

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1871 of 2017

Arising Out of PS. Case No.-88 Year-2016 Thana- SC/ST District- Sitamarhi

-
1. Shashi Shekhar @ Shashi Shekhar Singh Son of Late Bindeshwari Prasad Sinha @ Late Bindeshwari Singh
 2. Balajee Shekhar Son of Shashi Shekhar Both are residents of Village P.O. - Mazhullia Estate, Police Station - Bathnaha, District - Sitamarhi, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna bihar
2. The Home Secretary, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Tirhut Division, Muzaffarpur.
5. The Inspector General of Police, Weaker Section C.I.D. Bihar, Patna.
6. The Deputy Inspector General of Police, Tirhut Division, Muzaffarpur,
7. The District Magistrate, Sitamarhi.
8. The Superintendent of Police, Sitamarhi.
9. Sri Hari Prasath S., at present the Superintendent of Police, Sitamarhi.
10. The Deputy Superintendent of Police, Sadar, Sitamarhi.
11. Kumar Veer Dharendra, the Deputy Superintendent of Police, Sadar, Sitamarhi.
12. The S.H.O., SC/ST Police Station, Sitamarhi.
13. Sri Ganga Soren, SHO, SC/ST, Police Station, Sitamarhi.
14. The Investigation Officer of SC/ST P.S. Case No. 88 of 2016, SC/ST Police Station, Sitamarhi.
15. Sri Bishwa Mohan Ram, the then Investigating Officer of SC/ST P.S. Case no. 88 of 2016, SC/ST Poli
16. Dhanshwari Devi W/O Late Bharosi Manjhi Resident of village-Manjhauriya, P.S. Bathnaha, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Anshul, Advocate Mr. Rajeev Shekhar, Advocate
For the Respondents	:	Mr. Manish Kumar GP4 Mr. Manoj Kumar, AC to GP4
For Respondent no. 16	:	Mr. Birendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR



ORAL ORDER

6 28-02-2023 Heard learned counsel for the petitioners and learned APP for the State.

This application has been filed for quashing of order dated 01.12.2021 passed by learned Additional Sessions Judge-1st-cum-Special Judge, SC/ST (POA) Act, Sitamarhi in connection with Sitamarhi Sadar (SC/ST) P.S. Case No. 88 of 2016, by which cognizance has been taken against the petitioners for the offences under Sections 341, 323, 354, 504, 506/34 of the Indian Penal Code and under Section **3(1)(s), (w), (1)(h)** of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

During pendency of this case, the police submitted a Final Form on 29.02.2020 and exonerated the petitioners. The Additional Sessions Judge-1st-cum-Special Judge, SC/ST vide order dated 01.12.2021 has taken cognizance for the offences under Sections 341, 323, 354, 504, 506/34 of the Indian Penal Code and under Sections 3(1)(s), (w), (1)(h) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act differing with the Final Form.

Learned counsel for the petitioners has filed an Interlocutory application challenging the order dated 01.12.2021 by which cognizance has been taken against the petitioners.



Heard the parties including learned counsel for the opposite party no. 2. He has not objected to the amendment being sought by the petitioners.

Accordingly, the amendment application is allowed.

The allegations leveled against the petitioners are that after the death of her husband, the informant was employed at the house of petitioner no. 1 for last 18 years at the salary of Rs. 4,000/- per month. The informant along with her two sons is working under the petitioner no. 1. It is alleged that whenever the informant used to ask for remaining amount then the petitioner no. 1 assured her for return of the same by giving some land. The petitioner was given only Rs. 2400/- in the marriage of informant's daughter. It is alleged that on 17.08.2016, the petitioners abused the informant by using vulgar language. Further, the petitioner along with his son had beaten her and the petitioner denied to give any amount to the informant. In this way, the petitioner has misappropriated around Rs. 9,51,400/- and insulted her by saying caste name. It is also alleged that such incident was witnessed by some co-villagers as named in the F.I.R and the informant informed this incident to the Sarpanch.

It has been urged by learned counsel for the



petitioners that petitioner no. 1 is an eminent social activist and also Secretary of Welfare Housing Co-operative Society Limited, Patna.

It has further been assured that petitioner no. 2, namely, Balaji Shekhar is an advocate and presently practicing in this Court. It is also alleged that date of occurrence i.e. on 17.08.2016, petitioner no 2 was not present at his village rather, he along with his mother, wife and police security guard, namely, Sunil Choudhary had gone to temple of Janki- Mandir Situated adjacent to Sitamarhi SC/ST Police Station, which is also at the distance of about 20 Km far away from his village. Therefore, the above aspect clearly suggests the false implication of this petitioner no. 2.

He has further submitted that an F.I.R has been lodged in connection with Bathnaha P.S. Case No. 72 of 2012 against Bimlendu Singh, Ravi Kumar Singh @ Pappu Singh and other accused persons for the offences under Sections 147, 148, 149, 447, 353 & 307 of the Indian Penal Code and 27 of the Arms Act which is pending in the court of learned Additional District Judge-II, Sitamarhi in Sessions Trial No. 148 of 2015 wherein the petitioners are the witnesses in the aforesaid trial.

The present F.I.R. vide Bathnaha P.S. Case No. 72 of



2012 has been lodged in order to pressurize the petitioners for not deposing in the trial. The present F.I.R instituted at the instance of Sunil Mishra and Randhir Mishra. Earlier also the F.I.R bearing Sitamarhi, SC/ST P.S. Case No. 35 of 2015 was registered against the petitioners, in which the police submitted a Final Form. Apart from malicious prosecution, petitioners have contended that order dated 19.09.2016 by which cognizance has been taken is no order in the eye of law and it is a non-speaking order. Once the police have submitted Final Form, while differing with final form and taking cognizance, the Additional Sessions Judge-1st-cum-Special Judge, SC/ST, Sitamarhi ought to have been discussed all the materials which have come during investigation. The Additional Sessions Judge-1st-cum-Special Judge, SC/ST, Sitamarhi has passed a cryptic and non-speaking order by which cognizance has been taken against the petitioners and the same cannot be sustained.

Learned counsel for the State, the opposite party no. 2 and the informant have submitted that the impugned order taking cognizance against the petitioners is legal and justified as there is no requirement in law of a reasoned order to be passed by the court below while taking cognizance against the petitioners.



I have considered the submissions of the parties. Passing of a reasoned order in a case of such nature where the Final Form was submitted and the petitioners were exonerated is a must. The Hon'ble Supreme Court in the case of ***Pepsi Food Ltd. & Anr Vs. Special Judicial Magistrate & Ors*** reported in ***1998(5) SCC 749*** as held as follows:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient to the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witness to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the



accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that “in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused”. We do not think that the High court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the Magistrate as well, as the Magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the Magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint



merely show that the appellants have given their brand name to “Residency Foods and Beverages Ltd.” for bottling the beverage “Lehar Pepsi”. The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied on issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short “the Fruit Order”). It is not disputed that the beverage in question is a “fruit product” within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirements is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of the manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It



is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in Hamdard Dawakhana (Wakf) v. Union of India an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Article 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it.



In view of the law laid down by the Hon'ble Supreme Court in case of *Pepsi Foods Ltd. And another (Supra)* , this application is allowed and the order dated 01.12.2021 passed by Additional Sessions Judge-1st-cum-Special Judge, SC/ST, Sitamarhi against the petitioners is hereby quashed. Therefore, the entire prosecution of the petitioners in F.I.R i.e. Sitamarhi Sadar (SC/ST) P.S. Case No. 88 of 2016 is hereby quashed.

(Sandeep Kumar, J)

Harsh/

U			
---	--	--	--

