

(1976) 05 AHC CK 0028

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3029 of 1975

Khachar Mal

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 20-05-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1976) 05 AHC CK 0028

Hon'ble Judges : Jagmohan Lal, J

Final Decision : Dismissed

Judgement

J.M.L. Sinha, J.—This application has been moved by Khacher Mal, hereafter called accusedapplicant, under Section 482 of the Code of Criminal Procedure, praying that proceeding under Rule 114 of the Defence of India Rules, the Price Display Control Order, and Vanaspati dealers licensing order, pending against him in the Court of Magistrate, be quashed.

2. The facts, leading up to this application, can briefly be stated as under.

The applicant is owner of Truck No. UPB 8939. On 12th May, 1970, the police of Police Station Khair district Aligarh, received information through one Ram Kishore, that the accused applicant was selling Vanaspati Ghee, he purchased five tins of Ghee from him at the rate of Rs. 165/ per tin, that he had paid Rs. 100/ as advance to the accused applicant and that the applicant was to deliver the Ghee at his house by the truck that day. This information the SubInspector, along with some constables, went to the Chauraha of Kasba Khair and, as soon as his truck No. UPB 3839 reached that crossing, it stopped and four tins of Vanaspati Ghee of Golden Arrow brand and one tin of Vanaspati Ghee of Goat brand, were seized from the truck. The accused applicant was himself present at the truck at that time. On the above facts charge sheet was submitted for the prosecution of the accused applicant for contravention of U. P. Vanaspati Dealer Licensing Order, 1969, and U. P. Essential Commodities (Price Display and Control of Supply and Distribution) Order, 1971.

3. Having taken cognizance of the cases the learned Magistrate framed a charge for the aforesaid offences against the accused applicant on 7th May, 1975. The present application is directed against those proceedings.

4. The contention raised on behalf of the applicant before me is that the applicant was neither a licensee nor a dealer and consequently, U.P. Vanaspati Dealers, Licensing Order, 1969, could not apply to him. It was further urged that the applicant was neither a "whole seller" nor a "retailer" nor "distributor" and consequently, U. P. Essential Commodities (Price Display and Control of Supply and Distribution) Order, 1971, also did not apply to him. According to the learned counsel, the proceedings pending against him in the Court of the Magistrate are, therefore, wholly illegal and should be quashed. There are two reasons for which the contention raised on behalf of the applicant, cannot be accepted.

5. It is own case of the applicant that he has already entered appears in the Court of the Magistrate and even a charge has been framed against him. When an accused has entered appearance before a court of law to answer accusations, the proper course on his part is to raise such objections before the Magistrate himself and to invite finding thereon. Such a view was expressed by this Court also in the case Agra Electric Supply Company and another v. State of U.P., and another (1). In the instant case no application in writing was moved on behalf of the applicant in the court below raising an objection to the effect that, for the reasons indicated above, the Vanaspati Dealers Licensing Order, 1969, and the Price Display Control Order, 1971, did not apply to him and, consequently, the prosecution against him was misconceived. If an objection in writing to that effect had been raised, the Magistrate would have enquired into the same and would have disposed of the same by a formal order. Instead of raising such an objection, the applicant has come straight to this Court in order to agitate that point which does not appear to be expedient.

6. Learned counsel for the applicant pointed out that when the applicant was examined as accused in the trial court, he raised those pleas during his examination. Assuming that the applicant raised those pleas when he was examined by the trial court, it did not mean that by raising those pleas the applicant also called upon the trial court to dispose of those pleas at that stage. Unless a preliminary objection to that effect is taken in writing on behalf of the accused, such pleas are generally disposed of at the time of finally disposing of the case. Therefore, the mere fact that pleas to the above effect had been taken by the applicant during his examination in the court below, cannot be of any help to him so far as the present application is concerned.

7. There is yet another aspect of the matter. It is well established that in proceedings under Section 482 Code of Criminal Procedure, the court has to confine itself to the facts alleged by the prosecution. No investigation into facts should normally be done by a court while seized of an application under Section 482, Cr. P. C. In the instant case, the question whether the applicant was a licensee or a dealer within the meaning of these terms as defined in U.P.

Dealers" Licensing Order, 1969, or whether he was "whole seller," "retailer" or "distributor" within the meaning of these terms as defined in Price Display Control Order, 1969, are questions of fact. It is open to the prosecution to lead evidence in the trial court to establish that the applicant is a licensee or a dealer or retailer. If the prosecution leads evidence to that effect, it cannot be shut out merely because there is no specific allegation to that effect in the first information report. While disposing of this application it cannot be said that the case pending against the applicant has no legal basis unless the Court makes an enquiry and records finding to the effect that he is not a licensee, a dealer or a retailer. As already stated earlier, that is not possible under Section 482 Code of Criminal Procedure.

8. This application accordingly fails and is hereby dismissed. The stay order dated 1761975 is vacated. The court below shall be immediately informed of this order to enable it to proceed with the case.