IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.407 of 2017

Arising Out of PS. Case No.-45 Year-2016 Thana- BATHNAHA District- Sitamarhi

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Sanjay Kumar Gupta, Son of Late Swaminath Gupta, Resident of Mohalla- Court Bazar, Sitamarhi, P.S.- Sitamarhi, District- Sitamarhi.

... ... Petitioner

Versus

1. The State of Bihar through the Superintendent of Police, Sitamarhi.
2. The Officer- Incharge, Bathanaha P.S., District- Sitamarhi.
3. The Superintendent of Excise, Sitamarhi.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Advocate
For the Respondent/s : Mr. Vikas Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 10-11-2022

The sole petitioner in this case is seeking quashing of the First Information Report registered vide Bathnaha P.S. Case No. 45 of 2016 registered under Sections 420, 467, 472, 473 and 120B of the Indian Penal Code. By amending the writ application, the petitioner has further prayed for quashing of the final form no. 226 of 2022 dated 15.07.2022 by which the petitioner has been chargesheeted under Sections 420, 409, 467, 472, 473 and 120B of the Indian Penal Code. The amendment application was allowed by this Court vide order dated 01.08.2022 and an opportunity was given to the State to file its objection by way of an additional counter affidavit. The State has filed its additional counter affidavit whereafter the matter has been heard at length on 01.11.2022 and 03.11.2022.

Brief Facts of the Case

2. As per the First Information Report, M/s Saibya Liquors Private Limited, Sitamarhi (hereinafter referred to as the 'company') acted with an intention to commit fraud and thereby causing loss of revenue to the State Exchequer. It is alleged that the company had manufactured 10,327 cases of Officers' Choice Blue Whiskey, a brand owned by M/s Allied (wrongly typed as 'Spiced' instead of 'Allied' in the FIR) Blenders and Distillers Private Limited (hereinafter referred to as the 'Allied Blenders') for which the company used the FSSAI number of its earlier lessee namely M/s United Spirits Limited (In short 'USL') even though the agreement with M/s USL was revoked in past.

3. It is alleged that on coming to know about wrong labelling, the Superintendent of Excise, Sitamarhi vide Memo No. 1189 dated 14.08.2015 issued a show cause notice to the Director of the company and in compliance of the same, the Director of the company admitted to having used the FSSAI number of M/s USL. It is, thus, alleged that the Director and other associated employees of the company acted with an intention to commit fraud by using the FSSAI number of M/s USL in an unauthorised manner by doing business on the identity of another person. With these allegations, the FIR (Annexure '1') has been lodged.

Submission on Behalf of the Petitioner

4. Learned counsel for the petitioner submits that on a bare perusal of the first information report, it would appear that the company has manufactured Officers' Choice Blue Whiskey as the brand of M/s Allied Blenders. The only allegation against the company is that the company had used FSSAI number which was issued in favour of M/s USL. From the second paragraph of the FIR it would appear that the allegation is that of an attempt to do business on the FSSAI number of M/s USL unauthorizedly and thereby to cause financial loss to the Government.

5. It is his specific submission that it is not the case of the informant that the company had sold any of the manufactured bottles. In course of investigation also the I.O. did not collect any material either to show that the company had sold any one of the 10,327 cases or by his alleged act the company had caused revenue loss to the Government. It is submitted that in such circumstance where the alleged attempt to commit a fraud and to cause loss to the Government has not succeeded, the offence alleged cannot be said to have been committed.

6. It is further submitted that neither in the FIR nor in course of investigation, the informant/investigating agency has found any instance of an act or omission on the part of the company or the petitioner which may be said to be an attempt to 'commit fraud'. On the contrary, it is an admitted position that:-

(i) The company was engaged in manufacturing of Indian made foreign liquor since 2012 until prohibition was introduced in the State of Bihar w.e.f. 05.04.2016.

(ii) The company entered into a bottling agreement for manufacturing of the various brands owned by M/s USL. Upon obtaining separate license and getting the label registered, the license under the Food Safety Standards Act, 2006 (hereinafter referred to as the 'FSSA') was also granted by the competent authority and a license as contained in Annexure '3' to the writ application was issued in favour of the petitioner.

(iii) The agreement of the petitioner with M/s USL for bottling of its brand was not renewed for the year 2014 onwards. Thereafter not even a single bottle of the brand owned by the M/s USL was manufactured by the company.

(iv) The company executed an agreement for bottling with M/s Allied Blenders and obtained fresh license in form 19, 19B, 19C and 20 from Collector, Sitamarhi on 17.08.2014. A copy of the licenses are Annexure '4'.

(v) As per the terms of the requirements of the Bihar Excise Act, the company obtained label registration of the brand owned by M/s Allied Blenders from the Excise Commissioner upon payment of the applicable label registration fee. The order for registering the labels was issued on 03.09.2014. A copy of the order of label registration dated 03.09.2014 along with labels are Annexures '5' and '5/1'.

7. Learned counsel for the petitioner submits that in the aforementioned background, the company of which the petitioner is a director started manufacturing and bottling of the cases of the Officers' Choice Blue Pure Grain Whiskey and a total quantity of 10,327 cases were transferred to its bonded warehouse in form 19B. Even as the manufactured bottles were lying in the warehouse, the petitioner company *suo moto* noticed its mistake that the manufactured bottles were showing FSSAI license number of M/s USL which was printed by mistake. The petitioner, thereafter, *suo moto* submitted an application dated 19.02.2015 addressed to the Commissioner of the Excise, Bihar through the Superintendent of Excise, Sitamarhi and brought to his notice that the previous 'FSSAI' number along with 'FSSAI' number of current brand owner has been printed on the labels by mistake and as such a request was made for permitting re-labelling the existing aforesaid stock of foreign liquor so manufactured. The request of the petitioner was forwarded with a recommendation for issuance of necessary permission for re-registration of labels which would be evident from Annexures '6' and '6/1' respectively to the writ application. In the meantime, the petitioner claims to have stopped manufacturing of the said brand of M/s Allied Blenders.

8. It is the specific case of the petitioner that after getting an order from the Excise Commissioner, Bihar the labels were re-registered and the FSSAI number of M/s USL was removed. Only the FSSAI number of current brand owner remained. Learned counsel has drawn the attention of this Court towards Annexures '7' and '7/1' to the writ application.

9. Learned counsel for the petitioner has further submitted that vide Annexure '7/1' fresh registration number of labels of Officers' Choice Blue Pure Grain Whiskey containing the FSSAI license number of M/s Allied Blenders was issued. Much emphasis has been given on the letter of the company dated 18.03.2015 written to the Commissioner Excise Patna wherein the company has stated that because of wrong printing of FSSAI number on the label earlier, the company had not made supply to Bihar State Beverages Corporation Limited (in short 'BSBCL') and permission was sought to allow supply of the bottles after re-labelling as per the newly registered label. The Superintendent Excise, Sitamarhi while letter no. 374 dated 18.03.2015 (Annexure '8/1') also recommended the same to the Commissioner Excise, Bihar. In paragraph '10' of the writ application, it is stated that the petitioner obtained fresh license under the FSSA vide license no. 10015033000261 for its manufacturing premises in its own name on 19.05.2015. A copy of the said license has been annexed as Annexure ‘9’ to the writ application.

10. Learned counsel submits that in the given facts and circumstances where the company itself brought its mistake to the notice of the respondent authorities and no supply was made to the BSBCL on the basis of the earlier label, it is a fit case to quash the first information report as well as the chargesheet.

11. It is further submitted that in this case chargesheet has been filed only against the petitioner who is a Director of the company. His submission is that the petitioner cannot be held vicariously liable for the offence, if any, committed by the company. Learned counsel has relied upon the judgment of the Hon’ble Apex Court in the case of **Sushil Sethi and Another versus State of Arunachal Pradesh and Others** reported in **(2020) 3 SCC 240.** It is submitted that in the said case the chargesheet had been filed against the appellants who were the Managing Director and one of the Directors respectively of the company. There was no specific allegation and avernment in the FIR or even in the chargesheet that there was any fraudulent and dishonest intention of the accused. Considering that there was no FIR/complaint/chargsheet against the company and the appellants were arrayed as accused as the Managing Director and Director of the said company, there being no allegation that there was a fraudulent and dishonest intention to cheat the Government from the very beginning, the Hon'ble Supreme Court quashed the First Information Report and the chargesheet filed against the appellants for the offences under Section 420 IPC.

12. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **G.N. Verma versus State of Jharkhand and Another** reported in **(2014) 4 SCC 282** to submit that when a statute creates an offence and imposed a penalty of fine and imprisonment, words of section creating offence/punishment must be strictly construed. In the said case, the Hon'ble Supreme Court allowed the appeal holding that the appellant cannot be said to be a deemed agent for the mine owner and he cannot be held vicariously liable for the lapses that occurred in the mine resulting in a fatal accident, quashed the complaint against the appellant. It is submitted that in the present case, the FIR has been lodged against the company but the chargesheet has been filed only against the petitioner while keeping the investigation pending against the co-accused and on other points.

Stand of the State

13. This application has been contested by and on behalf of the State by filing a counter affidavit and an additional counter affidavit. It is stated that the case has been registered against the accused firm disclosing commission of cognizable offences under the penal provisions of the Indian Penal Code. In course of investigation as well as report II, it has been found that the case is true against the Director and other associates of the company.

14. Learned Standing Counsel 11 submits that the company was doing business on the identity of another entity. The sub-lease earlier granted to the company by M/s USL was not renewed, hence, after 31.03.2014 the company could not have continued to have manufactured. This was well within the knowledge of the petitioner. It is his submission that the fact that the company continued to manufacture the brands of M/s Allied Blenders without any license and FSSAI number up to 31.08.2014 is nothing but an act of fraud with an intention to cause loss to the Government Exchequer. It is submitted that the petitioner is not able to furnish any explanation for the period from 31.03.2014 to 31.08.2014, during which the company continued to manufacture bottles. It is submitted that there has been a loss of revenue to the State of Bihar for about 5 months and the manufacturing was done with a *mens rea* for wrongful gain to the company of which the ultimate beneficiary is the petitioner and thereby causing wrongful loss to the State.

15. Learned counsel for the State has argued that in this case the investigation on various points have been kept pending and a supplementary chargesheet will be filed after completion of investigation on those points. According to learned counsel for the

State, the judgment of the Hon'ble Supreme Court in the case of **Sushil Sethi** (supra) was rendered in a totally different facts situation inasmuch as in the said case the Managing Director and the Director were made an accused and the company had not been made a party. The Hon'ble Supreme Court found that the main allegation were against the company. In the said case the company was a limited company whereas in the present case the company is not only an accused in the FIR, it is a private limited company which is a closely held family company of the petitioner, therefore, the facts situation of the present case would be quite different and distinct. From the materials available on the record, it would appear that the petitioner is in ultimate control of the affairs of the company.

16. It is further submitted that in the present case, the charge-sheet specifically states that in course of investigation, the case has been found true against the non-FIR accused Sanjay Kumar Gupta and Dinesh Prasad. Since the investigation in this case is still pending, the investigating agency shall submit a supplementary charge-sheet. Only upon completion of investigation against the company actual loss, if any suffered by the State would surface. In paragraph '13' of its additional counter affidavit, it is stated that there is a requirement of two FSSAI numbers, one for the licensee and the other for the producer. In the present case, the license/contract of the company with M/s USL expired after which the company approached

M/s Allied Blenders for a fresh contract. The Commissioner, Excise and Prohibition, Patna ordered Registration numbers N3089, N3090 and N3091 for the year 2014-15 only for the choice number of M/s Allied Blenders, while two licenses should have been mentioned in it. Learned counsel for the State has submitted that mentioning of a wrong FSSAI number shall be covered under the definition of "misbranded food" under Section 3(zf) of the FSSA and the petitioner shall be liable for the same.

Consideration

17. Having heard learned counsel for the petitioner and learned counsel for the State, this Court finds that in the first information report, the company has been shown in the column of the accused but on reading of the FIR, it would appear that the allegations are not only against the company but are also against the Director and other associated employees of the said company. It is alleged that the company has used the FSSAI number earlier issued to M/s USL and this has been done with a fradulent intention to cause loss to the State. It is further alleged that when this fact came to the notice of the Superintendent, Excise, Sitamarhi, he vide Memo No. 1189 dated 14.08.2015 called upon the Director of the company to show cause and in his reply to the show cause the director accepted that the said FSSAI number was used. Thereafter the FIR specifically alleges that with a criminal conspiracy, the Director and other associated employees of the company indulged with an intention to commit fraud and used the FSSAI number of the another entity with an intention to cause loss to the State. Thus, at first instance, this Court finds that not only the company is an accused in this case but the FIR also contains specific allegation against the Director. This petitioner has been identified as the director and after investigation the case has been found true against him. Accordingly, a charge-sheet has been filed against the petitioner. The investigation against another director and on various points have been kept pending.

18. Learned counsel for the petitioner has attempted to make it a case as simple as it may be by submitting that by mistake FSSAI number of M/s USL was used on the label of Officers' Choice brand of M/s Allied Blenders but the question before this Court is as to whether the Court can readily accept that it is a case of mere mistake as claimed and on that ground alone the prosecution be quashed.

19. From Annexure '2 series', it appears that M/s USL obtained a license for (distribution) vend of foreign liquor for a period of one year from 05.05.2012. The license allowed the licensee to compound or to blend or reduce to strengths prescribed by the Board of Revenue, duty-paid foreign liquor whether imported or non-duty paid foreign liquor Made in India. The licensee shall be bound by the provisions of the Bihar and Orissa Excise Act, 1915. The company being a sub-lessee of M/s USL obtained a license in form 20 for bottling of potable foreign liquor for a period of one year from 05.05.2012 and further the company obtained a license under FSSA which was valid till 04.03.2018. This license no. 10013033000163 is in the name of M/s USL and it contains the name of the company as sub-lessee and its address as authorized premises. Admittedly, the M/s USL did not renew its sub-lease with the company after 31.03.2014 and the company of which the petitioner is a Director had no authority to indulge in bottling of potable foreign liquor as sub-lessee of M/s USL.

20. From Annexure ‘4’ series, it would appear that the company was granted a license for a period of one year from 07.08.2014 to 31.03.2014 to manufacture and bottling of IMFL brands of M/s Allied Blenders. In form no. 19B, this petitioner signed the counter part of the agreement declaring that he binds himself to perform and observe all the terms and conditions contained therein.

21. As per the allegation, the petitioner continued with the FSSAI number of M/s USL on the labels placed on the Officers' Choice Blue Pure Grain Whiskey brand of M/s Allied Blenders. The petitioner claims that it was by way of mistake but the investigating agency says that he had acted under a conspiracy with the associated employees of the company. Learned counsel for the State has pointed out that the company obtained the FSSAI license in its name at a much belated stage vide Annexure '9' containing the license issue date 19.05.2015 and only thereafter the Deputy Commissioner, Excise issued Registration number vide Memo No. 4058 dated 03.09.2015. The allegations are that of acting in criminal conspiracy and fraudulently to cause loss to the State. In the opinion of this Court, the allegations may only be tested in course of trial.

22. So far as the submission of learned counsel for the State that it would be covered under Section 3 (zf) of the FSSA is concerned, this Court finds that clause (zf) defines "misbranded food". The word "food" has been defined under clause (j) of Section 3 and it includes alcoholic drink. In the given facts situation, although learned counsel for the State has not shown to this Court as to whether any revenue loss has been caused to the State, what prevails in the mind of this Court is that the investigation of the case is still pending on various points, thus, it would not be prudent on the part of this Court to take a conclusive view by accepting the submission of learned counsel for the petitioner that it is a case of mere mistake and nothing else. The investigating agency must have its full say in the matter of investigation. The petitioner cannot succeed on this ground.

23. The submission of learned counsel for the petitioner relying upon the judgment of the Hon'ble Apex Court in the case of

Sushil Sethi (supra) would not impress this Court in the given facts situation of the case. In this case, it cannot be argued that the company has not been made an accused or that neither the FIR nor the chargesheet contains any allegation against the petitioner being Director of the company. The fact is that in the FIR, company has been arrayed in the column of the accused and the FIR contains the allegation against the Director and other associates of the company of entering into a criminal conspiracy with a fraudulent intention to cause loss to the State Exchequer. In course of investigation, the case has been found true against the petitioner and a chargesheet has been filed against him, it would not be appropriate for this Court to discuss the evidence collected by the Investigating Officer in course of investigation and take a view upon the sustainability of the chargesheet by weighing the materials collected in the case diary. Any such attempt would only be against the scope and ambit of the consideration for quashing of the FIR/chargesheet on the available grounds stated by judicial pronouncements of the Hon'ble Supreme Court in the catena of judgments such as **State of Haryana versus Bhajan Lal** reported in **1992 Supp (1) SCC 335; Indian Oil Corporation versus NEPC India Ltd. And Others** reported in **(2006) 6 SCC 736; V.Y. Jose and Another versus State of Gujarat and Another** reported in **(2009) 3 SCC 78.**

24. As to under which penal provisions of the Indian Penal Code the petitioner may be tried may only be seen by the learned trial court at the time of framing of charge, this Court would not form any opinion on this aspect as well in the present jurisdiction.

25. For the reasons stated hereinabove, no interference is called for either with the First information Report or with the chargesheet against the petitioner.

26. This writ application fails. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	03.11.2022
Uploading Date	10.11.2022
Transmission Date	10.11.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading ‘Judicial Orders Passed During The Pandemic Period’.