

(1983) 08 AHC CK 0053

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 6420 of 1983

Govind Gupta and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-08-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Uttar Pradesh Rice and Paddy (Levy and Regulation of Trade) Act, 1981 — Section 3(2)

Citation : (1983) 7 ACR 421

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : H.S. Nigam and P.C. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—The applicant against whom FIR has been lodged has come forward with a prayer that the FIR dated 1-7-1983 and the show cause notice dated 7-7-1983 may both be quashed. The grounds of attack are that both Petitioner No. 1 and the seller of the wheat and rice are wholesale dealers and the purchase of the commodities and bringing the same to the destination at Konch does not constitute an offence, the Marketing Inspector has not correctly read the licence number, the Marketing Inspector erred in not considering the entire evidence produced by the Petitioner and that levy on the rice purchase was already paid by Petitioner No. 1 hence no offence is made out.

2. The FIR recites that Sri R.K. Shukla, Marketing Inspector accompanied by other officials and two constables was carrying surprise checking at Kanpur road Etawah at the octroi and noticed one truck facing Kanpur direction and interrogated the driver and the conductor of the truck concerning the goods therein. There were 98 bags of wheat and 63 Kattas of Arwa rice. The release order concerning the rice was demanded. He referred to the other persons as owners sitting in the truck. Papers were demanded from them. In the gate pass shown the licence number of the seller and purchaser were not mentioned so it

was not possible to ascertain the real identifies with reference to licence number and the release certificate was also demanded and that was also not produced. Section 3(2)(ii) of the U.P. Rice and Paddy (Levy and Regulation of Trade) Order, 1981 lays down that every licensed dealer shall deliver to the State Government at the notified price in case of various districts and divisions, certain percentage of every variety of rice produced by him or coming into his custody or possession for sale or disposal. Section 3(4) of the Act further provides that if a part of any lot of rice in respect of which release certificate has been obtained is moved by road, the driver or person incharge of the vehicle carrying the same shall carry a certificate from the Marketing Inspector showing that the commodities moved is part of released lot and the certificate shall also contain the name, licence number and addresses of the dealer etc.

3. The recital of the FIR shows that any release order on demand was not produced and it would further show that even gate pass that was shown did not bear the licence number as required.

4. As I am going to reject this application summarily, to avoid any bias or prejudice to the applicant, I am not entering into the question of facts which will be looked into in course of investigation. The police is under a statutory duty to carry investigation. The complete procedure concerning the investigation is laid down in the Code of Criminal Procedure. The alleged offence is a cognizable offence, as such the matter to be considered is whether while exercising powers u/s 482 Code of Criminal Procedure the normal procedure of investigation by the police under its statutory obligation should be obstructed or disturbed. True that the powers u/s 482 Code of Criminal Procedure are wide and in suitable cases where on the face of the FIR no offence whatsoever is disclosed the Court can even quash the FIR and the investigation but it is also well settled that powers u/s 482 Code of Criminal Procedure are not to be lightly exercised nor they would be exercised to defeat and delay the normal procedure. Section 482 Code of Criminal Procedure simply lays down that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This has to be borne out before exercising such inherent powers. In the exercise of such powers the Court will not start functioning as an investigating agency to enter into any enquiry itself and to enter into the consideration of questions of fact. In fact, the very objective of the provisions concerning investigation by the police in cognizable offences collecting evidence and submitting final report or charge sheet as the case may be for which complete provision has been made in the Code of Criminal Procedure would be defeated if the court itself starts investigating matters involving question of facts. It would also not be serving ends of justice to stifle or obstruct or delay investigation. A statutory obligation has been cast upon the police under the relevant provisions of the Code of Criminal Procedure to investigate concerning the cognizable offence. It would amount to setting up another machinery in its place if light interference is made.

In fact by conducting the investigation, collecting evidence and then submitting its report either in the shape of final report or charge sheet the investigating agency in that way helps the Court for taking the decision whether prima facie case is disclosed, whether cognizance should be taken or not. The actual scheme would be seriously disturbed if powers u/s 482 Code of Criminal Procedure are lightly exercised and interference is made with the statutory rights of the police to investigate cognizable offences. I, therefore, do not consider it a fit case for exercise of any inherent powers and the facts can be better ascertained by a proper investigation in the matter and this application is summarily rejected.