

(1953) 01 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 25 of 1952

Chhatar Singh

APPELLANT

Vs

State of Madhya Bharat and Another

RESPONDENT

Date of Decision : 21-01-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226, 228
Madhya Bharat Police Act, 2007 — Section 12, 12(1), 12(2)

Citation : (1953) 01 MP CK 0004

Hon'ble Judges : Dixit, J; Chaturvedi, J

Bench : Division Bench

Advocate : Patankar, for the Appellant; K.A. Chitale, General and Mungre and Shiv Dayal, Govt. Advs., for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner moves this Court under Article 226 of the Constitution of India for an order or a writ quashing an order dated 11-7-52 passed by the District Magistrate of Morena by which additional police was posted in certain villages of Morena District and cost of the additional police was levied on the residents of those villages, and for an order prohibiting the opponents from enforcing the said order and realising the cost of the additional police from the Petitioner and other residents of those villages.

2. The Petitioner states that he is a Gujar Thakur by caste and a resident of the village Ghuraiya Basaia in Pargana Joura of District Morena; that on 10-7-52 the Government issued a proclamation u/s 12(1), Madhya Bharat Police Act Samvat 2007 declaring 5 villages including Ghuraiya Basai of Dist. Morena as a disturbed and dangerous area; and authorised under Sub-section (2) of Section 12 the Commissioner Northern Division to employ adequate police force in addition to the ordinary fixed complement in the above villages, that on 11-7-52, the District Magistrate of Morena purporting to act u/s 12 of the Police Act and under the proclamation issued by the Government on the previous day, quartered

additional police in the villages and imposed on the residents of those villages the cost of the police, exempting Harijans, Vaishya, Brahmins and other minor communities such as barbers, washermen, gadariyas etc., from liability to bear any portion of the cost of the police. The Petitioner further states that he and other residents of the live villages had applied to the District Magistrate of Morena to withdraw the order dated 11-7-52; but that the District Magistrate did not cancel the order. The validity of the proclamation and the order of the District Magistrate is challenged mainly on the grounds:

1. The proclamation was not issued in conformity with Section 12(1) of the Police Act.
2. That under the proclamation the Government did not authorise the District Magistrate to quarter additional police.
3. That the order of the District Magistrate by which he exempted certain castes from liability to bear the costs of additional police being repugnant to Articles 14 and 15 of the Constitution, was bad;
4. and that Section 12 of the Police Act which permits exemption of any person or class or section of inhabitants from liability to bear any portion of cost of additional police is itself void in view of Articles 14 and 15 of the Constitution.

On these allegations after stating that he had no other speedy, effective and other adequate remedy, the Petitioner prays that the order dated 11-7-52 of the District Magistrate be quashed and a writ in the nature of mandamus or appropriate order be issued either restraining the opponents from realising the cost of the additional police from him and other residents of the village or enjoining them to exempt the applicant and other residents from liability to bear the cost of additional police. On behalf of the opponents a return has been filed opposing the application.

3. This petition was filed on 23-8-52. It was admitted by us on 27-8-52 and after the issue of the notice to the opponents, it was put up before us for hearing on 6-1-1953. In the meantime the Petitioner from whom on the date of the filing of this petition, no demand had been made to pay any portion of the cost of additional police, paid the amount of his share and the proclamation issued by the Government as well as the order of the District Magistrate which were to be operative for a period of two months from the date of s their making, ceased to be in force. In these circumstances the learned Advocate General took the preliminary objection that the reliefs prayed for by the applicants could be of no avail to the applicant and that the petition should, therefore, be thrown out as infructuous.

4. Having heard the learned Counsel for the Petitioner and the learned Advocate-General on the preliminary point, I am disposed to uphold the objection of the learned Advocate General. The Petitioner has prayed the relief that the order of the District Magistrate be quashed and the opponents be prohibited from

realising from him and other residents any cost in respect of the additional police. It is not disputed by the learned Counsel for the applicant that the order passed by the District Magistrate and the proclamation issued by the Government are not now operative. The question, therefore, of the issue of any order by this Court to quash the order of the District Magistrate or the proclamation of the Government does not arise. It is true that the liability to pay the cost of additional police quartered under the proclamation of the Government and order of the District Magistrate subsists even after the expiry of the proclamation and the District Magistrate's order, and if a demand is being made from the Petitioner to pay any portion of such cost, the applicant can still complain that the proclamation and the order of the District Magistrate being both illegal, the demand is wholly without jurisdiction. But in the present case the Petitioner has already paid his share of the cost of additional police. That being so, the right which he can now claim to enforce is not a right to restrain the opponents from recovering from him any portion of the cost, but it is the right to the refund of the amount already realised from him on the ground that it was an illegal exaction. The applicant has not averred in this petition that, he has already paid his share of the cost and claimed the relief of the refund of that amount. The reliefs of the nature asked for by the applicants have now become inappropriate and when on the petition as it is framed there remains now no right of the applicant to be enforced, the applicant is clearly not entitled to a mere declaration that the proclamation and the order of the District Magistrate were illegal. The challenge to the order and the proclamation is" now plainly incidental to the establishment of the applicant's right to the refund of the money paid by him and if he thinks that the amount paid by him was illegally recovered from him, he has the remedy of a suit for the refund of the amount already paid by him. This remedy is equally effective, beneficial and convenient. Mr. Patankar learned Counsel for the Petitioner had to concede that the remedy of a suit for the refund of the cost was equally effective, beneficial and convenient remedy. He, however, felt some doubt as to whether such a suit could at all be entertained by a Civil Court. I myself have no such doubt. If the Petitioner's complaint is that the proclamation and District Magistrate's order were illegal and ultra vires and the amount realised from him was beyond the competence of the District Magistrate and was, therefore, an illegal exaction, then a suit claiming refund of the amount would lie in the Civil Court. I realise that if in the suit the question that Section 12 of the Police Act is void in view of certain provisions of the Constitution is raised, that question would have to be referred in this Court for its opinion under Article 228 of the Constitution of India. But his consideration can hardly be regarded as a valid ground for short-circuiting the proper remedy of a suit and holding that the remedy of suit is not as effective, beneficial and convenient as the one this Court can give under Article 226 of the Constitution.

5. A further point was made by the learned Advocate General that as on the date of the petition, no demand had been made on the Petitioner to pay his share of

the cost of the police and as no action had been taken under the order of the District Magistrate to his detriment, the Petitioner had no such interest as to be competent to maintain the application under Article 226 of the Constitution of India for an order restraining the opponents from imposing on all the residents of the five villages the cost of the additional police. To this contention the reply of Mr. Patankar learned Counsel for the Respondents was that although on the date of the application, the Petitioner was not called upon to pay any cost of the police, he and other residents of the five villages were persons who in the immediate future were to be affected by the order of the District Magistrate and that therefore, the Petitioner had a cause of action consisting in the threatened infringement of his right to property. The objection raised by the learned Advocate General is no doubt supported by a decision of the Rajasthan High Court in - "Pratap Mal v. Commissioner, Income- tax AIR 1951 Raj 150 (2) (A) in which following the observation of the Supreme Court in the case of - Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, (B) that only those persons whose interests are directly affected by a statute can apply for redress under Article 226, it was held that an interim injunction under Article 226 restraining the Income Tax Officer from assessing Income Tax on all the residents of the locality could not be granted, where no action had been taken against the applicant and the applicant wanted the injunction to be issued not only in his favour but also in favour of all residents of locality, who had not come to the Court. It also finds some support in the observations of Hidayatullah J., in-"Sheo Sankar v. State of Madhya Pradesh AIR 1951 Nag 58 (FB) (C). At this time it must be said that the contention of the learned Counsel for the applicant that on the date of the application the Petitioner had a cause of action in the threatened infringement of his right cannot be rejected summarily as devoid of any substance. As this application fails on the ground that it has become infructuous, it is not necessary to decide the objection whether in the circumstances existing on the date of the petition, the Petitioner was competent to maintain this application, the point might be profitably considered on a more appropriate occasion, when it arises in some other case.

6. In the result I would dismiss this petition leaving the parties to bear their own cost.