

(1983) 07 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1018-M of 1983

Jyoti Rani

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 27-07-1983

Acts Referred:

Citation : (1983) AICLR 640

Hon'ble Judges : B.S.Yadav, J

Advocate : Hari Singh Mann, Salil Sagar, G.R. Majithia, Advocates for appearing Parties

Judgement

B.S. Yadav, J.

1. The facts leading to this petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) are that the Tehsildar, Bhatinda, filed a complaint against the present petitioner under Sec. 64 of the Indian Stamp Act (hereinafter referred to as the Act). According to other allegations in the complaint the petitioner had obtained halfshare in a house situated in Bhatinda in exchange of a plot from one Virinder Kumar by means of a registered deed. In that deed the value of the house had been shown as Rs. 10,000. On an enquiry, the Collector, Bhatinda found that the value of the house was Rs. 22,000. The petitioner thus cheated the State to the tune of Rs. 480 in respect of the stamp duty plus registration charges.

2. Vide order dated 19th July, 1982, the learned Chief Judicial Magistrate, Bhatinda, exempted the personal appearance of the Tehsildar till further orders and allowed him to appear through the Additional Public Prosecutor. He also ordered for the summoning of the accused. In the present petition the petitioner prays for the quashing of the complaint as well as the orders of the Chief Judicial Magistrate by which she had been summoned to appear in his Court for the reasons given in para No. 14 of the petition.

3. The learned counsel for the petitioner argued that in view of section 47A of

the Act introduced by the Indian Stamp (Punjab Amendment) Act, 1982, the complaint filed by the Tehsildar has become infructuous. This argument has no force. Section 47A lays down how the instruments which have been under valued, have to be dealt with. If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in instrument, he may, after registering such instrument, refer the same to the Collector, for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. Thus that section only lays down the procedure for the determination of the proper duty payable on an instrument relating to the transfer of property. Section 64 of the Act lays down the penalty for omission to comply with the provisions of section 27. Therefore, section 47A and 64 of the Act provide for different contingencies. Moreover, in the present case, the complaint was filed prior to the introduction of section 47A of the Act. Hence in the light of the above discussion it cannot be said that the penalty imposed by section 64 of the Act for omission to comply with the provisions of section 27 is waived of after the Registering Officer makes a reference to the Collector under section 47A of the Act for determination of the proper duty payable on an instrument of transfer of property.

4. The next argument advanced by the learned counsel for the petitioner was that the learned Chief Judicial Magistrate did not examine on oath the complainant and his witnesses, if any, as required by Section 200 of the Code. However, a proviso has been appended to that section, the relevant portion of which reads as follows :

"200 xx xx xx xx

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses :

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

xxxx xxxx xxx xxx"

In the present case, in view of the reply filed by the respondentState it was not disputed by the learned counsel for the petitioner that the Tehsildar had been duly authorised under section 70 of the Act to file complaint in respect of the offences punishable under that Act. Therefore, the Tehsildar, being a public servant, had filed the complaint in the discharge of his official duties and hence in view of the above provisions, the learned trial Court was not bound to examine the complainant and the witnesses.

5. The learned counsel for the petitioner has cited Manindra Nath Das v. Public Prosecutor, 1979 Cr. L.J. 1465 and Norode Baran Mukherjee v. The State of West Bengal, 1976 CrL L.J. 370. Those cases have no application to the present case.

In those cases it was held that the public servant while filing the complaint, was not acting in the discharge of his duties, which did not include the filing of a complaint.

6. Next it was argued that the complaint shows that the report about the valuation was obtained from one Ved Parkash Gupta but he is a known Naxalite and black mailer and has and his wife's photos are pasted on the records of the Police Station Kotwali, Bhatinda. It was also urged that the cases mentioned in para No. 7 of the petition were registered against said Ved Parash. At this stage the evidence cannot be appraised. The only question to be seen in whether the complaint discloses prima facie material for drawing an inference that the accused has committed the offence. The accusedpetitioner during the trial can establish that the report of said Ved Parkash is not reliable. The petitioner cannot be heard to say so at this stage.

7. The learned counsel for the petitioner also argued that the present complaint by the Tehsildar is an abuse of the process of the Court as the petitioner's husband had been cited as a witness in 8 cases under section 64 of the Act, details of which have been given in para No. 10 of the petition, and in those cases he did not want to appear as a witness and was relieved by the Court. Merely because the petitioner's husband did not support the prosecution in certain cases under section 64 of the Act, it is difficult to hold that the present complaint is a false one. At this stage the Court is not concerned with the intention of the complainant in filing the complaint. Therefore, this argument has no force.

8. Lastly it was argued by the learned counsel for the petitioner that the order summoning the accusedpetitioner is not a speaking order and does not disclose if the learned trial Court had applied its mind to the contents of the petition. The order summoning the accused reads as follows :

"This complaint has been presented today again. It be registered. Personal appearance of Shri Krishan Chand, Tehsildar, is hereby exempted as pray for till further orders and till then he is allowed to appear through A.P.P. Accused be now summoned for 9.8.82."

In support of his argument the learned counsel for the petitioner has relied upon M/s Delhi Cloth and General Mills Company Ltd. v. State of H.P. and others, 1981 C.L.R. 336. In that case a complaint had been made by Food Inspector. The learned Magistrate ordered the office to check and report. After some time, the Court official put up a report of the effect that he had gone through the case file and found correct as per the list attached with the file by the Food Inspector, the learned Magistrate passed the following order :

"Report seen Registrar. Issue summonses to the accused for 20.9.1979".

One of the accused challenged that order. His lordship remarked :

"Reading sections 203 and 204 together for keeping in view the sequence in

which these sections appear in the Code, would go to suggest that in arriving at this conclusion whether or not to issue process against the accused, the Magistrate shall have to consider the same material on a consideration of which he shall have to decide whether the complaint should be dismissed under section 203. In fact for the purposes of section 204 of the (sic) Magistrate shall have to consider the aforesaid material more minutely and in greater details. The reasons is that where for the purposes of section 203 the Magistrate has to consider this material only for the purposes of forming an opinion whether there is sufficient ground for proceeding for the purposes of section 204 he has to not only form an opinion that there is sufficient ground for proceeding but he has also to take a decision regarding the nature of process to be issued for enforcing the attendance of the accused, whether summons or warrants. Issue of summons or warrants will depend upon the nature of the case and hence the Magistrate before the issue of process shall have further to form his opinion with respect to the nature of the offence for which the accused is to be summoned. It would thus necessarily follow that before directing issue of process against an accused person, the Magistrate must apply his judicial mind to the material before him and ascertain not only that there is sufficient ground for proceeding further in the complaint, but also the nature of the offence for which the accused need be summoned. It necessarily follows that under this provision the Magistrate does not enjoy an unrestricted power to summon a person at his whim, fancy or caprice simply because a complaint has been filed against him. Although strictly speaking it is no requirement of section 204 that an order directing issue of process against the accused be supported by detailed reasons, nonetheless this order has to be made by the Magistrate after applying his judicial mind to the material on record and this application of mind must be exhibited in the order itself in one way or the other. An order passed by the Magistrate without application of such mind would be without jurisdiction and liable to be quashed."

(Sic) lordship quashed the orders summoning of the accused.

9. The learned counsel for the petitioner has also (sic) M/s Kishan Chand and Co. and other v. Assistant Collector, Central Excise and Customs, 1982 C.L.R. 234. That case dealt with a complaint filed by the Assistant Collector, Customs, Ludhiana, under various sections of the Indian Penal Code and Section 9 of the Central Excise and Salt Act, 1944. The learned trial Court after granting exemption to the complainant, ordered, "the accused be summoned for 19.4.78". Relying upon the following passage of Krishan Murari and another v. Mohinder Pal, 1978 P.L.R. Crl. 138 his lordship quashed the orders of summoning :

"Any order which is open to judicial review is required to be speaking order. Similarly the order of the Magistrate summoning the accused has to be speaking but to what extent ? In our opinion if the Magistrate has referred to, in his order, the material considered by him, without giving the details thereof and there is indication that he applied his mind on the material, relevant and admissible

under the statute, he should be considered to have complied with the requirement of section 204."

In the present case the order passed by the learned trial Court for issuing process against the accused is very sketchy and it does not disclose at all if it had applied its mind to the facts contained in the petition and hence it cannot be sustained.

10. For the foregoing reasons I quashed the order passed by the learned trial Court for summoning the accused. The case is now sent back to that Court with a direction to proceed further in accordance with law as discussed above.