(2001) 01 BOM CK 0022

In the Bombay High Court

Case No : Criminal W.P. No''s. 199 and 288 of 1999

Jaysing Daulatsing Rawal and Others APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 56

Citation : (2002) 2 MhLj 177

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Pradeep R. Patil, for the Appellant; S.K. Tambe, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—The petitioners seek to quash the F.I.R. No. 38/99 dated 28-3-1999 lodged at Police Station, Dondaicha, District Dhule. It is the contention of the petitioners that the alleged F.I.R,, on the face of it, does not disclose any offence either under the provisions of Maharashtra Agricultural Produce Market Committee (Regulation) Act, 1963 or the Rules made thereunder or even under the provisions of the Indian Pena! Code. It is further the contention of the petitioners that the complaint is purely with political motivation and lacks bona fide on the part of the complainant as the same has been filed to malign the name of the petitioners few days earlier to the election of Legislative Assembly knowing well that the petitioners are strong contenders of the candidates for Assembly Constituency. It is further contention of the petitioners that as the offences under the said Act are not cognizable offences and in view of Section 56 of the said Act, prosecution can be instituted only by the authorised officer and, therefore, the F.I.R. is absolutely bad in law.

2. Elaborating the contention on behalf of the petitioners, the learned Advocate, placing reliance on the decision of the Apex Court in the matter of State of

Haryana and others Vs. Ch. Bhajan Lal and others, and in the matter of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and that of Single Judge of this Court in an unreported matter in Criminal Writ Petitions No. 245, 253 and 300 of 2000 in the case of Korra Srinivas Rao s/o Krishnamurthy and Anr. v. The State of Maharashtra and Ors. delivered on 5th December, 2000, it was contended that in terms of Section 31 of the said Act, if the agricultural produce is brought in the market area for the purposes of processing then the market fee is not leviable on such agricultural produce. The petitioners company bring Maize for processing and they also pay market fees on this agricultural produce. After satisfying the market committee that it has been processed within 30 days, they also claim back the amount of market fee already deposited. Rule 32 of the Agricultural Produce Marketing (Regulation) Rules, 1967, the market fees can be claimed back by the processor by filing necessary declarations in Form 8 and all these formalities were duly completed by the petitioners and the market fee was claimed back from time to time. It is further contended that the complainant Mahendra Bhagwan Patil is person set up by one Hemant Deshmukh is political opponent of the petitioners and the said Mahendra Patil was also working as Public Relation Officer with Sindkheda Sahakari Sakhar Karkhana Ltd., of which Hemant Deshmukh was the Chairman. Considering that the petitioners arc the strong contenders of the candidates of Assembly Constituency, a complaint is filed with political motivation. Drawing attention to sections 46 to 52 of the said Act, it was contended that the penalties leviable under the said provisions clearly disclose that the punishment is in the form of fine and hence, none of the offences under the said Act can be said to be cognizable offences and as such, the Police authorities had no powers under Criminal Procedure Code to register F.I.R. The learned Advocate further submitted that the copies of the documents placed before this Court along with the petition, clearly establish that the collection of the amount alleged in the complaint by the petitioner was towards refund of the fees in terms of provisions contained in Section 31 and Rule 32 of the said Act and Rules, respectively.

3. Perusal of the copy of the complaint discloses that the same relates to the allegation of payment of an amount of Rs. 19,00,000/- by the market committee without any decision in that regard in accordance of the provisions of law and, therefore, there has been violation of various provisions of the said Act. It has been also alleged in the complaint that the said amount has been paid without complying with the provisions of law, by fabricating the documents and to that extent, there has been misappropriation of the said amount of the market committee. Section 31 of the said Act provides that it shall be competent to a Market committee to levy and collect fees in the prescribed manner at such rates as may be decided by it from every purchaser of agricultural produce marketed in the market area. Further, Rule 32(3) of the said Rules provides that a trader, commission agent, processor shall immediately on bringing any declared agricultural produce in any market area for the purpose of processing or for export as the case may be, make a declaration in Form 8 and shall deposit" with

market committee an amount equal to the market fee payable on such agricultural produce. It further provides that the market committee shall refund the amount of deposit to the trader, commission agent, or processor, as the case may be, immediately on the production of the proof of processing or export of agricultural produce within 30 days from the date of the aforesaid declaration. In other words, Section 31 of the said Act speaks about the levy and collection of fees in the prescribed manner in relation to the agricultural produce marketed in the market area. Rule 32(3) which has been referred to as entitling refund of the fees, refers to the deposit of amount equal to the amount of market fees payable by the trader on agricultural produce. Second part of the said Rule 32(3) provides, as already stated above, for refund of the said amount of deposit on production of proof of processing or exporting of the agricultural produce within 30 days from the date of the declaration. In other words, it is a matter of investigation to find out whether the above provisions have been complied with before the refund order is made or not. Therefore, even assuming that the provisions of law provide for refund of the amount by the market committee, it simultaneously provides that such refund has to be ordered on production of certain proof regarding certain facts and the acts to be complied with by the trader who had deposited the amount along with the declaration in Form 8.

4. Sections 46 to 52 of the said Act speak of penalties for contravention of various provisions of the said Act. Section 46 deals with the penalties on contravention of Sub-section (1) of Section 6. Section 47 relates to the failure of the outgoing Chairman or Vice Chairman to comply a direction issued under subsection (2) of Section 26. Section 48 deals with the penalties on contravention of the provisions of Section 39. Section 49 deals with the penalties for obstructing any officer in carrying out the inspection of accounts or holding an inquiry into the offices of a Committee or failure to obey any order made under Clause (1), (c), (d) or (e) of Section 40. Section 50 deals with penalties for contravention of the provisions of Section 40 or Section 43. Section 51 deals with penalties for contravention of the provisions of Section 42 and Section 52 makes general provision for punishment for violation of any of the provisions of the said Act and Rules or Bye laws made thereunder. None of these provisions relates to the offences pursuant to misappropriation of amount of the market committee. Such an offence, naturally, therefore, would be governed by the provisions of Indian Penal Code and not by the provisions of the said Act and the Rules made thereunder.

5. As regards the contention of mala fides and the F.I.R. being filed with political motivation, it is seen that the pleadings in the petition contain allegations to the effect that one Mahendra Bhagwan Patil - complainant who has filed the F.I.R., is a person set up by one Hemant Deshmukh and said Hemant Deshmukh is political opponent of the petitioners and that, the said Mahendra Patil was also working as Public Relations Officer with Sindkheda Sahakari Sakhar Karkhana Ltd., of which Hemant Deshmukh was the Chairman. Mahendra Bhagwan Patil and Hemant Deshmukh have not been joined as parties -- respondents in the

petition. In the absence of those persons being joined as respondents, no notice can be taken of any allegation against the said persons or that, the F.I.R. is tainted with mala fide.

6. In this connection, much stress was led on the Guideline No. 7 issued by the Apex Court in the matter of State of Haryana v. Bhajan Lal (supra). It was held by the Apex Court therein that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the F.I.R. can be quashed. The petitioners, apart from making wild allegation that the said person is political opponent and that, the petitioners are strong contenders of candidates for Assembly Constituency, do not disclose any fact which can apparently show that the F.I.R. might have been lodged with ulterior motive for wreaking vengeance oh the petitioners.

7. Reliance has also been placed in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate (supra) and attention was drawn to para 22 thereof. The Apex Court therein, has held that it is well settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal the Apex Court had examined the extraordinary power under Article 226 of the Constitution and also the inherent powers u/s 482 of the Criminal Procedure Code and had held that it could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. According to the learned Advocate, to secure ends of justice in the case in hand, it is necessary to quash the F.I.R. as the same does not disclose any offence by the petitioners. In the said decision of the Apex Court in Pepsi Foods''s case, in paragraph 22, referring to the Guidelines issued by the Apex Court in State of Haryana v. Bhajan Lal it was observed that exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice and one of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

8. Perusal of the F.J.R., as already observed above, discloses allegation of payment of Rs. 19,00,000/- by the market committee to the petitioners in contravention of the provisions of law and by fabricating certain documents and without any justification. Once, the F.I.R. on the face of it discloses the said allegation, there cannot be any question of interference by this Court in its inherent powers either under Article 227 of the Constitution or u/s 482 of Criminal Procedure Code. In a recent case by the Apex Court in the matter of Shri Mahavir Prashad Gupta and Another Vs. State of National Capital Territory of Delhi and Others, , it has been held that if the complaint itself discloses an offence, High Court should not embark upon an inquiry as to genuineness of the

allegations made in the complaint or whether those allegations were likely to be established on evidence or not. Being so, question of ascertaining whether allegations made in the complaint are true or false on referring the documents sought to be produced by the petitioners along with the petition, cannot arise.

9. The learned Advocate for the petitioners has also referred to Section 56(2) of the said Act and submitted that no prosecution could have been instituted otherwise than by the authorised officer. Section 56(2) provides for no prosecution under the said Act shall be instituted except by the Director of any officer authorised by him in that behalf or by the secretary or any other person duly authorised by the Market Committee in that behalf. The provision apparently speaks about launching of prosecution. It does not speak about filing of a complaint with the police or taking cognizance by the police authorities of an offence which can be a cognizable offence. Mere filing of F.I.R. cannot amount to launching of prosecution by the person who has filed the complaint. When a complaint relating to an offence of cognizable nature is filed before the police, it is duty of the police to enquire into the matter and to arrive at a conclusion either regarding commission of offence or otherwise and, thereafter, to initiate prosecution if investigation reveals commission of offence. Section 56 in fact, speaks about the cognizance of the matter by the Court. Sub-section (1) thereof provides that no offence under this Act, or any rule or bye law made thereunder shall be tried by a Court other than that of a Presidency Magistrate or a Magistrate of the First Class or a Magistrate of the Second class specially empowered in that behalf. Sub-section (2) of Section 56 provides that no prosecution under the said Act shall be instituted except by the Director or any officer authorised by him in that behalf or by the Secretary or any other person duly authorised by the Market Committee in that behalf. Sub-section (3) of the said section provides that no Court shall take cognizance of any offence under this Act or any rule or order made thereunder, unless complaint thereof is made within six months from the date on which the alleged commission of the offence came to the knowledge of the officer or person referred to in Sub-section (2). All these provisions u/s 56 speak about and relate to the offences relating to the contravention of the provisions of law contained in the said Act and not relating to the acts constituting offences under Indian Penal Code.

10. In the circumstances, therefore, there is no case made out for interference as the impugned F.I.R., on the face of it, discloses cognizable offence which can be investigated by the police authorities. Hence, petitions are dismissed. Rule discharged with no order as to costs.