

PETITIONER:
SHARDA PRASAD SINHA

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT 08/12/1976

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
GUPTA, A.C.
SHINGAL, P.N.

CITATION:
1977 AIR 1754 1977 SCR (2) 357
1977 SCC (1) 505
CITATOR INFO :
F 1983 SC 67 (9)
R 1990 SC 494 (4)

ACT:

Inherent powers of the High Court to quash proceedings taking cognizance of the offence when the allegations set out in a complaint or the chargesheet do not constitute any offence--Criminal Procedure Code 1973 (Act 2 of 1974), s. 482.

HEADNOTE:

Employing or permitting to employ any person under the age of 18 years or any woman in any part of the licensed premises and in contravention of s. 25 constitutes an offence u/s. 54(1)(a) of the Bihar and Orissa Excise Act 1915. Under s. 25(2) it is an offence when a woman is employed or permitted to be employed, by a person licensed to sell foreign liquor, and the employment of such woman should be in any part of the premises in which such liquor is consumed by the public. Section 57(c) of the Act provides a penal fine upto Rs.500/- for an action done by a licensed holder wilfully in breach of the conditions of the license for which no penalty is prescribed elsewhere in the Act.

On a complaint from the Assistant Commissioner, Excise that the appellant at the time of the raid on the New Year Eve did not have any permission of the competent authority for conducting a cabaret dance in the premises of Bankipore Club, Patna (admittedly the holder of "OFF" foreign liquor licence), the SubDivisional Magistrate, Patna took cognizance of the offences complained, namely, violation of s. 54(1)(a) read with s. 25(a) and s. 57(c) of the Bihar and Orissa Excise Act 1915. A revision filed under s. 482 of the Criminal Procedure Code 1973 on the ground that the allegations in the complaint did not constitute any offence warranting the cognizance was dismissed in limine.

On appeal by special leave to this Court,

HELD: Where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under s. 482 of the Code of Criminal Procedure 1973 to quash the order passed by the Magistrate taking cognizance of the

offence. [359B]

The instant case was clearly one where the allegations contained in the complaint did not constitute any offence and the Sub-Divisional Magistrate was in error in taking cognizance of it and the High Court also ought not to have, in the circumstances, rejected the application of the appellant for quashing the order of the Sub-Divisional Magistrate. [360E]

No offence under s. 54(1)(a) could be said to have been committed on the allegations contained in the complaint in the absence of specific allegation of the two essential ingredients of the offence under s. 54(1)(a) read with s. 25(2) and also for want of an averment that either of the two women who were performing the cabaret was employed or permitted to be employed by the Club or that liquor was being consumed by the public in the part of the Club in which the cabaret was being performed. [359D-F]

The allegation contained in the complaint could not be said to constitute an offence under s. 57(c), in the absence of an allegation as to which condition of the licence was broken by the Club or the appellant in allowing a cabaret to be performed in the Club premises and more so, when no such condition in the licence itself could be pointed out on behalf of the State. [360C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 203 1976.

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(Appeal by Special Leave from the Judgment and Order dated 4-2-1976 of the Patna High Court in Crl. Misc. Petition No. 441/76.)

A.B. Sinha and Pramod Swarup, for the appellant.

S.N. Jha and U.P. Singh, for the respondent.

The Judgment of the Court was delivered by

BHAGWATI, J. There is a club in Patna called Bankipore Club. The appellant is the Honorary Secretary of that Club. It appears that at about 10.25 p.m. on 31st December, 1975 when the New Year eve was being celebrated at the Club, a raid was carried out by the Assistant Commissioner of Excise, Inspector of Excise and SubInspector (Excise) and it was found that two women and five men were singing and dancing in the club premises. The Excise Inspector filed a complaint against the appellant on 2nd January, 1976 charging him with having committed offences under Section 54(1)(a) and Section 57 (c) of the Bihar and Orissa Excise Act 1915.

The allegations on the basis of which the complaint was filed are material and we may set them out in extenso:

"A Cabaret dance with women was in progress at Bankipore Club, Patna. Two women and five men were singing and dancing. This dance was being performed inside the premises of the Bankipore Club, Patna before a large gathering of men and women. I asked Dr. Sharda Prasad Singh, Honorary Secretary and his Manager Sri Banke Bihari Prasad Sinha to show the permission obtained from the District Magistrate or from any other authority for organising the Cabaret dance because licence vending 'Off' foreign liquor is given to Bankipore Club in form 2. The validity

period of licence is from 1-4-75 to 31-3-1976 and under Section 25 (2), conducting of Cabaret dances without obtaining the prior permission from any proper authority is illegal. Dr. Sharda Prasad Singh who is Honorary Secretary of Patna Bankipore Club did not show any permission of the District Magistrate or of any other authority for conducting the Cabaret and he said that he had not obtained any such permission.

Therefore, Dr. Sharda Prasad Singh, Honorary Secretary is guilty of the aforesaid offence. It is therefore, prayed that Dr. Sharda Prasad Singh, Honorary Secretary be prosecuted in a Court of law for violating Section 54(a) and Section 57(c) of the Excise Act for which I have been authorised to submit charge sheet to him by the District Magistrate, Patna".

These allegations according to the appellant did not constitute any offence and hence the appellant filed an application in the High Court of Patna under Section 482 of the Code of Criminal Procedure for quashing the order passed by the Sub-Divisional Magistrate, Patna taking cognizance of the offences charged against the appellant. The

359 High Court by an order dated 4th February, 1976 summarily rejected the application. The appellant thereupon preferred an application to the High Court for leave to appeal to this Court, but this application was also rejected by the High Court on the ground that the allegations set out in the complaint made out a prima-facie case against the appellant. This led to the filing of the present appeal with special leave obtained from this Court.

It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence. The question which, therefore, arises for consideration is whether the allegations set out in the complaint constitute any offence against the appellant. The offences charged against the appellant are under Section 54(1)(a) and Section 57 (c) of the Act. Section 54(1) (a) provides that if any licensed vendor or any person in his employ and acting on his behalf, in contravention of Section 25, employs or permits to be employed, in any part of his licensed premises referred to in that section any person under the age of 18 years or any women, he shall be liable to fine which may extend to Rs.500/-. It is an essential ingredient of this offence that the licensed vendor should employ or permit to be employed any women in any part of his licensed premises in contravention of Section 25. Now there can be no doubt that the Bankipore Club was a licensed vendor since it held an "OFF" licence in Form No. 2 given in the Bihar and Orissa Excise Rules. We will also assume for the purpose of argument that the place where the cabaret was going on was a part of the licensed premises.. But in order that the alleged cabaret should constitute an offence under Section 54(1) (a), it was necessary that the women who were performing the cabaret should be employed or permitted to be employed by the Club and moreover that should in contravention

of Section 25. Section 25, sub-section (2) provides that no person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous written permission of the Board, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without any remuneration, any woman, in any part of such premises in which such liquor is consumed by the public. It will be seen that this provision also comes into play only when a woman is employed or permitted to be employed by a person licensed to sell foreign liquor. Moreover, the employment of the woman should be "in any part of such premises in which such liquor is consumed by the public." It is therefore, obvious that there could be no offence under Section 54(1)(a) read with Section 25(2) unless it could be shown by the prosecution that the women who were performing the cabaret were employed or permitted to be employed by the Club and they were performing the cabaret in a part of the club premises in which liquor was being consumed: by the public. We may point out that it was contended on behalf of the appellant that subsection (2) of Section 25 can have no application in case of a person who is holding an "OFF" licence as distinct from an "ON AND OFF" licence in form No. 3 and since the appellant in the present case was

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holding an "OFF" licence, he could not be guilty of contravention of Section 25, sub-section (2) and hence no question of offence under Section 54(1)(a) could arise. But we will assume for the purpose of argument that the appellant was covered by Section 25, subsection (2) and he was bound to obey the prohibition contained in that sub-section. But even so we find that the two essential ingredients of the offence under Section 54(1)(a) read with Section 25 subsection (2) were not even alleged in the complaint. The complaint did not aver that either of the two women who were performing the cabaret was employed or permitted to be employed by the club or that liquor was being consumed by the public in that part of the club in which the cabaret was being performed. No offence under Section 54(1)(a) could in the circumstances be said to have been committed on the allegations contained in the complaint.

Equally, it is difficult to see how the allegations contained in the complaint could be said to constitute an offence under Section 57(c). That section provides that if any holder of a licence granted under the Act or any person in his employ or acting on his behalf wilfully does any act in breach of the condition of the licence for which a penalty is not prescribed elsewhere in the Act, he shall be liable to fine which may extend to Rs.500/-. The complaint does not allege as to which condition of the licence was broken by the club or the appellant in allowing a cabaret to be performed in the club premises. Nor could the learned counsel appearing on behalf of the State point out any such condition of the licence. The allegations contained in the complaint manifestly did not constitute an offence under Section 57(c).

This was, therefore, clearly a case where the allegations contained in the complaint did not constitute any offence and the Sub-Divisional Magistrate was in error in taking cognizance of it. The High Court in the circumstances ought not to have rejected the application of the appellant for quashing the order of the Sub-Divisional Magistrate.

We accordingly allow the appeal, set aside the order of the

High Court and quash the proceedings in Case No. 2(2) 76
Trial No. 285/76 pending in the Court in Mr. S.S.P. Yadav,
Executive Magistrate, Sadar Patna.

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Appeal allowed.

JUDIS