

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9229 of 2011

Arising Out of PS.Case No. -136 Year- 2004 Thana -null District- SAMASTIPUR

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Indradeo Singh, son of Late Dwarika Singh, resident of village-Khanpur,
P.S.-Didarganj, District-Patna, Manager, Dhillan Transport Agency, Pethia Gachhi,
District-Samastipur.

.... Petitioner

Versus

1. The State of Bihar
2. Birendra Kumar, Food Inspector, District-Samastipur, C/o Civil Surgeon
Office, Sadar Hospital, Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Baxi S.R.P. Sinha, Senior Advocate
Mr. Ram Naresh Ray, Advocate

For the Opposite Party/s : Mr. M.K. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-10-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been filed for quashing the order dated 28.08.2006 passed in G.O. Case No.3 of 2004 by the learned Judicial Magistrate, 1st class, Samastipur whereby cognizance has been taken against the petitioner under Sections 7(iv), 21, 18-A and 7(iv) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act').



2. Samastipur Muffasil P.S. Case No.136 of 2004 dated 24.03.2004 was instituted for the offences under Sections 414 and 120-B read with 34 of the Indian Penal Code against accused persons namely, Chhatrapal and Manager of Dhillon Transport Agency on the basis of the written report submitted by one Rajeshwar Prasad Mishra, Sub-Inspector of Police. As per report, the truck bearing Registration No. UP 13-D-5477 was intercepted at Mohanpur Power House. The driver of the truck disclosed his name as Chhatrapal Singh, son of Prem Lal Singh. He disclosed that he has loaded the goods of Dhillon Transport Agency from Uttar Pradesh and was going to Samastipur office of the said agency. On demand, the driver produced the relevant papers of the truck and other goods loaded in it, but he could not show the papers of 21 bags of *Shikhar Gutakha*. On further inquiry, the driver disclosed that he had loaded the said 21 bags of *Shikhar Gutakha* at Tamkuhiraj near Bihar and Uttar Pradesh border. The police seized 21 bags of *Shikhar Gutakha*.

3. After institution of the said first information report (for short 'FIR'), Investigating Officer investigated the case and, after completion of investigation, submitted charge-sheet under Section 414 and 120B read with 34 of the Indian Penal Code against the accused persons including the petitioner.



4. Thereafter, the present G.O. Case No.3 of 2004 was registered on the basis of prosecution report submitted by one Birendra Kumar, Food Inspector, Samastipur. In his written report, he has stated that the special PP (PFA Act) had requested, in writing, the Civil Surgeon, Samastipur to lodge a fresh FIR of Muffasil Thana, Samastipur Case No. 136/04, dated 24.03.2004 and he has further requested that the case must be legally tried in the court of SDJM under section 16(A) of 'the Act'. On the aforesaid request of the special PP, the Civil Surgeon ordered him to do the needful. After which, he went to the Muffasil Police Station on 27.03.2004 and found a truck bearing Registration No. UP 13 D 5477 loaded with *Shikhar Gutakha* was parked nearby thana. In absence of the truck driver, he did not touch the bags of *Shikhar Gutakha* and related truck and after reading the first information report lodged in thana, he seized 21 full big jute bags of banned *Shikhar Gutakha* on paper only for further investigation by the permission of the court.

5. On the basis of the said prosecution report, the learned Judicial Magistrate took cognizance of the offences mentioned above against one Chhatrapal and the Manager, Dhillon Transport Agency.

6. Learned counsel for the petitioner submitted that the impugned order taking cognizance of the offence and



summoning the petitioner has mechanically been passed without judicial application of mind. He submitted that though Section 7(iv) of 'the Act' is not a penal provision, the learned Magistrate has mechanically taken cognizance of the said offence. He contended that Section 7(iv) of the Act has been repeated twice in the impugned order. He further contended that there is no provision like Section 18-A under the Act under which cognizance has been taken. He contended that the only other section under which cognizance has been taken is section 21 of 'the Act' which is also not a penal provision and it prescribes Magistrate's power to impose enhanced penalties notwithstanding anything contained in Section 29 of the Cr. P.C. 1973.

7. On the other hand, learned counsel for the State submitted that since the truck driver failed to produce any paper with regard to transportation of 21 bags of *Shikhar Gutkha*, which was seized in connection with the police case, no error can be found with the order passed by the learned Magistrate by which cognizance of the offences under the Act has been taken by the learned Magistrate. He submitted that the Government of Bihar vide Gazette Notification dated 31st March, 2003 had empowered the Food (Health) Authority to prohibit the sale of any article of food for the time being in the interest of public health as it was found necessary



in the interest of public health to take immediate and effective measures to prevent the general public from being addicted to 'Gutka' or 'Pan Masala', containing tobacco or not containing tobacco or by whatever being form. Whereafter, the Director-in-Chief, Health Service, who was also Food (Health) Authority, Bihar issued Notification under Section 7 of the PFA Act directing that no person shall himself or by any person on his behalf, shall manufacture for sale, or store, sell or distribute 'Gutaka' or 'Pan Masala', containing tobacco or not containing tobacco, or by whatever name called, for a period of five years with effect from 1.4.2003. He contended that in view of the aforesaid notification, the transportation of Gutaka by a goods carrier Dhillon Transport Agency was clearly in violation of law.

8. In reply, learned counsel for the petitioner contended that it is true that some of the articles booked in the said truck were loaded in the truck at Samastipur, but the *Gutaka* in question was booked in Uttar Pradesh for being unloaded at Guwahati, Assam, but the same was seized in the way by the Muffasil Police Station. He submitted that by notification of the Health Department, Government of Bihar, Patna 'Pan Masala', which can be known by any name, production, sale, storage or distribution was banned in the entire State of Bihar in the year 2003,



but the transportation of the same was not prohibited. Thus, no case under any of the provisions of ‘the Act’ is made out.

9. I have heard learned counsel for the parties and perused the record.

10. The learned counsel for the petitioner has rightly contended that the provisions prescribed under Section 7(iv) and 21 of ‘the Act’ are not penal provisions.

11. Section 7(iv) of ‘the Act’ reads as under:-

“7. Prohibition of manufacture, sale, etc., of certain articles of food.—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

(i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;”

12. Similarly, Section 21 of ‘the Act’ reads as under:-

“21. Magistrate’s power to impose enhanced penalties.—Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate or any Judicial Magistrate of the first class to pass any sentence authorised by this Act, except a sentence of imprisonment for life or for term exceeding six years in excess of his powers



under the said section.”

13. Thus, I find that the learned Magistrate totally failed to look into provisions of law and materials available on record while taking cognizance of the offence. There is complete lack of judicial application of mind. It can be further highlighted from the fact that though there is no provision like Section 18-A of ‘the Act’, the learned Magistrate has taken cognizance of the said offence also. Learned counsel for the petitioner is further correct in his submission that in the impugned order, the learned Magistrate has referred Section 7(iv) of ‘the Act’ twice.

14. I further find force in the submission of the learned counsel for the petitioner that by the aforestated notification of the Health Department, Government of Bihar, though production, sale, storage or distribution of ‘Pan Masala’ was banned in the entire State of Bihar, the transportation of the same was not prohibited. There is no allegation in the complaint that the accused persons were found producing, selling, storing or distributing *Shikhar Gutakha* in the State of Bihar. Admitted case of the prosecution is that the truck was intercepted in transit.

15. In view of the discussions made above, the impugned order dated 28.08.2006 passed in G.O. Case No.3 of 2004 by the learned Judicial Magistrate, 1st class, Samastipur cannot be



sustained. It is set aside, accordingly.

16. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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