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Court : Patna

Decided On : Aug-18-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 4(1)(f), 173, 190(1)(c), Chapter 14, 251A, 252; [Essential Commodities Act, 1955](#) - Sections 7, 11

Appeal No. : CRIMINAL MISCELLANIOUS No.45858 OF 2005

Appellant : Surendra Singh, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Mritunjay Kumar Nirala, Adv.

Advocate for Pet/Ap. : Mr. Anil Jayaswal; Mrs. Anjana Bhagat; Mr. Tarkeshwar Prasad Verma, Advs.

Judgement :

1. Heard learned counsel for the petitioners, Additional Public Prosecutor for the State and Sri Tarkeshwar Prasad Verma for opposite party no. 2.
2. This is an application under Section 482 Cr.P.C. seeking to quash the order dated 28.11.2005 passed by learned Chief Judicial Magistrate, Sitamarhi in Runnisaidpur P.S. Case No. 239 of 1996, refusing to accept final form submitted by the police, after investigation but taking cognizance for the offence under Section 7 of the [Essential Commodities Act, 1955](#) against the petitioners.

3. Short relevant facts of this case is that on the written information received through opposite party no. 2 alleging some sort of black-marketing of essential commodities against the petitioners, Runnisaidpur P.S. Case No. 239 of 1996 was instituted on 30.12.1996 for the offence under Section 7 of the Essential Commodities Act. After investigation, police submitted final form on 31.10.2004 finding the case not true, on receipt of the same notice was issued to the informant, opposite party no. 2, who appeared but by filing petition on 01.10.2005, raised no objection against outcome of the investigation and submitted to accept the same of course on the ground of amicable settlement between the parties, but the court below on perusal of the case diary findings some material against the petitioners, took cognizance in the case for the offence under Section 7 of the Essential Commodities Act, giving rise to instant application.

4. Learned counsel for the petitioners submitted that in view of Section 11 of the Essential Commodities Act, cognizance for the offence can be taken only on the report of public servant, if the Investigating Officer being public servant, on investigation did not find any case, the court has no right to differ and take cognizance. Reliance has been placed on the decisions reported in 1998(3) PLJR 507 and 2001(3) PLJR 70. On the other hand learned Additional Public Prosecutor, while supporting the impugned order placed reliance upon decision of this court reported in 1968 PLJR 179.

5. Undisputedly, after investigation police found no case against the petitioners, in fact there is a report of police being public servant that no offence is made out against the petitioners for the offence under Section 7 of the Essential Commodities Act. The Division Bench decision of this Court referred and relied upon by learned Additional Public Prosecutor in a case A.K.JAIN & ORS. v. GOVERNMENT OF INDIA IN THE DEPARTMENT OF FOOD & AGRICULTURE & ORS. reported in 1968(1) PLJR 179, in fact supports the petitioners version as will appear from Paragraph 44 of the judgment, in aforesaid case which reads as such :-

44. The first point urged by Mr. Basudeo Prasad adopted and reinforced by Mr. S.N. Datta is also without substance, Section 11 of Act 10 of 1955 merely

provides- "No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined Section 21 of the Indian Penal Code." Offences under the said Act made punishable under Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 7 are cognizable within the meaning of Clause (f) of Sub-section (1) of Section 4 of the Code of Criminal Procedure in accordance with the Second Schedule of the Code. That being so, there is nothing in the 11th Section of Act 10 of 1955 taking away the power of the police to investigate under Chapter XIV of the Code. After such investigation, the report submitted by the Police, as pointed out by the Supreme Court in (11) Pravin Chandra Mody V. State Andhra Pradesh (A.I.R. 1965 Supreme Court 1185) following the decision of that Court in Bhagwati Saran V. State of U.P. (A.I.R. 1961 Supreme Court 928, is, to all intents and purposes, a report in writing of a person who is a public servant within the meaning of Section 11 of Act 10 of 1955, and is not a charge sheet, as popularly called, or a report under Section 173 Cr.P.C. The provisions of Section 11, in my opinion, do not either expressly or by necessary implication take away the power of the Police under Chapter XIV or any other provision of the law contained in the Code of Criminal Procedure in regard to a cognizable offence. Nor does it completely supersede or annul the procedure prescribed in Sub-Section (1) of Section 190 of the Code for taking cognizance of an offence. It merely modifies the procedure in that it does not authorize the taking of cognizance of a case by a court upon receiving a complaint of facts from any person unless that person is a public servant as defined in Section 21 of the Indian Penal Code. If that report be a report in writing of a police officer who is a public servant within the ambit of the said provision of law, taking cognizance upon such report can still be said to be taking cognizance upon a report in writing of such fact made by a Police Officer within the meaning of Clause (b) of Sub- section (1) of Section 190 of the Code. Observations of the Supreme Court in Pravin Chandra's case referred to above do lend support to this view of mine and that would determine the procedure which has to be followed at the trial by the magistrate under Chapter XXI. If it is a case instituted on a police report within the meaning of Clause (b) of Sub-section (1) of Section 190 fulfilling at the same time the conditions laid down in the 11th Section of Act 10 of 1955, the procedure

prescribed in Section 251 A of the Code has to be followed. If it is a case instituted otherwise than on a police report within the meaning of Clause (a) or (c) of Sub-section (1) of Section 190 again fulfilling at the same time the requirement of Section 11 of Act 10 of 1955, the procedure prescribed in Section 252 of the Code will have to be followed. Decision to the contrary in (12) State of M.P. V. Baital Nahar Singh (A.I.R. 1966 Madhya Pradesh 5), in my opinion and I say so with very great respect, does not seem to be correct and is against the trend of the decision of the Supreme Court in Pravin Chandra's case.

6. This court in subsequent decisions taken in a case NATHUNI YADAV & ORS. VERSUS THE STATE OF BIHAR & ORS. reported in 1998(3) PLJR 507 has followed the same view and in Paragraph 17 it is held as such:-

17. The other High Court might have taken different view, but so far this Court is concerned, there is consistent view that the Special Judge has no power to take cognizance in a case where police submits final report exonerating the accused. I do not think it safe to refer the matter to the Division Bench although it must be conceded that the point canvassed by Mr. Thakur is supported by a large number of decisions of the Supreme Court, some of which have been referred to above but are not in relation to E.C. Act.

7. In another case PRADUMAN GUPTA VERSUS THE STATE OF BIHAR & ORS., this court has followed the above decision in the case of Nathuni Yadav & Ors. v. State of Bihar in Paragraph 7 it has been held:-

7. Under these circumstances, in my view, by no stretch of imagination it can be said that the Special Judge acting under Essential Commodities Act can differ with the police report and take cognizance of the offence.

8. Thus, in view of the consistent decisions of this Court, impugned order is not sustainable, accordingly quashed and the application stands allowed.

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