

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37391 of 2012

=====

M/S Spicy Beverage Pvt. Ltd.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner : Shri Y.V.Giri, Sr.Advocate.

For the Opposite Party/s : Shri Nityanand Tiwary (App)

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

4 14-05-2015 Heard.

A truck bearing registration no.BR-22/5741 and carrying about 20,000/- litres of spirit was found standing by the road side in Muzaffarpur. The officials of the Excise Department, Muzaffarpur suspected the spirit illicitly being transported against either no licence or using a licence over and again. The truck was seized and with the seizure of the truck, the person, driver or his possession was also searched as appears from the seizure memo. The owner book of the truck, the licence of the driver, i.e., the driving licence, the carriage pass from Sitamarhi Distillery, Riga as also the pass for carrying the liquor issued by Superintendent Excise, Nalanda at Biharsharif were also recovered and seized. As noted above, the officials of the Excise Department were of the view that it was an unlawful transportation of illegally possessed spirit in violation of the provisions of Bihar Excise Act and they

lodge a prosecution report against accused persons named in column no.2 of the report under Section 47A of the Excise Act.

It appears that on the seizure of the truck, it triggered many litigations. The one among them being Cr.Misc.No.42521 of 2010 and an order was passed by the Court in the following terms:-

“Let petitioners, named above, appear in the court of Chief Judicial Magistrate, Muzaffarpur in connection with Excise Case No.04 of 2010 along with a copy of this order, whereafter the court below should call for the two registers from the prosecuting officer and verify whether the same transit pass was used twice for carriage of rectified spirit. Until such verification is made, no coercive steps be taken against the petitioners. It is, however made clear that if after verification it is found that allegations in the prosecution report are not substantiated from the two registers petitioners be admitted to the privilege of bail, otherwise appropriate orders remanding them to jail custody be passed and report submitted to this Court.”

In the light of the direction issued as above by this Court , the Judicial Magistrate, Ist Class, Muzaffarpur who was seized with Excise Case No.04 of 2010 (Trial No.4170 of 2011) directed the production of the concerned documents, like, the registers, etc and after perusing the same had passed an order on 30th of July, 2011 and had very clearly recorded that the same pass had not been used over and again for transporting the rectified spirit and the register indicated that the truck which was seized with the spirit and in respect of which the prosecution report was filed,

was carrying the validly issued rectified spirit on a valid pass which was authentically issued by the competent officer. The Magistrate was also of the view that the facts and records indicated as if it may not be the commission of an offence.

It is on the directions and findings of the Magistrate, it was contended by Shri Y.V.Giri, learned senior counsel appearing on behalf of the petitioner, that the whole prosecution and its continuance was not only an abuse of the process of the Court but was only to achieve the harassment of the petitioner and other persons which could never be allowed to continue. Submission was that if the records were as clearly as to indicate that no offence was made out, then the very prosecution report and the initiation of the prosecution on that basis of the petitioner and others appears quite not in the interest of justice.

I have perused the records in the form of connected documents, the copies of which have been placed before this petition and I have also perused the order passed on 26.03.2011 in Cr.Misc.No.42521 of 2010 by which a direction was issued to the Magistrate to seek the production of the concerned records and to verify as to whether it was a duplicity as regards the use of the pass or permit as the case may be for taking delivery of the rectified spirit for the purposes of carrying it to any destination in

an unlawful manner. Besides, I have also gone through the order passed by the Judicial Magistrate, Ist Class, Muzaffarpur in compliance to the order passed by this Court in the above noted Cr.Misc. Petition.

The learned Magistrate had sought the production of the documents and as appears from the records made by him through his order dated 30.07.2011, the Register produced before him indicated that on a valid pass being produced the Sitamarhi Distillery had delivered the seized quantity of spirit for being carried by the truck seized by the officials of the Excise Department. The destination was also recorded and on verification the same was also found corrected. The Magistrate did not find that the pass against which the spirit was issued had been used over and again for any purpose especially for the receipt of the quantity of spirit for being carried to any destination other than Nalanda at Biharsharif. Valid endorsements on the pass and connected records, like, the pass issued by the Excise Superintendent Nalanda at Biharsharif with that issued by Exercise Superintendent, Sitamarhi were found quite in consonance with each eliminating any legitimate presumption that the issuance, possession and transportation of the seized liquor would be unlawful or illegal.

If the records were as straight as was found by the Judicial Magistrate, Muzaffarpur, then indeed the prosecution did not have a case and the Excise Department did not have any cause to place the prosecution report for initiating the prosecution of the petitioner and others.

On considering the gamut of facts and the connected records which are reflected also in the judicial order, I am of the opinion that the very prosecution of the petitioner and other accused persons in Excise Case No. 04 of 2010 presently, pending before the Judicial Magistrate, 1st Class, Muzaffarpur appears a sheer abuse of the process of the Court and its continuance is no longer conducive to the ends of justice.

In the result, the petition succeeds. The very prosecution which was initiated by filing the prosecution report as also the prosecution and any order consequent upon it are hereby quashed.

The petition is allowed in the above terms.

(Dharnidhar Jha, J)

B.Kr./-Saif

U		T	
---	--	---	--