

Patna High Court

Subodh Kumar Purbey vs The State Of Bihar Through ... on 24 November, 2017

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 2083 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- M ADHEP

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Subodh Kumar Purbey, Son of Late Dinanath Purbey, Resident of Kala Balua, Police Station - Raniganj, District - Araria Petitioner Versus

1. The State of Bihar through District Magistrate, Madhepura.
2. The District Supply Officer, Madhepura.
3. The Block Supply Officer, Gamhariya Block, Madhepura.
4. The Inspector, Weights and Measure, Madhepura.
5. The Superintendent of Police, Madhepura.
6. The Officer Incharge, Gamhariya Police Station, Madhepura Respondents
===== Appearance :

For the Petitioner : Shri Prashant Kumar Shahi, Sr. Advocate Shri Mukesh Kumar, Advocate For the Respondents : Shri Upendra Pratap, A.C. to S.C. IV
===== CORAM:
HONOURABLE MR. JUSTICE BIRENDRA KUMAR ORAL JUDGMENT Date: 24-11-2017 Heard Shri Prashant Kumar Shahi, learned Senior Counsel for the petitioner and Shri Upendra Pratap, learned counsel for the State.

2. The petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India to quash the First Information Report of Gamhariya P.S. Case No. 71 of 2017, registered under Sections 419 and 420 read with Section 34 of the Indian Penal Code.

3. According to First Information Report, the petrol pump of co-accused named as M/S Prabhakar Petroleum Service, Gamhariya, was inspected by a team constituted by the District Patna High Court Cr. WJC No.2083 of 2017 dt.24-11-2017 Magistrate, Madhepura and it was noticed during inspection that the scale of measurement of petroleum being sold to the consumer was reduced, though the calibration sale was intact. Since calibration sale was intact, it was suspected that the petitioner, who was Inspector of the Weights and Measurement, was in collusion with the proprietor of the aforesaid petrol pump.

4. Learned Senior Counsel for the petitioner submits that when the offence has been committed relating to weights and measures, Section 51 of the Legal Metrology Act, 2009 specifically bars the application of the provisions of the Indian Penal Code and the Code of Criminal Procedure.

Therefore, the FIR registered under Sections 419 and 420 read with Section 34 of the Indian Penal Code is quite violative of the aforesaid provisions and, as such, not sustainable in law.

5. Section 51 of the Legal Metrology Act, 2009 reads as follows:-

"51. Provisions of Indian Penal Code and Code of Criminal Procedure not to apply.---The provisions of the Indian Penal Code and Section 153 of the Code of Criminal Procedure, 1973 in so far as such provisions relate to offenses with regard to weight and measure, shall not apply to any offence which is punishable under this Act."

6. In the present case, the offence alleged is clearly Patna High Court Cr. WJC No.2083 of 2017 dt.24-11-2017 defined and punishable under Section 30 of the Legal Metrology Act, 2009, hence, the application of the Indian Penal Code is barred.

7. Section 30 of the Legal Metrology Act, 2009 is being reproduced below:-

"30. Penalty for transactions in contravention of standard weight or measure.-----
Whoever ----

(a) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or

(b) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or

(c) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or

(d) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for, Shall be punished with fine which may extend to ten thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both."

8. Learned counsel for the State-respondent though opposed the prayer, however, does not dispute the legal position and concedes that the case might have been registered under Section 30 of Patna High Court Cr. WJC No.2083 of 2017 dt.24-11-2017 the Legal Metrology Act, 2009 but not under the provisions of the Indian Penal Code.

9. Second submission of the learned Senior Counsel for the petitioner is that M/S Prabhakar Petroleum Service, Gamhariya has already compounded the offence after paying compounding fee. There is no direct evidence against the petitioner. Only suspicion is there against the petitioner that

since calibration sale was intact, the petitioner was in collusion. Different reason may be for the alleged tampering and it was to the knowledge of the supplier i.e. the proprietor of the petrol pump or his employee only.

10. From the above discussion, it is evident that the impugned FIR violates the provisions of Section 51 of the Legal Metrology Act, 2009 which specifically bars the application of the provisions of the Indian Penal Code when the offence alleged is with regard to weights and measures. Further the offence under Section 30 of the Legal Metrology Act, 2009 which might have been applicable in this case is punishable with fine only and is compoundable also. The same has already been compounded with the main accused. Only suspicion is there against the petitioner which is not sufficiently explained pointing out the involvement of the petitioner. Hence, criminal prosecution of the petitioner would amount to an abuse of the process of the Court.

11. Accordingly, the FIR of Gamhariya P.S. Case No. 71 Patna High Court Cr. WJC No.2083 of 2017 dt.24-11-2017 of 2017 stands quashed and this writ application is allowed.

(Birendra Kumar, J) Kundan/-

AFR/NAFR	N.A.
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