

(1996) 01 MP CK 0093

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 14 of 1995

Atul Kumar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 31-01-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 — Section 39

Penal Code, 1860 (IPC) — Section 182, 211

Citation : (1996) CriLJ 3301

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : Arun Pateriya, for the Appellant; R.B. Chaturvedi, Government Advocate, for the Respondent

Judgement

T.S. Doabia, J.—This order shall dispose of Criminal Revision No. 219 of 1994, also as in both these petitions same legal issue has been raised. The facts have, however, been taken from Criminal Revision No. 14 of 1995.

2. Proceedings have been initiated u/s 39 of the Madhya Pradesh Vinirdhistha Bhrashta Acharan Niwaran Adhiniyam, 1982 (hereinafter referred to as the Adhiniyam). The initiation of these proceedings was challenged in the Court below. It was contended that there is non-compliance of Section 39 of the Adhiniyam. It was specifically urged that cognizance of this case could not be taken because there was no direction given by the State Government of the officer authorised by a notification under the section. It be seen that Section 39 was amended in 1984. It would, therefore, be apt to notice the amended as well as unamended provisions. These read as under :

Unamended Amended 1. Cognizance of Offences. Section 39. Cognizance 39. All offence under this of Offences. All Act shall be cognizable. offences under this Provided firstly that no Act shall be cognizable. Court shall take cognizance (Provided that the of and no Police Officer shall Police Officer shall register a

case, inquire into not investigate an or investigate an offence offence under the Act under this Act against any except on a direction person unless directed by the of the prescribed authority State Government or such officer not below the rank of or authority, as it may by the Commissioner of Division notification, specify. Provided on a report submitting secondly that if on receiving an by him to such authority.) information of the commission of Provided further that an offence under this Act an the State Government may, officerspecified under this section at any time for the purpose apprehends that delay may result in of satisfying itself as to disappearance of material price of the propriety of any evidence, he may forthwith direct a order passed by the Executive Magistrate sub-ordinate to Commissioner of the Division him to proceed to collect the as prescribed authority either evidence of ensure against on its own motion or on reference disappearance of the facts made by the prescribed authority, relating thereto and facts shall shall call for and examine forthwith be reported by the record of any case such Executive Magistrate pending before or disposed to the committing Magistrate of by such authority and having jurisdiction and also may pass such order in ref- to the officer specified erence thereto as it thinks fit.)" under this section. Provided thirdly that no direction shall be issued under this section against a member of the judicial service of the State save with the prior concurrence of the High Court. Provided fourthly that if the Court while discharging or acquitting the accused finds that any officer while giving directions under this section or while granting sanction under Section 197, of the Code of Criminal Procedure, 1973 (No. 2 of 1974), acted maliciously without just cause or excuse, he shall be prosecuted according to law for an offence puhishable under Section 182 or 211 of the Indian Penal Code, as the case may be. 3. A perusal of the above provisions indicates that there is material difference between the amended and the unamended section. Under the unamended statute a Court was not supposed to take cognizance unless and until it was so directed by the State Government. Unamended provision have since been interpreted by this Court in The State Vs. Harishankar Goyal and Another, . It was observed (at p. 1715 of Cri U):

However, it was after the case was committed to the Court of Session, that the prosecution by an application dated 4-4-83, sought to file the endorsement dated 6-10-82 of the Commissioner Gwalior meant for the Collector, in connection with the prosecution of the respondents. This is rather suspicious, since no such correspondence was filed earlier before the committing Court. Assuming the bona fide existence of such correspondence, even that would be in effective in validating the prosecution of the respondents under the Ordinance, since the notification dated 24-9-82 would still require auction, and there was no such report in writing of the Commissioner to the Police for the purpose of prosecution, and there was no such report in writing of the Commissioner . addressed to the Police.

4. The above view expressed by this Court was followed in the later decision in Mohd Umar v. State of M. P. 1989 (1) MPWN 41. There can be no dispute with

the proposition laid down in the abovementioned two cases. But as noticed above, there is an amendment and the case has to be examined now as per the amended law.

5. Under the amended law, all that has been prescribed is that the police officer shall not go ahead with the investigation unless and until there is a direction given in this regard by the competent authority. So far as this case is concerned, the matter was referred by the Collector, to the Commissioner of the Division. The Commissioner of the Division took notice of the fact that a piece of land situated in survey Nos. 933 and 934 has been sold by Shri Atul Kumar S/o Shri Bishambhar Dayal in contravention of the statutory provisions. It was accordingly directed that the investigation be taken in hand. This letter is dated 8th of April, 1992. The direction is specific. It is in pursuance of this direction, proceedings have been taken against the petitioner in criminal revision No. 14 of 1992, that is, Atul Kumar. A further direction was given to take action against all other defaulting persons action (sic) be also taken. Specific mention has been made to Section 39 of the Adhiniyam. Merely because action has been taken on a reference made by the Collector, to the Commissioner and merely because the Commissioner ordered investigation, would not give rise to a conclusion that the Commissioner of the division did not apply his mind. As such, I am of the view that the decisions on which reliance has been placed by the learned counsel for the petitioner are not applicable. These decisions have been given under the unamended law under the provisions as it exist now, there is no bar to the taking of cognizance. The bar is only in the matter of initiating investigation, so far as this procedural formality is concerned, that has been duly complied with.

6. Faced with this situation, the learned counsel appearing for the petitioner submits that he be permitted to withdraw the petition with liberty to challenge the order of Commissioner before the State Government. According to him under second proviso to Section 39, the State Government can take suo motu action with view to examine as to whether the direction given by the Commissioner of the Division is in accordance with law or not. So far as this aspect of the matter is concerned, the petitioner can if so advised, approach the State Government. Whenever such an application is made, that be considered by the State Government and decided in accordance with law. It is made clear that suo motu jurisdiction would include exercise of power when something is brought to the notice of the Government by a third party also. In this regard, reference may be made to a decision given by this Court in *Arajpatrit Shashkiya Karmachari Grih Nirman Sanstha, Gwalior v. Subhash Yadav* 1995 MPLJ 988.

Paras. 10,11,12 and 13 are relevant and noticed:

10. There is no dispute that when some illegality is brought to the notice of the State Government by a third person, and action is taken then even that action would be an action taken in exercise of suo motu jurisdiction. Such was the view expressed by Punjab and Haryana High Court in *Jaswant Singh v. State of Punjab* (1986) 1 L. R. & S. 314. What was being interpreted was Section 69 of the

Punjab Co-operative Societies Act, 1961. This section confers suo motu powers on the State Govt. It was observed that there is no difference in the exercise of the powers when action is taken by the State Govt. itself or when the action is taken when a third person brings some illegality to the notice of the State Govt. at page 318 it was observed:-

I hence fail to see how the position would become diametrically different if the matter is brought to the notice of the revisional authority (which is clothed with wide powers) by one of the parties to the dispute. The State Government is not a natural person and has no personal knowledge of its own and matters are thus brought to its notice either directly or by its employees or by other and no fatality can attach to an order on the hypertechnical ground that if the State Government had acted suo motu its action would have been unassailable but merely because the action is taken on proceedings brought to its notice by another the self-same action would become totally vitiated.

11. In this regard, reference be made to the decision given by the Supreme Court in the case of Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others, , where the scope of Section 154 of the Maharashtra Co-operative Societies Act, 1960 was under consideration. The Supreme Court was of the view that the State could exercise suo motu jurisdiction even where the Government was moved by a person not a party to the dispute. Relevant observations made by the Supreme Court be noticed again (at p.1453of AIR):-

...It is, of course, true that the words "on an application of a party" which occur in Section 150 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action unless it thinks fit. The party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which of Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not only inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Governments may act or may not act; the choice of Government. There is no right to relief as in appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err and that is what Government did in this case.

12. Reference be also made to the decision of the Privy Council in the AIR 1948 102 (Privy Council) . In the above case, the Privy Council has observed:

It is possible that there might be a contest in which words so inapt for that purpose would create a duty. But in the present case there is no such context. On the contrary Section 33 follows upon a number of sections which determine the rights of the assessee and is itself, as its language clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinate and take the necessary action upon such review. It appears that as a matter of convenience, a practice has grown up under which the Commissioner has been invited to act "of his own motion" under the section and where this occurs a certain degree of formality has been adopted. But the language of the section does not support the contention, which has at the root of the third question and is vital to the respondent's case, that it affords a claim to relief.

13. To the same effect is a decision given by a Full Bench of Punjab and Haryana High Court, reported as *Gurnam Kaur v. State of Punjab* (1993) 13 L. R. and S. 254. The Full Bench concluded as under:-

The aforesaid provision does not specifically mention that such powers could be exercised by the Commissioner or by the Financial Commissioner suo motu or at the instance of the interested or the aggrieved parties. In the absence of use of such phraseology, it cannot be said that the Financial Commissioner or the Commissioner could not act under the provision aforesaid, rather the statute is to be interpreted in such a manner that it fulfills the object for which the same is framed.

7. In view of the above, the argument of the learned counsel for the petitioner that proceedings are vitiated for want of failure to follow Section 39 cannot be sustained. The petitioner would, however, be at liberty to approach the State Government under second proviso to Section 39.

8. Both the revision petitions are disposed of as indicated above.