

(1978) 02 AHC CK 0005

In the Allahabad High Court

Case No : Criminal Misc. Application No. 5540 of 1976

Harish Chandra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Defence of India Rules, 1971 — Rule 114, 183, 36
Essential Commodities Act, 1955 — Section 11, 7

Citation : (1978) ACR 250

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : N.K. Roy, for the Appellant; Anshuman Singh, for the Respondent

Judgement

P.N. Goel, J.—This is an application u/s 482 Code of Criminal Procedure. On 21-5-1974 Sri Basudeo Singh, Sub-Inspector, Police Station Kotwali, Jaunpur, took search of the house of Petitioner Harish Chandra and recovered 17 big packets of surf and 25 small packets of surf detergent powder. He asked the Petitioner to produce the papers. The Petitioner could not produce any paper relating to these packets. Sri Basudeo Singh did not find any list of these packets at the shop of the Petitioner. Lateron, the police submitted charge-sheet against the Petitioner u/s 7 of the Essential Commodities Act and Rule 114 of Defence of India Rules.

2. The Petitioner's contention is that he carries on a shop of medicines, that he holds a license for the same and that he does not sell any other article at his shop. Further contention of the Petitioner is that he could not be prosecuted at the instance of Basudeo Singh. The Petitioner has given his affidavit in support of the petition. Sri Basudeo Singh has filed counter affidavit. He has admitted that the Petitioner has a medicines shop. He has then stated that the soap was recovered from the Petitioner's house because it was stored for the purpose of sale. He also purported to depose that a copy of the F. I. R. was submitted along

with the charge-sheet and that the search was made before the Sub Divisional Magistrate who was Enforcement Officer under the Essential Commodities Act.

3. Sri N.K. Roy, Advocate for the Petitioner and Sri Anshuman Singh, Advocate for the State have been heard.

4 It is undisputed that the Petitioner has a medicines shop. It is also undisputed that the recovery of 42 packets of surf detergent powder was made from the residential house of the Petitioner. Nothing was shown that there was any limit of such detergent powder which a person can keep at his house. Therefore, prima facie by keeping 42 packets of surf detergent powder at his house the Petitioner had committed no offence and as such he could not be prosecuted for any offence. As the packets were kept at the house and not at the shop there can be no presumption that the packets stored in the house were for sale. There is nothing in the affidavit of Basudeo Singh that he had previously seen the Petitioner selling detergent powder at his shop. Therefore, the very basis of the prosecution is without substance.

5. Sri Basudeo Singh does not appear correct in deposing that the search was made in the presence of the Sub Divisional Magistrate who was Enforcement Officer for the purpose of Essential Commodities Act. In case the Sub Divisional Magistrate was the Enforcement Officer, he should have taken search of the house and not Sri Basudeo Singh. Recovery memo, Annexure A to the affidavit of Harish Chandra, clearly shows that the search was taken by Basudeo Singh and not by the Sub Divisional Magistrate. In this memo there is no mention of the presence of the Sub Divisional Magistrate at the time of search. Thus it is patent that Basudeo Singh was not competent to take search of the house of the Petitioner under the Essential Commodities Act. Sri N.K. Roy further contended that u/s 11 of the Act, no court could take cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by order of or under the authority of the District Magistrate or such other officer as have been empowered by the State Government by general or special order in this behalf. Sri Basudeo Singh has not deposed that he had such an authority to launch the prosecution. His allegation is that a copy of the first information report was attached with the charge-sheet. Section 11 is a special Act, therefore, its compliance should be made strictly. Charge-sheet is not a report u/s 11. First Information Report is also not a report u/s 11 First information report is made to the police officer concerned. Section 11 envisages a special type of report by an officer empowered by the District Magistrate of the Government as the case may be. In the affidavit Basudeo Singh has referred to the case of Tej Singh and Others Vs. State of U.P., . In this case Tej Singh and others were prosecuted for breach of Rule 36 of the Defence of India Rules, 1971. The police officer could prosecute them. It was held that a copy of the first information report along with the charge-sheet was sufficient compliance of Rule 183 of Defence of India Rules. There is no dispute to this principle, but this principle cannot be extended to a case filed u/s 11 of the Essential Commodities

Act. Its obvious reason is that in the instant case, the police officer could not prosecute the Petitioner.

6. No other point was urged.

7. For the view taken above, the prosecution of the Petitioner is wholly bad in law. Intention of Section 482 Cr PC is to prevent abuse of process of court and to secure the ends of justice. The case before me is a fit one for the exercise of power u/s 482 Code of Criminal Procedure.

8. The application is accordingly allowed and the criminal proceedings for the prosecution of the Petitioner are hereby quashed.