

**Naresh Kumar. Vs. State of Bihar.**

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**Court :** Patna

**Decided On :** Feb-11-2011

**Judge :** Rakesh Kumar, J.

**Acts :** Indian Penal Code (IPC) - Sections 467 , 468, 471, 420, 120B; Bihar Finance Act - Sections 48(2)(f), 48(7), 49(2)

**Appeal No. :** CRIMINAL MISCELLANEOUS NO.29279 OF 2000

**Appellant :** Naresh Kumar.

**Respondent :** State of Bihar.

**Advocate for Def. :** MR. A.M.P. MEHTA, Adv.

**Advocate for Pet/Ap. :** MR. MRIGANK MAULI; MR. VINAY MISTRY, Adv.

**Judgement :**

1. In both the cases, similar points were involved and as such, both the cases were heard together and are being disposed of by this common judgment.

2. Cr. Misc. No. 10240 was filed for quashing of an order dated 8.12.1998 passed by Sri A.K. Pandey, Judicial Magistrate, Ist Class, Nawada in G.R. Case No. 1598 of 1996 / Tr. No. 385 of 2000 whereby the learned Magistrate had taken cognizance of offences under Sections 467 , 468, 471, 420, 120B of the Indian Penal Code and Section 48(2)(f) and Section 48(7) of the Bihar Finance Act (correctly Section 49) and directed for summoning the petitioner. After the order of

cognizance, the petitioner Rajendra Prasad approached this court by filing the previously mentioned petition questioning the order of cognizance mainly on the ground of want of prosecution sanction. On 20.9.2000, while issuing notice to Opposite Party No. 2 this court directed that further proceeding in G.R. No. 1598 of 1996 / Tr. No. 385 of 2000 pending in the court of Judicial Magistrate, 1st Class, Nawada (Sri A.K. Pandey) shall remain in abeyance. Thereafter, on 28.3.2001, the case was admitted for hearing and it was directed that until final disposal of this application the interim order dated 20.9.2000 will continue and order of stay is continuing.

3. In Cr. Misc. No. 29279 of 2000 the petitioner, Naresh Kumar has prayed for quashing of an order dated 26.7.2000 passed by Sri Subodh Prasad Shukla, learned 4th Additional Sessions Judge, Nawada in Cr. Revision No. 25 of 1998 whereby prayer for setting aside the order of cognizance of offences passed by learned Chief Judicial magistrate Nawada under Sections 467, 468, 471, 420, 120(B) of the Indian Penal Code and Section 49(2) of the Bihar Finance Act in Nawada P.S. Case No. 214 of 1996 was rejected. Since similar point was involved by order dated 29.11.2001, it was directed to list this case alongwith record of Cr. Misc. No. 10240 of 2000 (Rajendra Prasad Vs State). On 6.12.2001, the petition was admitted for hearing and it was directed that this petition shall be heard alongwith Cr. Misc. No. 10240 of 2000. While admitting it was directed that until further order further proceedings in the court below with regard to the petitioner shall remain stayed and order of stay in this case is continuing. In both the cases facts are different however, question of law in both the cases are almost similar in nature.

4. In Cr. Misc. No. 10240 of 2000, on the basis of written application submitted by Assistant Commissioner, Commercial Taxes, Nawada Circle, Nawada addressed to the Officer-in-charge, Sadar Police Station, Nawada an F.I.R. vide Nawada P.S. Case No. 251 of 1996 was registered on 17.10.1996 on an allegation that three forms IX "C" issued by M/s National Steel Industries in favour of the petitioners firm was reported to be not genuine and it was suspected that the forms were forged and used for the evasion of sales tax. After registering F.I.R., Police investigated the same and thereafter, a charge-sheet was submitted.

Subsequently, vide order dated 8.12.1998, the learned Chief Judicial Magistrate took cognizance of offences under Sections 467, 468, 471, 420, 120(B) of the Indian Penal Code and Section 48(2) and 48(7) of the Bihar Finance Act.

5. In Cr. Misc. No. 29279 of 2000, Assistant Commissioner, Commercial Taxes, Nawada Circle, Nawada had submitted a written application to the Officer-in-charge, Sadar Police Station, Nawada alleging therein commission of offences. Thereafter, an F.I.R. vide Nawada P.S. Case No. 214 of 1996 was registered on 19.9.1996. It was alleged in the F.I.R. that informant had received information that on 5 April 1991, one form F bearing no. D-257042 was used for transportation of one consignment of Vanaspati from Amrit Vanaspati Ltd., Ghaziabad valuing Rs. 5,96,400/-. It was suspected that the said form F was forged since signature of officer and seal of the circle put thereon was not genuine. It was suspected that the said form was used by the petitioner because of appearance of petitioners signature on the form. After registering F.I.R., Police investigated the same and thereafter charge sheet was submitted. After submission of charge- sheet the learned Judicial Magistrate, 1st Class, Nawada vide its order dated 10.12.1997, took cognizance of offences under Sections 467, 468, 471, 420, 120B of the Indian Penal Code and 49(2)(A)(B)(C)(F) of the Bihar Finance Act and directed for summoning the accused i.e. petitioner. Aggrieved with the said order of cognizance the petitioner filed a Revision vide Cr. Revision No. 25 of 1998. However, the learned 4th Additional Sessions Judge by its order dated 26th July, 2000 dismissed the said revision. Aggrieved with the order of Revisional Court as well as with the order of cognizance petitioner approached this court by filing the present petition.

6. Sri Mrigank Mauli, learned counsel appearing on behalf of petitioners in both the cases has raised the question of initiation of proceeding, questioned the order of cognizance as well as the revisional order in Cr. Revision No. 29279 of 2000 on the ground that the learned Magistrate in absence of sanction for prosecution in view of Section 49(5) of the Bihar Finance Act, 1981 was not authorized to take cognizance of offence and on this ground alone the order of cognizance in both the aforesaid cases are liable to be set aside. Besides absence of prosecution sanction, the proceeding is also liable to be set aside on the ground that, if there is

special provision under the Special Act the learned Magistrate was not authorized to take cognizance under the provisions contained in the general law. It was submitted that on the allegation made in both the cases the prosecution / proceeding under the Bihar Finance Act, 1981 was only permissible but the learned Magistrate contrary to the settled law has passed the impugned order taking cognizance of offences under the provisions of the Indian Penal Code as well as the Bihar Finance Act. In support of his argument, Sri Mrigank Mauli has referred to A.I.R. 1991 S.C. 558 (Narcotics Control Bureau Vs Kishan Lal & Ors.) and also A.I.R. 1991 S.C. 1148 (Jogendra Lal Saha Vs The State of Bihar & Ors.). Besides this, Sri Mrigank Mauli has heavily relied on an unreported single Bench judgment of this court passed in Cr. Misc. No. 11663 of 1992 (Ganesh Kumar Agrawal Vs The State of Bihar) and other analogous cases. At the time of hearing learned counsel for the petitioner has produced certified copy (same has been kept on record) of the judgment dated 11th March 1998 passed in Cr. Misc. No.11663 of 1992 and other analogous cases. It was submitted that in the similar facts and circumstances this court in Ganesh Kumar Agrawals case (Supra) has held that order of cognizance in absence of sanction issued by the Commissioner under Section 49(5) of the Bihar Finance Act was illegal. Besides this, this court in the said case has also held that investigation by the Police in such cases was not permissible. Besides praying for quashing of the orders of cognizance in both the cases as well as Revisional Order in Cr. Misc. 29279 of 2000, Sri Mrigank Mauli has also argued that both the cases were initiated only on suspicion. The investigation in both the cases was conducted in a mechanical manner and even F.I.R. was registered only on suspicion without any proper verification, and as such, it has been prayed to quash order of cognizance in both the cases and order of Revisional Court in Cr. Misc. No. 29279 of 2000.

7. Sri A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioners. It was submitted by Sri Mehta that so far sanction point is concerned this point can be raised during the trial of the case and only on the ground of non-availability of sanction order proceeding may not be set aside.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In both the cases it is evident that the learned Magistrate has not taken notice that at the time of taking cognizance, sanction issued by the Commissioner as per provision contained in Section 49(5) of the Bihar Finance Act was condition precedent and in absence of such sanction cognizance order was not required to be passed. Section 49(5) of the Bihar Finance Act puts a bar on court to take cognizance in absence of sanction issued by the Commissioner. In absence of sanction issued by the Commissioner in both the cases, the court is of the opinion that the learned Magistrate have erred in passing order of cognizance in both the cases. Besides this, fact remains that the F.I.R. was lodged mainly on suspicion long back in the year 1996 and same was stayed by this court at the time of admission of aforesaid cases. Accordingly, it would not be just and proper to allow prosecution of petitioners after such a long time coupled with the fact that sanction under Section 49 (5) of the Bihar Finance Act was not on record.

9. Accordingly, both the petitions are allowed and orders of cognizance in both the cases as well as Revisional Order passed in Cr. Misc. No. 29279 of 2000 are hereby set aside and both the previously mentioned petitions are allowed.

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