

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30730 of 2016

Arising Out of PS. Case No.-188 Year-2010 Thana- JAHANABAD District- Jehanabad

1. Vikash Kumar and Ors s/o - Yugal Kihore Prasad, R/o West Gandh Maidan, P.S Jahanabad, District- Jahanabad.
2. Guddu Sharma, s/o- Radhe Shyam Sharma, R/o West Gandhi Maidan, P.S- Jahanabad, District- Jahanabad.
3. Jampu @ Jambu Sharma @ Amrendra Kumar, s/o- Janardan Sharma, R/o- Registry Office, P.S- Jahanabad, District- Jahanabad.
4. Chuhiya Sharma @ Chuhiya @ Priya Ranjan Sharma @ Priya Ranjan Kumar, S/o- Late Bhola Sharma, R/o Shwami Sahjanand, P.S- Jahanabad, District- Jahanabad.
5. Shakti Sharma @ Shakti Kumar S/o- Ajay Sharma R/o East Gandhi Maidan, P.S- Jahanabad, District- Jahanabad.
6. Tuntun Kumar @ Rahul Kumar @ Rahul Sharma, S/o Siyaram Sharma, R/o East Gandhi Maidan, P.S- Jahanabad, District- Jahanabad.
7. Nanhe Sharma, s/o- Late Jai Narain Sharma, R/o Horil Ganj, P.S- Jahanabad, District- Jahanabad.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Satya Narain Prasad, S/o- Late Ramlayak Prasad, R/o village Gol- Bigha, P.S- Rampur, District- Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal
		Mr. Binod Kumar Sinha
For the Opposite Party/s :		Mr. Chandra Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 06-04-2023 Heard the parties.

This application has been filed on behalf of the petitioners for quashing the order dated 09.06.2016 passed by Chief Judicial Magistrate, Jehanabad in Jehanabad P.S. Case No. 188 of 2010 as well as for quashing further proceedings of the F.I.R. bearing Jehanabad P.S. Case No. 188 of 2010.



“The prosecution story in brief is that the informant of this case namely Satya Narain Prasad gave his “fard-bayan” to the S.I. Suresh Pd. Singh of Jehanabad P.S., District- Jehanabad on 02.04.2010 at 9:30 P.M. at Gandhi Maidan, Jehanabad. The informant stating there in that, he was doing his duty as a assistant staff under the ownership of Ramesh Kumar (mela malik) namely “Bihar Vikash Mela” Gandhi Maidan, Jehanabad. The informant further alleged that, the Mela was going on and in the meantime, 15 to 20 boys came and threw Metal, Stone, Soil and Silt etc under the gate of Mela at about 8.30 P.M. and also assaulted the staffs of Mela. The people of Meena-Bazar became shocked and in the meantime he heard a sound of Pataka like Bomb. During this incident a gateman namely Pappu Kumar sustained injuries. The informant was unable to identify the name and address of the boys and when the police came, they fled away and hence the case was registered.”

The contention of the learned senior counsel for the petitioners is that the cognizance has been taken without any material available during investigation.

It has further been submitted that Vivek Kumar, brother of petitioner No. 01 Vikash Kumar was killed in the occurrence for which Jehanabad P.S. Case No. 188 of 2010 was



registered. The accused persons including the informant of present case were put on trial and were convicted. The conviction of the accused persons including the informant of the present case has been upheld till Hon'ble Supreme Court.

It has been submitted by learned senior counsel for the petitioners that the present case is a false case and without any proper investigation, charge-sheet has been submitted by the Police and the real facts have come during the trial of the Jehanabad P.S. Case No. 188 of 2010.

Learned senior counsel also submits that the cognizance order is a non-speaking order and no material whatsoever, has been discussed and the criminal case has been put into motion against the petitioners. In support of his submission learned senior counsel for petitioners has relied upon the judgment of *M/s Pepsi Foods Limited and Anr Vs. Special Judicial Magistrate and Ors. 1998 (5) SCC 749* of which Paragraphs 28, 29 and 30 reads as follows:-

“28. 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 for 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. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses 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.

29.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 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 allegation. 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 shoe 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 manufacturer 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 No.3. The preliminary evidence on which the 1st respondent relied in issuing summon 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 the 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, making and labeling of containers of fruit products. One of such requirement 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 manufacture to be displayed on the top or neck of the bottle. The licence number of 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 [The Hamdard Dawakhana \(WAKF\) Delhi & Anr. vs. The Union of India & Ors.](#) [AIR 1965 SC 1167 = (1965) 2 SCR 192], 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.

30. 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 the 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 the. 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 its jurisdiction. Provisions of Articles 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 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.”

Learned APP for the State as well as learned counsel for the Opposite Party has opposed the application for quashing and have submitted that after investigation the police has submitted charge-sheet after finding enough materials and thereafter cognizance has been taken by the learned Magistrate after application of mind and there was no requirement of discussing the materials in the case.

Learned counsel for the opposite party No. 02 has not denied the factum of conviction of the informant and other accused persons for the murder of the brother of the petitioner No. 01.

From the materials available on record, it appears that the informant and others, to save themselves have filed this false and fabricated case and the police has submitted charge-sheet without proper investigation and in a mechanical manner the learned Magistrate has taken cognizance.

Considering the facts of the case and considering the



fact that the informant and other accused persons have killed the brother of Petitioner No. 01 and also considering the law laid down by the Hon'ble Supreme Court in the case of *M/s Pepsi Foods Limited and Anr Vs. Special Judicial Magistrate and Ors. (Supra)* , this application is allowed.

Accordingly, the order dated 09.06.2016 passed by Chief Judicial Magistrate, Jehanabad in Jehanabad P.S. Case No. 188 of 2010 as well as further proceedings of the F.I.R. bearing Jehanabad P.S. Case No.188 of 2010 is hereby quashed.

(Sandeep Kumar, J)

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