

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31099 of 2019

Arising Out of PS. Case No.-101 Year-2014 Thana- FATUA District- Patna

Parveen Amanullah Wife of Afzal Amanullah Resident of -133, Patliputra Colony, P.S.- Patliputra, District- Patna- 800013.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pankaj Kumar Son of not Known The then Circle Inspector, at- Fatuha, Post- Fatuha, P.S.- Fatuha, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anuj Kumar

For the Opposite Party/s : Mr.Pranav Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 24-08-2023

This application has been filed on behalf of the petitioner for quashing the cognizance order dated 01.08.2014 passed by learned Judicial Magistrate, 1st Class, Patna City by which cognizance has been taken under Sections 188 and 171 (H) of the Indian Penal Code in Fatuha P.S. Case No. 101 of 2014.

2. Learned counsel for the petitioner has submitted that the petitioner had contested the Assembly Elections in Bihar and was elected to Bihar Legislative Assembly and thereafter, she was also appointed as a Cabinet Minister in the Bihar Government and she has done her duties honestly until resigning from her position as a Minister, as an MLA and from the membership of Janata Dal United also in early February,



2014 due to ideological reasons.

3. The facts and circumstances which have led to the filing of the present petition, in brief, are as follows:-

(a) The petitioner has been a social activist for more than two decades, with stellar credentials in the field of Public Service, particularly in Bihar, being the convener of *Humlog* Trust, a Non-Governmental Organization for promotion of peace, harmony and social progress.

(b) In November 2010, the petitioner was given the opportunity to contest the Bihar Assembly election from the Janata Dal United Party and went on to become a Member of the Bihar Legislative Assembly from 'Sahebpur Kamal' assembly constituency. The Petitioner was subsequently appointed as a Cabinet Minister in the Bihar Government (Minister for Social Welfare) and served the electorate honestly and dutifully until resigning from her position as a Minister, an MLA and a member of the Janata Dal United Party.

(c) On 05/03/2014, the Election Commission of India announced the final dates for the Lok Sabha Elections, 2014 and the model code of conduct came into force from the same date. The Model Code of Conduct ("MCC") for political parties and candidates is a set of norms evolved with the consensus of



political parties. While the "MCC" itself does not have statutory backing, most of the codes of conduct within it have corresponding statutory backing in other provisions including the Indian Penal Code, 1860 and the Representation of People's Act, 1951.

(d) The Petitioner joined a (then) recently constituted political party, i.e., Aam Aadmi Party and contested the Lok Sabha elections from the 'Patna Sahib' parliamentary constituency for which she campaigned extensively in the parliamentary constituency.

(e) For the purposes of effective campaigning during the elections, the petitioner sought and was given permission from the concerned authorities for the use of various four wheel vehicles.

(f) During the elections, besides the use of these permitted vehicles, various permissions were taken, as and when required, for the use of loud speakers, and the like for the purposes of effective electioneering. Further, prior to carrying out rallies, processions and road shows' (processions of vehicles), intimation regarding the same, as required, would be given by the petitioner / her authorized agents to the office of the concerned Sub-divisional Officer.



(g) Accordingly, as a part of her election campaign, on 26.03.2014, the petitioner has participated in a road show after due intimation and permission in this regard from the authorities wherein the petitioner only employed the use of the four wheeled vehicles for which she had specifically applied for and obtained permissions from the office of the concerned Sub-divisional Officer. The petitioner, at no point of time, caused, intended or was responsible for the participation of any unauthorized / illegal vehicles, including two-wheeled vehicles, in the said road show.

(h) It is pertinent to mention that the petitioner, at all times, strictly maintained adherence to the "MCC" and other applicable laws and obtaining permissions, as and when required, thereby strictly adhering to the mandate of the Election Commission and other applicable laws.

(i) As per the contents of the complaint filed by the Opposite Party No. 2, it has been alleged by the Opposite Party No. 2 to the Officer-in-Charge of the Fatuha police station that on 26/03/2014 at about 10:30 A.M., when the road show of the Aam Aadmi Party with its candidate, i.e., the petitioner went through Samspur Nagar Panchayat, it was alleged that the procession of vehicles included ten motorcycles, for which



permission of the competent authority was not taken. The complaint ended with the allegation that there had been a violation of the "MCC" and on the written complaint of Opposite Party No. 2, the aforementioned FIR i.e., Fatuha P.S. Case No. 101/14 was registered. Thereafter, the investigating officer filed a charge sheet before the Trial Court.

(J) Upon submission of the charge sheet, the the trial Court was pleased to pass orders taking cognizance of an offence punishable under Section 188 and 171 (H) of Indian Penal Code and issued summons to the petitioner.

(k) Learned counsel for the petitioner further submits that contents of the FIR, the charge sheet and other materials placed before the Trial Court, *prima facie*, do not disclose the commission of any offence committed by the petitioner including any offence under Section 188 of the Indian Penal Code and from the FIR, it is not clear that whether the informant was an eye witness or he has received information from other sources and the materials available on record even *prima facie* neither disclose that the petitioner has committed any offence nor has the petitioner committed or intended to commit any offence under Section 188 of the Indian Penal Code.

4. It has further been submitted by the learned counsel for



the petitioner that the impugned order dated 01.08.2014 taking cognizance of offences under Sections 188 and 171(H) of the Indian Penal Code against the petitioner is unsustainable, and has been passed without application of mind, as mandated by law and is contrary to the manner provided under Section 195 of the Criminal Procedure Code. For taking cognizance of offences under Section 188 of the Indian Penal Code and the FIR by the Opposite Party No. 2 does not contain any allegation of wrongdoing on the part of the petitioner and also does not make any mention of the order of any public authority which had been allegedly violated by the petitioner and the police erred in registering an FIR against the petitioner despite the lack of ingredients of any offence.

5. Section 188 of the Indian Penal Code, reads as follows:-

“Disobedience to order duly promulgated by public servant:-

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may



extend to one month or with fine which may extend to two hundred rupees, or with both.

6. Section 188 of the Indian Penal Code, therefore, makes it clear that for any act to constitute an offence under this particular statute, there must be an order lawfully passed by a Public Servant, duly authorized in this regard, the said order must be directed towards a person/persons directing him/them to abstain from an act, the order must be in the knowledge of the person(s) to whom it is directed, who, and despite having knowledge of such order, the concerned person(s), having the knowledge that his/their disobedience of the order will or is likely to cause harm, disobeys such order resulting in the obstruction, annoyance or injury or risk thereof or causes danger to human life, health or safety or a riot.

7. Learned counsel for the petitioner further submits that the complaint dated 26/03/2014 written by Opposite Party No. 2, the impugned F.I.R. bearing No. 101/2014 as well as the contents of the charge sheet bearing No. 91/14 do not disclose any details essential to constitute an offence as alleged.

8. It is also submitted on behalf of petitioner that the contents of the FIR submitted by Opposite Party No. 2 clearly shows that the permission had not been taken and thus the essential ingredients necessary for an offence under Section 188



of the Indian Penal Code cannot be said to have been fulfilled and the investigating authorities erred in registering an FIR without there being any conditions necessary for fulfilling the ingredients of Section 188 of the Indian Penal Code, 1860.

9. Learned counsel for the petitioner has further submitted that the investigating officer and the learned Judicial Magistrate have grossly erred in law and violated the mandatory procedure prescribed under the Code of Criminal Procedure, 1973 pertaining to the offences punishable under Sections 172 to 188 of the Indian Penal Code, 1860.

10. Learned counsel for the petitioner has further submitted that once it is held that the prosecution under Section 188 of the Indian Penal Code of the petitioner is held to be illegal, the prosecution of the petitioner under Section 171(H) of the IPC shall also fail in the light of the judgment of this Court passed in the case of *Shyam Narayan Arya Vs. The State of Bihar reported in 1997(1) BLJ 1214*. The petitioner relied upon the judgment of the Supreme Court passed in the case of *Pepsi Food Ltd Vs. Special Judicial Magistrate reported in (1998) 5 SCC 749*. Paragraphs No. 28, 29, 30 of the aforesaid judgment 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. The 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 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 in 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 [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 negated 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 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 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 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.”

11. Taking into consideration the submissions advanced on behalf of the parties and in view of the facts and circumstances of the case, I am of the view that summons have been issued without application of mind and without following the law laid down by this Court in its earlier judgment. The Magistrate must be aware of the judgments pronounced by this Court and apply the same while issuing summons to an accused. Here, I find that the summons have been issued mechanically by



a cryptic order and it cannot be sustained.

12. In view of the discussions above, it is held that none of the offences alleged against the petitioner are made out and the prosecution of the petitioner is illegal.

13. Accordingly, the cognizance order dated order dated 01.08.2014 passed by learned Judicial Magistrate 1st Class, Patna City, Patna by which cognizance has been taken under Sections 188 and 171 (H) of the Indian Penal Code in Fatuha P.S. Case No. 101 of 2014 and the entire prosecution are hereby quashed against the petitioner only in the interest of justice.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.11.2023
Transmission Date	25.11.2023

