IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26405 of 2022

Arising Out of PS. Case No.-215 Year-2021 Thana- PUPRI District- Sitamarhi

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MD. ASIF S/o Md. Zahir Ahmad R/o village- Yahiyapur, P.S.- Pupri, District-Sitamarhi

... ... Petitioner/s

Versus

1. The State of Bihar
2. Musarrat Jahan W/o Neyaz Ahamad R/o village- Yahiyapur Ward No. 13, P.S.- Pupri, Distt.- Sitamarhi

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Sanjay Kumar
For the Opposite Party/s : Mr.Zainul Abedin

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 23-02-2023 Heard the parties.

This application has been filed for quashing the order dated 17.12.2021 passed by learned A.D.J.-VI-cum-Special Judge, Sitamarhi in connection with Pupri P.S. Case No. 215 of 2021 by which learned A.D.J.-VI-cum-Special Judge, Sitamarhi has taken cognizance under Section 12 of the POCSO Act differring with the final form.

The prosecution case is that the petitioner and one Md. Seraj used to misbehave with minor daughter of opposite party no.2 and they also used to pressurize her for physical relationship and on objection, they have threatened for dire consequences.

After investigation, Final Form was submitted on 04.08.2022 finding the allegation to be false. Thereafter, learned Magistrate has differed with the Final Form and has taken cognizance against the petitioner.

Learned counsel for the petitioner has submitted that the impugned order is bad in law and it cannot be sustained as it is a non-speaking order. In support of his submission, he relied upon the judgment of the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. And another Vs. Special Judicial Magistrate and others (1998) 5 SCC 749.***

> "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 them 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.

Learned counsel for the State assisted by the learned counsel for the opposite party no.2 has submitted that the impugned order is legal and justified and the learned Special Judge has gone through the materials on record and thereafter, has taken cognizance against the petitioner.

I have considered the submission of both the parties. In my opinion, when the Special Judge has differed with the Final Form he should have passed a reasoned order. When the police found the allegation false, the impugned order passed by learned Special Judge is a non-speaking order, which cannot be sustained.

Considering the aforesaid facts as also law laid down by the Supreme Court in the case of ***Pepsi Foods Ltd. And another Vs. Special Judicial Magistrate and others (Supra),*** this application is allowed. The impugned order dated 17.12.2021 passed by learned A.D.J.-VI-cum-Special Judge, Sitamarhi in connection with Pupri P.S. Case No. 215 of 2021 is hereby quashed.

The matter is remitted back to the Court below for passing a fresh order in accordance with law after examining the records.

(Sandeep Kumar, J)

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