

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34957 of 2014

Arising Out of PS.Case No. -175 Year- 2013 Thana -BAHADURPUR District- DARBHANGA

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Ritesh Kumar @ Banti Son of Dr. Satrudhan Raut, resident of Belwaganj,
P.O. & P.S.- Laherisarai, District- Darbhanga.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. G.P. Vimal, Advocate

For the Opposite Party/s : Renu Kumari(App)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

5 02-08-2017

Heard learned counsel for the petitioner and the State.

The petitioner has challenged the order dated 23.6.2017 passed in Trial No. 3657 of 2014 arising out of Bahadurpur P.S. Case No. 175 of 2013 whereby the learned Magistrate rejected the petition for discharge under section 239 of the Cr.P.C.

The short question raised by Sri Ganga Prasad Vimal, counsel appearing on behalf of the petitioner is that the entire proceeding is vitiated on account of investigation by Sub-inspector of Police in teeth of provision under section 77 of the Excise Act.

Counsel for the petitioner submits that under the law Excise Inspector and above have jurisdiction to investigate but in the instant case investigation was done by Sub-inspector of Police



having absolutely no jurisdiction in the matter.

Mr. Vimal has relied upon the judgment of this court in case of *Saheb Kumar @ Sanjay Kumar Vs. The State of Bihar reported in 2014(4) PLJR 509* wherein this Hon'ble Court in the facts situation held out that in terms of Section 77 of Bihar Excise Act ,1915 investigation by Assistant Sub-Inspector of Police is without jurisdiction and the cognizance was quashed by this Hon'ble Court.

Section 77 of the Act reads as follows:-

“(1) A Collector may, without the order of a Magistrate, investigate offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have powers to inquire into or try under the provisions of I[ChapterXIII of the Code of Criminal Procedure, 1973 (Act 2 of 1974) relating to the place of inquiry or trial.

(2) Any other Excise Officer specially empowered in this behalf by the State Government in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a court having jurisdiction over the local area to which such officer is appointed would have power to inquire into or try under the aforesaid provisions.”



In view of the fact that the Act prescribes particular authority to investigate offence pertaining to Excise Act hence, investigation by authorities or officers other than prescribed under the Act is impermissible. It is well settled proposition of law that if law requires a thing to be done in a particular manner it has to be done in the manner prescribed or not at all as any other mode of its performance is forbidden by necessary implication. This line of reasoning was coined by the *Chancery Court in the case of Taylor Vs. Taylor 1875 1ch.D426* which was followed by the Apex Court and this court consistently including recently in the case of State of Rajasthan Vs. Mohinuddin Jamal Alvi reported in AIR 2016 S.C. 2386 wherein the apex Court held out that the trial under TADA is vitiated for want of prior approval of District Superintendent of Police despite the fact that approval was taken of Additional Director General of Police.

Para 4 of the aforesaid judgment is quoted for ready reference:-

“As per the aforesaid Section, no information about the commission of offence under TADA is to be recorded by the police without the prior approval of District Superintendent of Police. The specific authority which is named under sub-Section (1) of Section 20A is District Superintendent of Police. In the present case, it is on record that the approval that was taken was of Additional Director



General of Police Mr. Shyam Partap Singh Rathore. The TADA Court has treated the said approval as valid because of the reason that approval is given by an authority which is higher than the District Superintendent of Police. The question, therefore, is as to whether it is only District Superintendent of Police whose approval will meet the requirements of law or it can be given by an Officer higher in rank. This question is no more res integra and is settled by a series of judgment of this Court. It is not necessary to give account of all those judgments as in the latest judgment rendered by this Court in Hussain Ghadially @ M.H.G. A. Shaikh & Ors. V. State of Gujara (2014) 8 SCC 425 : (AIR 2014 SC (Supp) 1659 Paras 17, 18 & 19), all the previous precedents are taken note of and on that basis, this Court has reiterated the position in law that even an authority higher in rank would not be competent to give the approval as required under sub-Section (1) of Section 20A of the TADA Act. The same has been interpreted in the said judgment in the following manner:-

“21. A careful reading of the above leaves no manner of doubt that the provision starts with a non obstante clause and is couched in negative phraseology. It forbids recording of information about the commission of offences under TADA by the police without the prior approval of the District Superintendent of Police. The question is whether the power of approval vested in the District Superintendent of Police could be exercised by either the Government or the Additional Police



Commissioner, Surat in the instant case. Our answer to that question is in the negative. The reasons are not far to see:-

21.1

We say so firstly because the statute vests the grant approval in an authority specifically designated for the purpose. That being so, no one except the authority so designated, can exercise that power. Permitting exercise of the power by any other authority whether superior or inferior to the authority designated by the Statute will have the effect of re-writing the provision and defeating the legislative purpose behind the same-a course that is legally impermissible. In joint Action Committee of Air Line Pilots' Association of India v. Director General of Civil Aviation (2011)5 SCC 435: (AIR 2011 SC 2220), this Court declared that even senior officials cannot provide any guidelines or direction to the authority under the Statute to act in a particular manner.

21.2 Secondly because exercise of the power vested in the District Superintendent of Police under section 20-A (1) would involve application of mind by the officer concerned to the material placed before him on the basis of whereof, alone a decision whether or not information regarding commission of an offence under TADA should be recorded can be taken. Exercise of the power granting or refusing approval under Section 20-A (1) in its very nature casts a duty upon the officer concerned to evaluate the information and determine having regard to all attendant circumstances whether or not a case for



invoking the provisions of TADA is made out. Exercise of that power by anyone other than the designated authority viz. the District Superintendent of Police would amount to such other authority clutching at the jurisdiction of the designated officer, no matter such officer or authority purporting to exercise that power is superior in rank and position to the officer authorized by law to take the decision.

21.3 Thirdly, because if the Statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. All other modes or methods of doing that thing must be deemed to have been prohibited. That proposition of law first was stated in Taylor v. Taylor (1875) 1 ChD 426 and adopted later by the Judicial Committee in Nazir Ahmed v. King Emperor AIR 1936 PC 253 and by this Court in a series of judgments including those in Rao Shiv Bahadur Singh & Anr. V. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh v. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha v. Mahavir Prasad 1999 (8) SCC 266 : (AIR 199 SC 3558), Dhananjaya Reddy v. State of Karnataka 2001 (4) SCC 9 : (AIR 2001 SC 1512 and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. 2009 (4) SCC 755 : (AIR 2008 SC 1921). The principle stated in the above decision applies to the cases at hand not because there is any specific procedure that is prescribed by the Statute for grant of approval but because if the approval could be granted by anyone in the police hierarchy the provision specifying the authority for grant of such



approval might as well not have been enacted.”

Since Excise Act prescribes particular authority to investigate into the matter but investigation was done by Sub-Inspector of Police in the instant case the same is without jurisdiction.

Since the investigation itself is without jurisdiction, the entire proceedings launched on the basis of such investigation is without jurisdiction as such follow-up action of taking cognizance is also unauthorized as without jurisdiction as it was based on unauthorized investigation.

In the result, the application is allowed. The entire proceedings in Trial no. 3657 of 2014 arising out of Bahadurpur P.S. Case No. 175 of 2013, pending in the court of learned Judicial Magistrate, 1st Class, Darbhanga is quashed.

(Anil Kumar Upadhyay, J)

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