

(2015) 4 PLJR 509

Patna High Court

Case No: Criminal WJC Nos. 660 and 632 of 2014

Saheb Kumar

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: July 7, 2015

Acts Referred:

- Bihar and Orissa Excise Act, 1915 - Section 47, 47(a), 47-A, 49, 55
- Evidence Act, 1872 - Section 77
- Penal Code, 1860 (IPC) - Section 188, 272, 273, 409, 419

Citation: (2015) 4 PLJR 509

Hon'ble Judges: Gopal Prasad, J.

Bench: Single Bench

Advocate: Satyabir Bharti and Alok Chandra, for the Appellant; Abhimanyu Vatsa and Shashi Shakher Prasad Sinha, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Gopal Prasad, J.

Both the petitions are being heard together and disposed of by this common order. Cr. W.J.C. No. 632 of 2014 has been filed for quashing the First Information Report of Chapra Town P.S. Case No. 119 of 2014 dated 14.4.2014 registered for the offence under Sections 419, 420 and 409 of the Indian Penal Code and Section 47(a) of the Bihar Excise Act, 1915. Cr. W.J.C. No. 660 of 2014 has been filed for quashing the First Information Report of Bhagwan Bazar P.S. Case No. 49 of 2014 dated 22.3.2014 registered for the offence under Sections 272, 273, 419 and 420 of the Indian Penal Code and Section 47(a) of the Bihar Excise Act, 1915.

2. The learned counsel for the petitioner submits that the First Information Report has been lodged on the basis of search and seizure conducted by the Assistant Sub-Inspector who is not authorized to search and seize and further that the investigation conducted by the Sub-Inspector who is not authorized to conduct the investigation and the cognizance has been taken on the charge-sheet submitted by the Sub-Inspector who is not competent to investigate and submit charge-sheet so the order taking cognizance on the report is not sustainable and is fit to be set aside.

3. The prosecution case as alleged in Chapra Town P.S. Case No. 49 of 2014 by informant is that I Arun Kumar Sharma posted as Assistant Sub-Inspector in Bhagwan Bazar Police Station on 22.3.2014 at 13:30 P.M. while on patrolling got secret information that adjoining north of Chapra Siwan Main Road in Gudri Bazar there is a shop in which country-made liquor and foreign liquor has been stored and is being sold. On the said information, he reached Gudari Bazar at 14:00 hours near house of one Krishna Kumar Yadav then saw one person trying to flee away coming out of the house of Krishna Kumar Yadav was caught hold who disclosed his name Tarkeshwar Singh. This information was given to Inspector of Police-cum-Officer-in-Charge, Bhagwan Bazar and Officer of Excise Department and then Officer-in-Charge, Bhagwan Bazar and Sub-Inspector, Excise (Durgesh Kumar) reached there. In presence of two independent witnesses the godown was searched and huge quantity of country-made liquor and foreign liquor was found for which no license was produced who disclosed that the godown belongs to Sahab Kumar who has taken the premises on rent from Krishna Kumar Yadav and then search and seizure list has been prepared. The seizure list bears the signature of Station House Officer and Excise Sub-Inspector Durgesh Kumar.

4. On the said written report endorsement was made and the case was registered.

5. A counter affidavit and supplementary counter affidavit have been filed stating, inter alia, that investigation completed and charge-sheet submitted and further submitted that under Section 70 of the Excise Act (a) provides that any officer of the Excise, Police, Salt, Customs or Land Revenue Department, or (b) any person empowered by the State Government in this behalf, by notification, may arrest any person found committing offence under Sections 47, 49, 55 and 56 of the Excise Act.

6. However, a supplementary affidavit has been filed on behalf of the petitioner that the offence under Sections 419, 420, 272 and 273 of the Indian Penal Code is not made out as the search and seizure in licensed premises was conducted by the Assistant Sub-Inspector without obtaining any search warrant. The investigation of the case was handed over to Sri Azamat Hussain, Assistant Sub-Inspector who conducted the investigation and submitted Charge-Sheet No. 4 of 2015 on which cognizance has been taken by the Magistrate for offence under Section 47 of the Excise Act. It is submitted that the power to investigate an offence under Section 47 of the Excise Act is provided to the Officer-in-Charge of Police Station and not to the Assistant Sub-Inspector and hence, cognizance taken on the report submitted by an authority not entitled to investigate and

hence, order taking cognizance is not sustainable and further Section 96 of the Excise Act prohibits the taking of cognizance for offence under Section 47 of the Excise Act beyond six months of the date of occurrence hence, the cognizance taken beyond the period of limitation is not sustainable.

7. Chapra Town P.S. Case No. 119 of 2014 registered for the offence under Sections 419, 420 and 409 of the Indian Penal Code and Section 47(a) of the Bihar Excise Act by the informant Sri Charan Ram that while he was on patrolling reached at Chapra Kachahari Station near Hanuman Temple Shop he found the shop of foreign liquor and Mamta Bear Bar opened on dry day dated 13.4.2014 violating the order and liquor was being sold so the police reached and arrested two persons for which Chapra P.S. Case No. 117 of 2014 dated 13.4.2014 lodged under Section 188 of the Indian Penal Code and Section 47-A of the Excise Act and both shops were sealed by the Excise Inspector Durgesh Prasad. An information was received that after breaking the seal, the shops are being run, and so he was ordered to verify the information. So he reached the place of occurrence, the shop, and found Mamta Bear Bar open. At 11:55 A.M. the Executive Magistrate, Sadar reached the place of occurrence and informed that he was authorized by the District Magistrate and Sub-Divisional Officer, Chapra to inquire and prepare inventory. He found liquor shop open and informed Sub-Inspector, Excise, Chapra and it was disclosed that the seal at Mamta Bear Bar has been broken. Then search made and liquor seized. It is alleged that on the dry day Mamta Bear Bar shop was illegally opened and liquor illegally served. On the written report of Sri Charan Ram, Assistant Sub-Inspector the investigation was handed over to Sub-Inspector, Gautam Tiwary, who is investigating the case. The other prayer is to quash the First Information Report as search and seizure has been made in violation of Section 69 of the Excise Act as also search has not been made by the person authorized to search and seize and further investigation is not sustainable by the Officer of the rank of the Assistant Sub-Inspector as the Assistant Sub-Inspector is not authorized to investigate the case under Section 77 of the Evidence Act.

8. Hence, taking into consideration the allegation and the fact that two cases instituted under Section 47(a) of the Excise Act and Sections 419, 420 and 272, 273 of the Indian Penal Code and allied Sections of the Indian Penal Code by the Assistant Sub-Inspector of Police on the basis of the search and seizure made by the Assistant Sub-Inspector but in presence of the Station House Officer and the Excise Sub-Inspector who have been authorized under rules framed under Section 89 of the Excise Act bearing notification No. 470F dated, 15th January, 1919 the Sub-Inspector and Excise or Station House Officer of the Police Station has been authorized to conduct the search and seizure and investigate the case.

9. Section 69 of the Excise Act provides that power to enter and inspect, and power to test and seize measures, etc.--it provides that any of the following officers, namely:--(a) the Excise Commissioner, or (b) a Collector, or (c) any Excise Officer not below such rank as the State Government may, by notification, prescribes, 470F dated 15.1.1919 provides

the power to search and seize and investigate either to the Sub-Inspector of the Excise or to the Station House Officer of a Police Station and to search and seizure any premises of licensed manufactured, or licensed premises for keeping the liquor. However, Section 70 provides power to arrest without warrant, to seize articles liable to confiscation, and to make searches for seizure to any officer of the excise or police. The learned counsel for the petitioner has drawn a distinction between Sections 69 and 70 of the Excise Act in terms that Section 69 of the Excise Act is appealable for licensed premises whereas Section 70 of the Excise Act is for vehicle vessel and premises for which license has not been provided and hence, the power to search and seizure of licensed premises is guided by Section 69 of the Excise Act and hence, Section 70 of the Excise Act not applicable to petitioner as the search and seizure is from his license premises so Section 69 of the Excise Act is applicable in the above case. However, even accepting the argument the search and seizure in Chapra Town P.S. Case No. 49 of 2014 is before the Excise Inspector and the Station House Officer, as such the power of Section 69 of the Excise Act has been complied.

10. However, the contention raised that the investigation having been completed by an officer of the rank of the Assistant Sub-Inspector of Police having no jurisdiction to conduct the investigation as per Section 77 of the Bihar Excise Act, 1915 and rule and notification issued under it. Section 77 of the Excise Act provides that a Collector may investigate and Section 77(1) A of the Excise Act provides that any other Excise Officer specially empowered in this behalf and rule framed under the Excise Act provides the Sub-Inspector of Excise or the Officer-in-Charge of the Police Station is empowered to investigate the case. Hence, the Officer below the rank of the Sub-Inspector of Excise or the Officer-in-Charge of Police Station is only empowered. Assistant Sub-Inspector of Police is not empowered to investigate the case under Section 47-A of the Excise Act.

11. Hence, having regard to the fact that the investigation conducted in Chapra Town P.S. Case No. 49 of 2014 by the Assistant Sub-Inspector having no jurisdiction to investigate, hence, the cognizance taken on the charge-sheet submitted by Assistant Sub-Inspector is not sustainable and order taking cognizance is hereby set aside. So far Chapra Town P.S. Case No. 119 of 2014 is concerned though the First Information Report lodged by the Assistant Sub-Inspector on the search and seizure of the Magistrate but investigation conducted by the Assistant Sub-Inspector having not empowered to investigate, hence, the investigation by the Assistant Sub-Inspector is not sustainable as the Assistant Sub-Inspector has no jurisdiction to investigate. Hence, investigation by the Assistant Sub-Inspector is hereby quashed. So far the allegation regarding the offence under Sections 419, 420, 272 and 273 of the Indian Penal Code is concerned even accepting the allegation on the face value of the complaint the fact alleged does not make out an offence under Sections 419 and 420 of the Indian Penal Code. In Sections 419 and 420 of the Indian Penal Code, cheating by impersonation and cheating by dishonestly inducing delivery of property has been defined as dishonest and fraudulent inducement follow with delivery of property on said deception. However, the allegation

accepted on face value there is neither any allegation of any inducement nor element of delivery of property to constitute an offence of cheating and hence, the order taking cognizance in Chapra Town P.S. Case No. 49 of 2014 for the offence under Sections 419 and 420 of the Indian Penal Code is hereby quashed and the offence under Section 47 of the Excise Act is concerned since the Assistant Sub-Inspector has no jurisdiction to investigate and hence, the cognizance on the basis of the investigation, submission of charge-sheet by person not authorized to investigate is not sustainable and is hereby quashed and both the petitions are disposed of.