had recommended the exercise of powers under the M.V. Act apart from taking sufficient steps for strict enforcement of the provisions relating to overloading under the M.V. Act, and the Central Motor Vehicles Rules, 1989. It was further claimed that the authorities are putting the transporters, including the Petitioner to arbitrary and unreasonable restrictions under the threat of prosecution severely affecting Petitioner's right to pursue his transport business, as the impugned executive instruction issued by the authorities has conferred unbridled and unguided power upon the authorities to prosecute the allegedly overloaded vehicles without instruction to determine the factum of damage before initiating any prosecution.

4. Learned Counsel for the Petitioner very eruditely and elaborately argued various aspects of the case and claimed that M.V. Act is a self-contained

sufficient enactment prevailing over the general laws. It is also stated that Sections 113(3), 114 and 115 thereof provide limit of weight and load on the vehicles as per the Certificate of Registration which is granted u/s 41 of the Act, whereas Section 194(1) & (2) of the Act provides punishment for plying vehicle with weight in excess to the permissible limit for which fine is provided and not imprisonment, whereas Section 200 of the Act provides that any offence punishable under Sections 177, 178, 179, 180, 181, 182, 183, 184, 186, 189, 190, 191, 192, 194, 196 and 198 of the Act, shall be compounded by such officers or authorities and for such amount as the State Government may satisfy on this behalf and as soon as the offence is compounded the offender if in custody shall be discharged and no further proceeding shall be taken against him in respect of such offence. Learned Counsel for the Petitioner further claimed that this is a benevolent provision which had been duly affirmed as such by the Apex Court in case of P. Ratnakar Rao and others Vs. Government of Andhra Pradesh and others,, . He also relied upon another decision of the Apex Court in case of Paramjit Bhasin and Ors. v. Union of India and Ors. reported in 2006 (1) PLJR (SC) 65 holding that it was for the State Governments concerned to make necessary arrangements to ensure that the difficulties highlighted can be suitably remedied by the State Government themselves without in any way overstepping statutory prescriptions.

5. Learned Counsel for the Petitioner also argued that the then Commissioner of Transport, Government of Bihar issued letter dated 10.5.2010 (Annexure-2) to all the District Magistrates of the State for taking action against plying of overloaded vehicles under the provisions of the PDPP Act, but the said order was objected to by several persons and hence the Secretary of the Department stayed the said letter of the Commissioner until a policy decision is taken by the Government vide letter dated 14.5.2010 (Annexure-3). It was further claimed that when the earlier Commissioner of Transport became Secretary of the Department he issued the impugned letter dated 10.8.2010 (Annexure-4) restoring the directions passed by him as Commissioner vide letter dated 10.5.2010 (Annexure-2) without any mention of the earlier letter of stay issued by the then Secretary of the Department on 14.5.2010 (Annexure-o) in spite of the fact that no policy decision in that regard had been taken by the Government.

6. Learned Counsel for the Petitioner asserted that in spite of the aforesaid facts and circumstances and merely on the basis of the abovementioned impugned letter of the Secretary-cum-Commissioner of Transport dated 10.8.2010 (Annexure-4) an F.I.R. was lodged against the Petitioner for the alleged offence of overloading under the provisions of the PDPP Act. It was also submitted that an objection was raised with respect to the said action of criminal prosecution in case of overloading before the Hon"ble Minister, Department of Transport but it was never replied and hence this writ petition has been filed. It was further asserted that the statements made by the Respondents in their counter affidavit denying the claims of the Petitioner are not backed by any document and hence such unsubstantiated statements made in the counter affidavit cannot be legally

entertained as had been held by the Apex Court in case of *Bharat Singh and Ors. v. State of Haryana and Ors.* alongwith other analogous cases reported in *Bharat Singh and Others Vs. State of Haryana and Others*, .

7. Learned Counsel for the Petitioner averred that the PDPP Act applies only in case of public commotions, riots, etc. as is apparent from its Statement of Objects and Reasons and hence it is not at all applicable to the facts of the instant case where there is no question at all of any public commotions, riots etc. It was further claimed that Section 3 of the PDPP Act is with respect to the place where mischief causing damage had taken place, but the said provision does not include road, but in spite of the aforesaid fact an F.I.R. has been lodged under the aforesaid provision although admittedly the vehicle was seized from the road and there was no allegation of damage to any public property as mentioned in the said provision. He further stated that in these facts and circumstances the provisions of the PDPP Act were wrongly applied whereas the offence committed under Sections 113, 114 and 115 of the M.V. Act provide only punishment of fine u/s 194 and even that punishment is compoundable u/s 200 at the instance of the owner of the vehicle, who was always ready to pay fine. In this connection he relied upon a decision of the Apex Court in case of *Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others*, in which it was held that administrative action should not be against the objects of the Act and also relied upon another decision of the Apex Court in case of *Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*, in which it was held that parallel procedure for the same offence cannot be legally adopted.

8. It is further contended by learned Counsel for the Petitioner that High Court is a court of construction and while dealing with the language of a statute it has to be ascertained from and accord to, the statute, the meaning, the purpose, the will and the object which the legislature intended for, as had been held by the Apex Court in case of *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others*, as well as in case of *Chern Taong Shang and Others Vs. Commander S.D. Baijal and Others*, . He further contended that it would not be correct to assume that the expression as defined in the interpretation clause would necessarily carry the same meaning throughout the statute as has been held by the Supreme Court in case of *Indian Handicrafts Emporium and Ors. v. Union of India and Ors.* reported in AIR 2003 SCW 4617.

9. Learned Counsel for the Petitioner also submitted that as per the provision of Section 138 of the M.V. Act no rule has been made by the State Government and such matters are dealt with only by executive instructions, but the impugned letter has travelled much beyond the scope of the M.V. Act specially when damage to roads is not a separate question rather it is incidental to the violation of permits with regard to overloading, which is covered under the M.V. Act. It was further averred that vide Article 19(1)(g) of the Constitution protection has been guaranteed to the citizens to practice any profession or to carry on any occupation, trade or business according to their own free will which has been

blatantly violated by the action of the authorities which is illegal and hence even if any illegal action seemed to be reasonable it cannot be justified. Hence, it was claimed that the impugned action of the Respondents authorities was not sustainable in law.

10. Learned Advocate General appearing for Respondents State of Bihar and its authorities very precisely and succinctly argued that M.V. Act does not deal with Damage of Public Property rather it is only with respect to the violation of permit and certificate of registration granted by the authority for plying the vehicle, whereas the POPP Act is with respect to the other aspect, namely Damage of Public Property caused by the vehicle, which is the concern of impugned order of the authority dated 10.8.2010 (Annexure-4). It was also claimed that the vires of PDPP Act is not under challenge in the instant case and the object of the said Act is to curb the damages on the public road itself and to protect it from damages and the impugned direction is only to implement or/and enforce the law and not to demolish it. He further claimed that the authorities by their impugned actions are not violating the provision of Article 19(1)(g) of the Constitution rather they are imposing reasonable restrictions as permitted under Article 19(6) thereof on the exercise of right conferred by the said clause in the interest of the general public and for protection of the public road. In this connection he relied upon several decisions of the Apex Court e.g. in case of Saghir Ahmad Vs. The State of U.P. and Others, , in case of B.P. Sharma Vs. Union of India (UOI) and Others, and in case of M.R.F. Ltd. Vs. Inspector Kerala Govt. and Others, .

11. It was further argued that several studies have been conducted on the road crust damages due to overloading of commercial vehicles, which is quite apparent from letter dated 19.11.2010 (Annexure-B) issued by the Secretary of the Road Construction Department to the Secretary of Road Transport Department and hence action had to be taken under the PDPP Act which was specifically enacted for that purpose, whereas the provisions of the M.V. Act are only with respect to the violation of the permit and certificate of registration, hence there being two separate causes of action, there is no question of any double jeopardy as had been decided by the Apex Court in case of The State of Madhya Pradesh Vs. Veereshwar Rao Agnihotry, as well as by this Court in case of Ishodanand Biswas and Others Vs. The State, . Thus, he asserted that the action of the authority concerned was well within the scope and precinct of the Constitution and the concerned enactments.

12. Learned Counsel for the intervener Respondent submitted that plying of commercial vehicles, overloaded beyond the prescribed limit, had been causing serious damage to the roads of Bihar since several years resulting in great losses and difficulties not only to the intervener's Association and its members but also to the other commercial and private vehicles of the State. He further claimed that the intervener Respondent had been raising this matter before the authorities concerned since much before and only after due enquiries made in that regard the authorities had passed the impugned orders which were quite

legal and justified.

13. From the arguments raised by learned Counsel for the parties as well as from the materials on record, it is apparent that undisputedly Petitioner is the owner of the Truck bearing Registration No. JH-02M-2857 which was loaded with coal and was intercepted on the Grand Trunk Road in the district of Aurangabad by the District Transport Officer, Aurangabad (Respondent No. 4) because it was found to be overloaded by* 19,980 Kg. as the maximum R.L. weight allowed as per the registration certificate granted for the said vehicle was 25,000 Kg., but it was found to be weighing 44,980 Kg. as per Kanta Challan (Annexure-1 series). Accordingly, an F.I.R. bearing Aurangabad (M) P.S. Case No. 135 of 2010 dated 17.8.2010 (Annexure-1) was lodged making the owner of the vehicle, namely the Petitioner as an accused for plying an overloaded vehicle exceeding the limit prescribed in the certificate of registration punishable under Sections 177, 194, 113 and 114 of the M.V. Act. The Petitioner is not aggrieved by the said action as it is punishable only with fine under the provision of Section 194 of the M.V. Act which is also com-poundable u/s 200 of the M.V. Act on the willingness of the accused as has been held by the Apex Court in case of P. Ratnakar Rao and Ors. (supra).

14. The Petitioner is aggrieved by Memo No. 4047 dated 10.8.2010 (Annexure-4) issued by the Secretary-cum-Commissioner of Transport, Government of Bihar (Respondent No. 1) by which directions were given to all the District Magistrates of the State to initiate a separate proceeding against the drivers, permit holders and owners of the vehicles found to be overloaded u/s 3(2)(e) of the PDPP Act after getting the weight measured over the Weigh Bridge. It is claimed that due to such actions double jeopardy shall be caused to the persons concerned as for the same offence they will be punished twice, i.e. u/s 194 of the M.V. Act as well as u/s 3(2)(e) of the PDPP Act.

15. Section 113 of the M.V. Act provides that the State Government may prescribe the conditions for the issuance of permits for transport vehicles by the State or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route and no person shall drive or cause or allow to be driven in any public place, any motor vehicle, the weight of which exceeds the weight specified in the certificate of registration of the vehicle. Section 114 of the M.V. Act empowers the Authorized Officer to get the vehicle and its contents weighed if he has reason to believe that the goods, vehicle or trailer is being used in contravention of Section 113 of the M.V. Act. Section 115 of the M.V. Act empowers the Authorized Officers to restrict the use of vehicles if he is satisfied that it. is in the interest of public safety or convenience or because of the nature of any road or bridge etc.

16. The Petitioner cannot raise any dispute with regard to the fact that the certificate of registration issued to him for his transport vehicle by the State/ Regional Transport Authority u/s 41 of the Act prescribed certain limits of weight which was not followed and accordingly the aforesaid provisions of the M.V. Act

were contravened and hence F.I.R. was lodged u/s 194 of the said Act after getting the loaded vehicle weighed on the Kanta Challan, which is clear from Annexure-1 series. The provision of Section 194 of the M.V. Act reads as follows:

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 113 or Section 114 or Section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load;

(2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorized in this behalf u/s 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees.

17. The objects and reasons of the M.V. Act as provided therein is to consolidate and amend law relating to motor vehicles taking into account the fast increasing number of commercial as well as personal vehicles, adoption of higher technology in automotive sector, greater flow of passenger and freight with the least impediments, road safety standards and pollution control measures, simplification of procedure and policy, liberalization for private sector and effective ways of tracking down traffic offenders. From the aforesaid objects and reasons as well as the provisions made in the M.V. Act it is quite apparent that the said Act is only with respect to the motor vehicles and compliance of the specific provisions therein and to punish the offenders for violating the terms of permit and registration certificate granted by the authorities and for contravening the provisions of the Act. As is apparent from the nomenclature of the Act, namely Motor Vehicles Act as well as from the aforementioned objects and reasons and the provisions of the Act, it is only concerned with the vehicle and its contents and is not concerned with the resultant damages caused" to the roads and bridges etc.

18. On the other hand, the objects and reasons of the PDPP Act is prevention of damage to public property and curbing the acts of vandalism and damage to the public property including destruction and damage caused during riots and public commotion and to deal effectively with the cases of damage to public property by punishing such offenders to the public property. The PDPP Act in Section 3 provides as follows:

(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in Sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being

(a) any building, installation or other property used in connection with the

production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

19. There can be no doubt that the Government roads and highways are public properties. Ordinance No. 3 of 1984 has defined "Public Property" as any property, whether immovable or movable, which is owned by, or in the possession of, or under the control of the Central Government, or any State Government, or any local authority, or any corporation established by, or under, a Central, Provincial or State Act, or any Company as defined in Section 617 of the Companies Act, 1956, or any such other institution, concern or undertaking financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments as the Central Government may, by notification in the Official Gazette, specify in this behalf. The same definition is provided u/s 2(b) of the PDPP Act.

20. So far the word "Mischief used in Section 3 of the PDPP Act is concerned, it is not defined in the said Act, but Section 425 of the Indian Penal Code defines "Mischief and provides that whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief. As per the said definition it is quite apparent that any person knowingly causing loss or damage to the public roads commits a "mischief. Hence damage in question caused to the public roads by violating the specific provision of law clearly amounts to mischief as provided u/s 3 of the PDPP Act.

21. Learned Counsel for the Petitioner raises an objection that the objects and reasons of the PDPP Act as given therein is to curb the acts of vandalism and damage to public property during riots and public commotions only, hence in the instant case admittedly there being no riot or public commotion, the provisions of the PDPP Act cannot be made applicable. In this connection it may be noted that the words used in the PDPP Act while describing its objects and reasons is "To curb acts of vandalism and damage to public property, including destruction and damage caused during riots and public commotions". Thus it is quite apparent that the main emphasis is the acts of vandalism and damage to public property

in any form including any destruction or damage during riots and public commotions.

22. The Apex Court in case of Jagir Singh and Others Vs. State of Bihar and Another etc. etc., has specifically held that "The general rule of construction is not only to look at the words but to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances". A Division Bench of this Court also in case of K.N. Farms Industries (Pvt.) Ltd. Vs. State of Bihar and Others specifically held that when the word "includes" is used then that means that an extensive meaning has to be given to the word. Thus it cannot be legally presumed that the PDPP Act is applicable merely in the situation of riots and commotions, rather the word "Includes" used in the object thereof clarifies that the said Act is with respect to all the acts of vandalism and damage caused to the public property at any time and by any cause and the situation of riots and commotions were not excluded from it.

23. Learned Counsel for the Petitioner has also laid emphasis on the word "Vandalism" used while describing the objects and reasons in the PDPP Act and had claimed that the allegation against the Petitioner cannot be legally termed as vandalism. From the aforesaid statement of objects and reasons as given in the PDPP Act it is quite apparent that the word "vandalism" is not used singly rather it is used alongwith damage to the public property i.e. "vandalism and damage to public property". Hence the objection raised by learned Counsel for the Petitioner is not sustainable in law. Furthermore, the word "vandalism" has been defined in Black's Law Dictionary as willful or ignorant destruction of public or private property, especially artistic, architectural, or literary treasures as well as the actions or attitudes of one who maliciously or ignorantly destroys or disfigures public or private property. ADVANCED LAW LEXICON (3rd Edition) published under the general editorship of Hon'ble Justice Y.V. Chandrachud (Former Chief Justice, Supreme Court of India) defines "vandalism" as defacing or damaging property. THE OXFORD ENGLISH DICTIONARY defines "vandalism" as willful or malicious destruction or damage to works of art or other property. Hence the plea of learned Counsel for the Petitioner is not sustainable in the eye of law, as the term Vandalism for the purposes of PDPP Act, includes damages and loss knowingly caused to the public property by any one and committing mischief with respect thereto.

24. Considering the entire facts and circumstances as well as the position in law as detailed above it is quite apparent that the provisions of the PDPP Act are legally attracted to the damages caused to any public property including the roads by public transportations etc. and hence when the provision of the aforesaid Act is attracted to such damages caused by any one, the offenders committing such mischief and causing damage to such public property would naturally become liable to be punished under its provision, namely Section 3 of

the PDPP Act.

25. It may be noted in this connection that vires of the PDPP Act or any of its provision is not under challenge in this case and the point raised by the Petitioner is "Double Jeopardy", claiming that for the same offence he cannot be punished twice and when he is already going to be punished under the M.V. Act which is a self-contained enactment, no step for his punishment under the PDPP Act as directed by the Secretary, Department of Transport, Government of Bihar (Respondent No. 1) vide memo dated 10.8.2010 (Annexure-4) can be taken for the same offence as it would amount to double jeopardy. He has further claimed that under the provision of Section 194 of the M.V. Act a punishment of fine is provided, which can be compounded u/s 200 of the M.V. Act, whereas under the provision of Section 3 of the PDPP Act a sentence of imprisonment, which is not compound-able, is provided and there is no provision for its compounding, hence the Petitioner is bound to be punished twice for the same offence if the impugned action is allowed to be continued.

26. From the provisions of the M.V. Act it is quite apparent that it deals only with respect to the violations of the terms of permit and certificate of registration granted by the authorities for plying the vehicles on the road and it does not at all deal with the question of damages to the public property caused by such persons or their vehicles. On the other hand, the PDPP Act is not at all concerned with violation of the terms of permit and certificate of registration committed by the public transporters rather the said Act is only concerned with the damages caused to public property, including the public roads by anyone including public transporter.

27. Thus from the constructions and language of the provisions made in the two central enactments, namely the PDPP Act of 1984 and the M.V. Act of 1988, it is quite apparent that the law makers being fully aware of the requirements of the society enacted the aforesaid two statutes with the aforesaid distinct intention, purpose and objects covering different fields, none of them contradicting or following the other. This aspect of the matter is also clarified by Section 6 of the PDPP Act according to which the provision of the said Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, and nothing contained in that Act shall exempt any person from any proceeding which might apart from this Act, be instituted or taken against him. Thus decisions of the Supreme Court in case of *Chern Taong Shang and Ors.* {supra}, in case of *Tinsukhia Electric Supply Co. Ltd.* (supra) as well as in case of *Indian Handicrafts Emporium and Ors.* (supra) relied by learned Counsel for the Petitioner are not at all attracted to this case.

28. Although the act of the Petitioner is only one, namely plying of overloaded vehicle on the public road but by this act he had committed two distinct offences punishable under two different enactments, namely (i) violation of the terms of permit and certificate of registration granted by the authorities which is punishable under the M.V. Act, and (ii) causing damage to the public property

which is punishable under the PDPP Act. Hence the claim of the Petitioner that he is being punished more than once for the same offence violating Article 20(2) of the Constitution of India is neither factually correct nor legally tenable as he is being proceeded against for two distinct offences punishable under two separate Acts and no parallel procedure for the same offence is being adopted and thus neither there is any question of "double jeopardy" which means second trial for the same offence, nor the decision of the Supreme Court in case of *Hira Lal Hari Lal Bhagwati* (supra) relied by learned Counsel for the Petitioner is applicable.

29. Furthermore, in these circumstances Section 26 of the General Clauses Act, 1897 will also not be applicable to the facts of this matter as the said provision is with respect to double punishment for the same offence. In this regard a Division Bench of this Court in case of *Ishodanand Biswas and Ors. v. The State* (supra) had specifically held that a person who commits an offence under the Penal Code and a case is lodged against him, he can also be punished in another case under the provisions of the Arms Act if he has committed that offence with an unlicensed arms causing another offence under the Arms Act and hence there is nothing unjust in a separate trial under the provisions of the Arms Act. Similarly the Apex Court in case of *State of Madhya Pradesh v. Veereshwar Rao Agnihotri* (supra) had held that the offence of criminal misconduct punishable u/s 5(2) of the Prevention of Corruption Act, 1947 is not identical in essence, import and content with an offence punishable u/s 409 of the Indian Penal Code, 1860.

30. So far the averments made by learned Counsel for the Petitioner with respect to the protection granted under Article 19(1)(g) of the Constitution of India to practice any profession, or to carry on any occupation, trade or business is concerned, it is quite apparent that by their impugned action under the provisions of the PDPP Act Respondents are not stopping Petitioner's business rather they are restricting the Petitioner from misusing his privileges and damaging public property. Article 19(6) specifically provides that nothing in Sub-clause (g) of Clause-1 shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

31. The Apex Court as far back as in 1954 in case of *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, as well as in case of *Saghir Ahmad Vs. The State of U.P. and Others*, held that it cannot be denied that the State has power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public and such traders cannot legally claim the privileges under Article 19(1)(g) of the Constitution of India. Furthermore in case of *J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others*, , the Apex Court after considering the matter in detail had come to the conclusion that Clause-6 of Article 19 of the Constitution is intended to strike a balance between individual freedom and social control. In the instant case the Petitioner's right to ply his vehicle on the Government road

is not taken away, rather a reasonable restriction has been imposed upon such persons whose act is bound to cause damage to the public property including the roads.

32. The Apex Court in case of *M.R.F. Ltd. v. Inspector, Kerala Govt, and Ors.* (supra) as well as in case of *B.P. Sharma v. Union of India and Ors.* (supra) had specifically held that regulatory measures for better efficiency, conduct and behaviour in the public interest is legal and proper and the right which is guaranteed to all the citizens under Article 19(1)(g) of the Constitution to practice any profession, or to carry on any occupation, trade or business can be restricted as per Clause-6 of Article 19 of the Constitution of India in the interest of general public. Hence, the Government is fully entitled to impose restrictions on the right of the people under Article 19(1)(g) of the Constitution of India, but that restriction has to be reasonable. In the instant case the right of the Petitioner to ply his vehicle on the public road is not taken away rather by the provisions of the PDPP Act he is only required to ply his vehicle on the public roads in the manner prescribed in law so that the public property, including the public roads are not damaged. Thus, the restriction is quite legal and reasonable.

33. Furthermore, it is quite apparent from the materials on record that the Government and its authorities had very carefully conducted several studies and considering the said Studies and Reports etc. as is apparent from Annexure-B, Annexure-C, Annexure-D and Annexure-E had found that among the reasons for any premature damages to the public road, the overloading of vehicles is the main cause which not only causes considerable damage to the road networks but also contributes to the serious problems of maintaining road safety on our roads. Thus, the factum of damage caused to the public road by overloaded vehicles had been fully considered by the authorities before taking the impugned steps. The vehicle of the Petitioner was found to be overloaded after getting it weighed at the appropriate weighing facility, namely Kanta Challan, which is fully proved by Annexure-1 series.

34. Road networks are arteries of our country as it is used for transportation of people and freight from one place to the other place, including far flung areas and to every nook and corner maintaining a lifeline for our vast country. It is also used for taking personnel and materials in cases of emergency and urgent requirements for the security of our homeland and benefit of its people. Hence, the road networks cannot be allowed to be damaged by such unscrupulous persons for their personal aggrandizement as its blockage and damage at one place is bound to have vast ramifications and serious implications. Accordingly, the restrictions imposed under the PDPP Act is quite reasonable and comes within the purview of Clause-6 of Article 19 of the Constitution of India.

35. From the aforesaid facts and circumstances this Court finds that the statements made in the counter affidavit filed by the State of Bihar and its authorities are fully backed by the documents, namely the Studies and Reports after which the authorities concerned were constrained to take actions in that

regard as per the PDPP Act. Accordingly, decision of the Supreme Court in case of Bharat Singh and Ors. (supra) relied upon by the Petitioner cannot be legally applied to this case. Furthermore, the administrative action taken by the authorities concerned is precisely within the ambit of the objects and provisions of the Act and steps were rightly taken to make necessary arrangements for prevention of damage to the public properties, including the public roads without overstepping the statutory prescriptions. Accordingly, decisions of the Supreme Court in case of Utkal Contractors and Joinery Pvt. Ltd. and Ors. (supra) and in case of Paramjit Bhasin and Ors. (supra) do not come to help the case of the Petitioner.

36. So far the question of letter dated 14.5.2010 (Annexure-3) issued earlier by the erstwhile Secretary of the Department staying action under the provision of PDPP Act until a policy decision is taken by the Government is concerned, it was obviously frivolous and misconceived as when the statute with clear and unambiguous provisions had already been enacted by the Parliament and had come into force, there was no occasion for the authorities to take any policy decision to the contrary, nor in fact any such policy decision has been taken by them. Hence, the incumbent Secretary of the Department was quite justified in ignoring the earlier letter dated 14.5.2010 (Annexure-3) while issuing the fresh letter dated 10.8.2010 (Annexure-4) to all the District Officers "for taking steps in accordance with the PDPP Act.

37. The State Government and its authorities are duty bound to take strict actions under the PDPP Act against the offenders as and when any vehicle, private or commercial, carrying freight or passenger is found to be causing damage to public property including roads by overloading which has become quite rampant these days causing great havoc, mischief and disruptions in the transport system of the State.

38. Considering all the points involved as discussed above, this Court does not find any merit in this writ petition, which is accordingly dismissed.