(2022) 06 PAT CK 0026

Patna High Court

Case No: Criminal Writ Jurisdiction Case No. 795 Of 2021

Sandeep Tewari	APPELLANT
Vs	
State Of Bihar	RESPONDENT

Date of Decision: June 22, 2022

Acts Referred:
Constitution Of India, 1950 â€" Article 226#Indian Penal Code, 1860 â€" Section 120B, 272, 273#Bihar Prohibition and Excise Act, 2016 â€" Section 2(2), 2(40)(ii), 2(60), 13, 14, 14(2), 14(3), 23, 30, 30(a), 41(1), 56, 57#Code Of Criminal Procedure, 1973 â€" Section 155(2), 156, 156(1), 482

Citation: (2022) 06 PAT CK 0026

Hon'ble Judges: Partha Sarthy, J

Bench: Single Bench

Advocate: Satyabir Bharti, Prachi Pallavi, P.K. Verma, Suman Kumar Jha

Final Decision: Dismissed

Judgement

Heard learned counsel for the petitioner and learned Additional General no. 3 for the respondents.

The petitioner has preferred this writ application for quashing the FIR instituted vide Kishanganj P.S. Case no. 123 of 2021 dated 13.3.2021 registered

under sections 272, 273 and 120B of the Indian Penal Code and sections 30(a) and 41(1) of the Bihar Prohibition and Excise Act, 2016, for directing

the respondents to release the tanker lorry bearing registration no. NL01K9511 along with 2500 litres of extra neutral alcohol (Ã¢â‚¬Ëœ ENAÃ¢â‚¬â„¢ in short)

loaded on it seized in connection with Kishanganj P.S. Case no. 123 of 2021 and to pass other order or orders as the Court may deem fit in the facts

of the case.

The prosecution case based on the self statement of Ashwani Kumar, Police Inspector-cum-SHO, Kishanganj recorded on 13.3.2021 at 10 am is that

at 7.15 am the same morning secret information was received that a tanker lorry vehicle bearing registration no. NL01K9511 carrying spirit for

preparation of liquor was going towards Purnia. Giving information to the Senior Police Officers the informant reached the Bir Kunwar Bus Stand at

Kishanganj at about 9.45 am. He saw the tanker lorry bearing registration no. NL01 K9511 and signaled the driver to stop. On inquiry from the driver

of the vehicle namely Md. Mannan, he disclosed that there was a total of 25000 litres of spirit in the tanker lorry meant for preparation of liquor. He

was carrying the same from Bhutan and was taking the same to Muzaffarpur. No documents were produced by the driver. It is stated that on inquiry

it transpired that the digital lock on the vehicle was open. The informant states that on the digital lock on the same being open, it clearly showed the

intention of the owner of the tanker lorry that he intended to sell the same in the State of Bihar. The same was a cognizable offence in view of the

complete prohibition of liquor in the State of Bihar. The driver of the vehicle was arrested and a seizure list prepared. On the basis of the self

statement of the informant FIR being Kishanganj P.S. Case no. 123 of 2021 was registered on 13.3.2021 under sections 272, 273 and 120B of the

Indian Penal Code and sections 30(a) and 41(1) of the Bihar Prohibition and Excise Act, 2016.

The case of the petitioner in brief is that the petitioner is the owner of the tanker lorry which was hired for transportation of 25000 litres of ENA from

Bhutan Centennial Distillery, an undertaking of the Royal Government of Bhutan to M/s. Bottlers, Una, Himachal Pradesh. The statutory permit, pass

and invoice on the strength of which the consignment of ENA was being transported have been brought on record as annexures to the writ petition.

The attached permit would reveal that the consignment was loaded on 11.3.2021 at Gelephbu, Bhutan and in view of the prohibition of consuming

liquor in the State of Bihar a long route was prescribed intentionally avoiding the State of Bihar. However, the vehicle could not avoid the chicken

neck area in the district of Kishanganj in the State of Bihar while crossing Baro Bisha in West Bengal and there is no alternate route for the same. It

is further stated that as the vehicle was seized in the morning of 13.3.2021 and a digital lock had been affixed by the government of West Bengal,

there was neither requirement to affix another lock and it was not possible to remove the affixed digital lock as it was to be removed in Asansol, West

Bengal. It is stated that when the vehicle entered Kishanganj in Bihar the agent appointed by the State of Bihar asked the driver to remove the digital

lock of West Bengal and to affix his digital lock to which the driver did not agree and he stated that since the digital lock was already affixed, it cannot

be removed by him. The agent complained to the SHO, Kishanganj Police Station who making false and frivolous allegations lodged the FIR.

It is submitted by learned counsel appearing for the petitioner that the consignment of ENA being transported not being an intoxicant or liquor, the

petitioner cannot be prosecuted under section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢) and

learned counsel in support of his contention relies on the judgment in the case of Bihar Distillers and Bottlers Pvt Ltd vs. State of Bihar (2017 (2)

PLJR 818). Learned counsel further submits that section 14 of the Act having been declared to be unworkable in absence of any corresponding rules

having been framed and as held in the case of CTI Infrastructure Pvt Ltd vs. the State of Bihar (2019 (3) BLJ 844), the petitioner cannot be

prosecuted for violation of section 14 of the Act which remains unworkable till enactment of the rules on 27.9.2021. It was submitted that section

30(a) read with section 14(2) of the Act makes illegal transportation of wine or liquor in violation of the provisions of the Act, Rules and the

notifications framed there under as punishable and since the consignment in question is ENA which is not an intoxicant, the same would not be

applicable. The petitioner cannot be prosecuted for violating an unworkable provision. The argument that the FIR discloses that the driver did not

produce any document in relation to the consignment has no basis. No document was produced relates only to non-affixation of digital lock /transit

permission. Only police officials were made witnesses. It was finally submitted that sections 272 and 273 of the Indian Penal Code has no application

in the facts of the present case.

The case of the respondents in brief is that on having received secret information about a tanker lorry carrying spirit for making wine going towards

Purnia, the vehicle in question was stopped and searched. 25,000 litres of spirit was found for which the driver did not produce any documents. He

disclosed that the lorry contained spirit for making liquor and the same was being carried from Bhutan to Muzaffarpur. Thus, the FIR was registered

as stated above. It was submitted that section 14(2) of the Act provides that if any consignment of liquor or intoxicants is being transported by road

from a place outside the State of Bihar to another such place and the vehicle carrying the consignment passes through the territory of the State, the

driver or any other person in-charge of the vehicle shall obtain transit permission in the prescribed manner from the authority of the first check post

falling enroute after entry into the State and shall surrender the same transit permission to the authority of the last check-post before leaving the State

and in the event of failure to do so within the stipulated hours of leaving the first check-post falling enroute, it shall be deemed that liquor or intoxicants

so transported have been sold or disposed off by the owner or the person-in-charge of the vehicle within the State of Bihar. The State of Bihar vide

Gazette (Extra Ordinary) no. 1234 dated 21.12.2015, in clause 2 (gha)(v) has prescribed the procedure of digital lock which was not completed by the

petitioner. In case of non-compliance with the provisions of sections 14(2) and 14(3) of the Act, the driver may also be prosecuted under section 30 of

the Act. Section 56 of the Act prescribes the things liable for confiscation which includes the vehicle used for carrying the intoxicant or liquor. On

investigation the case was found to be true for filing charge sheet and proposal for confiscation sent to the District Magistrate, Kishanganj. The seized

liquor was destroyed as per law. The 2015 policy referred to above provides for putting of digital lock at the entrance check post in the State and

maximum transit permit of 24 hours duration to exit the State with further provision that the digital lock shall be opened at the exit check post. Besides,

the movement is also to be covered by the GPS system.

It was further submitted by learned Additional Advocate General no. 3 appearing for the State that the vehicle in question which was seized did not

contain ENA but contained rectified spirit which is defined under section 2 (60) of the Act which states that rectified spirit means un-denatured

alcohol, including absolute alcohol, extra neutral alcohol and alcohol derived from malt as may be specified by the BIS standard. Further section 2(2)

of the Act defines Alcohol to mean ethyl Alcohol having a colorless volatile and flammable organic liquid which is produced by a natural or yeast

fermentation of sugar and is intoxicating constituent of wine, beer, spirits and other alcoholic beverages, and is also used as an industrial solvent and as

fuel. It was submitted that alcohol includes all and from the lab report (Annexure-F to the supplementary counter affidavit) the sample was analyzed

and found to be rectified spirit. It was further submitted that the route map which is Annexure-3 to the petition should be strictly construed and the

same does not contain any area of the State of Bihar. As per the contents of the FIR, the excise permit as contained therein and which contained the

transit route to the destination was not produced before the police authority. Even if the contention of the petitioner was to be accepted that there was

no alternative route and the consignment had to cross the area in the District of Kishanganj in the State of Bihar, as per section 14(2) of the Act the

driver or the person in-charge of the vehicle was required to obtain transit permit at the first check post in the State of Bihar and as per the 2015 New

Excise Policy published in the Bihar Gazette (Extra Ordinary) on 1.12.2015, the vehicle was required to have a digital lock at the entrance check post

which was to be removed at the exit check post with the maximum transit permit of 24 hours duration, the movement of the vehicle being monitored

by the GPS system. It was submitted that from the FIR it would transpire that the digital lock on the vehicle was open, at the time of checking, no

route permit was shown, no documents were produced before the informant and as per the driver the lorry contained spirit for making of liquor and

the goods were to be delivered in Muzaffarpur. It was submitted that the facts which are disputed by the petitioner cannot be decided in the instant

petition. In the facts of the instant case there is no applicability of the judgments of this Court in the case of Bihar Distillery and Bottlers Pvt. Ltd.

(supra). On conclusion of the investigation charge sheet has been submitted in the case against the driver on 11.5.2021 while the owner of the vehicle

has still not surrendered and is absconding. Cognizance has been taken and the case is fixed for prosecution evidence in the trial. It was further

submitted by learned Additional Advocate General no. 3 appearing for the State that so far as release is concerned, the same is not maintainable. In

view of section 57 of the Act the seized spirit has been destroyed and proposal for confiscation has been sent to the District Magistrate, Kishanganj.

Thus, it was submitted that there being no merit in the instant application the same be dismissed.

Heard learned counsel for the petitioner and learned Additional Advocate General no. 3 assisted by Sri Suman Kumar Jha, learned counsel on behalf

of the State.

As per the prosecution case on secret information having been received about the vehicle in question carrying spirit for the purpose of preparing liquor,

the vehicle was stopped and on checking 25000 litres of spirit was found. The driver of the vehicle disclosed that he was carrying 25000 litres spirit for

preparing liquor from Bhutan and the same was to be delivered at Muzaffarpur. The driver did not produce any documents with respect to the same.

The informant further states that the digital lock was open. Thus, it was stated that 25000 litres of spirit meant for preparing liquor was carried in the

State of Bihar for being delivered at Muzaffarpur clearly showed the intention of the driver and owner of the vehicle that they intended to sell the

same in complete violation of the Prohibition laws effective in the State of Bihar and it was a cognizable offence. Here itself it would be relevant to

point out that the Act which came into effect from the date of its publication in the Bihar Gazette (Extra Ordinary) no. 805 dated 2.10.2016 provides

for complete prohibition of liquor and intoxicant in the territory of the State of Bihar and for matters connected there with or incidental thereto.

The HonÃ¢â‚¬â„¢ble Supreme Court in the case of State of Haryana vs. Bhajanlal (AIR 1992 SC 604) held as follows :

Ã¢â‚¬Å“102. In the back drop of interpreta-tion of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the

principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or

the inherent powers under Sec-tion 482 of the code which we have ex-tracted and reproduced above, we give Ã, the following categories of

cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to

secure the ends of justice, making it clear that it may not be possi- ble to lay down any precise, clearly de-fined and sufficiently channelised

and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercise :

(1) Where the allegations made in the first information report or the com-plaint, even if they are taken at their face value and accepted in

their entirety do not prima facie constitute any of-fence or make out a case against the accused.

(2) Where the allegations in the first in-formation report and other materials, if any, accompanying the FIR do not dis-close a cognizable

offence, justifying an investigation by police officers under Section 156(1) of the Code except un-der an order of a Magistrate within the

purview of Section 155(2) of the Code.

(3) Where the uncontroverted allega-tions made in the FIR or complaint and the evidence collected in support of the same do not disclose

the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable of-fence, no investigation

is permitted by a police officer without an order of a Magistrate as contemplated under Sec-tion 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and in-herently improbable on the basis of which no prudent person

can ever reach a just conclusion that there is suf-ficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

proceeding is insti-tuted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing effica-cious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is mali-ciously instituted with an ulterior

mo-tive for wreaking vengeance on the ac-cused and with a view to spite him due to private and personal grudge.Ã¢â‚¬‹

In the case of Pratibha Rani vs. Suraj Kumar & Anr [(1985) 2 SCC 370] the HonÃ¢â‚¬â„¢ble Supreme Court held as follows :

Ã¢â‚¬Å“59Ã¢â‚¬Â¦.it is well settled by a long course of decisions of this Court that for the purpose of exercising of its powers under Section 482

CrPC to quash a FIR or a complaint the High Court would have to proceed entirely Ã, on the basis of the allegations made in the complaint

or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations.Ã¢â‚¬‹

In the case of Superintendent of Police, CBI and Ors vs. Tapan Kumar Singh [(2003) 6 SCC 175] the HonÃ¢â‚¬â„¢ble Supreme Court held as follows :

Ã¢â‚¬Å“20. It is well settled that a First Information Report is not an en-cyclopedia, which must disclose all facts and details relating to the

offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or

his as-sailant. He may not even know how the occurrence took place. A first in-formant need not necessarily be an eye witness so as to be

able to dis-close in great details all aspects of the offence committed. What is of sig-nificance is that the information given must disclose the

commission of a cognizable offence and the informa-tion so lodged must provide a basis for the police officer to suspect the commission of a

cognizable offence.

At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not

that he must be convinced or satisfied that a cognizable offence has been commit-ted. If he has reasons to suspect, on the basis of

information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investi-

gation. At this stage it is also not nec-essary for him to satisfy himself about the truthfulness of the information. It is only after a complete

investigation that he may be able to report on the truthfulness or otherwise of the infor-mation. Similarly, even if the informa-tion does not

furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The informa-tion

given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary

evidence, and thereafter to take ac-tion in accordance with law. The truetest is whether the information fur-nished provides a reason to

suspect the commission of an offence, which the concerned police officer is em-powered under Section 156 of the Code to investigate. If it

does, he has no option but to record the informa-tion and proceed to investigate the case either himself or depute any other competent

officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of

occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are

alien to the consideration of the ques-tion whether the report discloses the commission of a cognizable offence.

Even if the information does not give full details regarding these matters, the investigating officer is not ab-solved of his duty to investigate

the case and discover the true facts, if he can.Ã¢â‚¬â€‹

In the case of Neeharika Infrastructure Pvt Ltd vs. the Ã, State of Maharastra and Ors. [(2021) SCC online SC 315] the HonÃ¢â‚¬â„¢ble Supreme Court

while dealing with the question as to under what circumstances the High Court would be justified in passing an interim order of stay of investigation

and/or Ã¢â‚¬Ëœno coercive steps to be adoptedÃ¢â‚¬â„¢, during pendency of the quashing petition under section 482 Cr.P.C or under Article 226 of the

Constitution of India and in what circumstances the High Court would be justified in passing the order of not to arrest the accused proceeded to

conclude in paragraph no. 80 as follows :

Ã¢â‚¬Å“ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cog-nizable offence or offence of any kind is disclosed in the first informa-tion report that the Court will not

permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspec-tion, as it has been observed, in the Ã¢â‚¬Ëœrarest of rare cases (not to

be con-fused with the formation in the con-text of death penalty).

v) While examining an FIR/com-plaint, quashing of which is sought, the court cannot embark upon an en-quiry as to the reliability or

genuine-ness or otherwise of the allegations made in the FIR/complaint;

xii) The first information report is not an encyclopedia which must dis-close all facts and details relating to the offence reported. Therefore,

when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be

permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does

not de-serve to be investigated or that it amounts to abuse of process of law.

After investigation, if the investigat-ing officer finds that there is no sub-stance in the application made by the complainant, the investigating

officer may file an appropriate re- port/summary before the learned Magistrate which may be considered by the learned Magistrate in

accor-dance with the known procedure;Ã¢â‚¬â€‹

As per the law settled by the HonÃ¢â‚¬â„¢ble Supreme Court the facts/allegations stated in the fir are to be accepted as true and the allegations made in

the fir are to be taken at their face value and accepted in their entirety and in case the uncontroverted allegations made therein disclose the

commission of an offence, the fir cannot be quashed.

So far as the facts of the instant case is concerned, as per the allegations in the FIR, the driver of the vehicle in question disclosed that he was

carrying in the tanker lorry 25000 litres of spirit meant for manufacture of liquor to be delivered at Muzaffarpur. He did not produce any documents

with respect to the same. So far as the judgment in the case of Bihar Distillers and Bottlers Pvt Ltd (supra) is concerned, the challenge therein was to

the constitutional validity of certain provisions under the Act. Thus, the Court proceeded to hold in paragraph no. 86 of the judgment as follows :

Ã¢â‚¬Å“86. Accordingly, we allow these petitions to the extent of holding that the definition of intox-icant' as contained in section 2 (40)(ii) of

the Bihar Prohibition and Excise Act, 2016 so far as it includes ENA within the ambit of the word, intoxicant' is ultra vires to the

Constitution and the IDR Act and to that extent the definition is struck down and in view of this, the provisions of Sections 13, 23 and 24

will not have any application and the meaning of the word in-toxicant' appearing in Section 13 has to be read accordingly. That apart, we

further set aside the No-tification dated 24th January, 2017 issued by the State Government so far as it prevents or denies the right of

renewal of an existing li-cense for production of ENA from grain based distilleries. To that ef-fect, the Notification is struck down and set

aside and the petitioners' case for renewal of license is di-rected to be considered by the State Government in accordance with the

requirement of law.Ã¢â‚¬‹

In the opinion of the Court, the ratio of the judgment in the case of Bihar Distiller and Bottlers Pvt Ltd (supra) is of no assistance to the petitioner in

the instant application which is for quashing of the FIR.

It may be stated here that even accepting the contentions made on behalf of the petitioner that he had no alternate route and the vehicle had

necessarily to cross through the district of Kishanganj in the State of Bihar in between Baro Bisha in West Bengal and Dalkhola in West Bangal,

nevertheless besides this contention being a defence which may be raised by the petitioner at an appropriate stage, the petitioner could not be

permitted to violate the New Excise Policy, 2015 of the Government of Bihar as published in the Bihar Gazette (Extra Ordinary) no. 1342 Patna

21.12.2015 (Annexure-D to the supplementary affidavit) Clause 3(2)(v) and (vi) of which provides that a digital lock would be placed on the vehicle

carrying spirit or foreign liquor or IMFL at the first check post inside the State of Bihar which will be opened at the last check post within the State of

Bihar and the period given to transit the State would be a maximum of 24 hours.

In view of the judgments of the HonÃ¢â‚¬â„¢ble Supreme Court referred to herein above including the judgments in the case of Pratibha Rani (supra),

Bhajanlal (supra), Tapan Kumar Singh (supra) and M/s Neeharika Infrastructure Pvt Ltd (supra), the Court finds merit in the submissions made by the

learned Additional Advocate General no. 3 that at the time of considering the prayer of the petitioner for quashing of the FIR, the contents of the

allegations contained therein have to be accepted as true and so far as the points being raised on behalf of the petitioner is concerned, they are

disputed questions of fact, the defence being raised cannot be considered at this stage and the petitioner may raise the same at an appropriate stage in

course of trial.

In view of the facts and circumstances stated herein above specially the contents of the FIR, quashing of which has been prayed for on behalf of the

petitioner, together with the ratio of the judgments of the HonÃ¢â‚¬â„¢ble Supreme Court referred to herein above, in the opinion of the Court the

petitioner has not made out any case for quashing of the FIR and the Court finds no merit in the application. The Court also does not find merit in the

consequential prayers made on behalf of the petitioner.

The application is dismissed.