

(1988) 05 AHC CK 0025

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 259 of 1988

Mahabir Prasad Agarwal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-05-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482, 561A, 561A
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1988) 2 AWC 1199

Hon'ble Judges : G.B. Singh, J

Bench : Single Bench

Advocate : Kr. Shanti Prakash, M. Rakesh and Kr. Mukul Rakesh, for the Appellant;

Final Decision : Dismissed

Judgement

G.B. Singh, J.—This is a petition u/s 482 Code of Criminal Procedure to quash the proceedings arising out of the First Information Report Annexure No. 1 u/s 3/7 Essential Commodities Act and directing the opposite parties not to arrest the Petitioners in connection with the crime registered on the basis of that report.

2. Mahabir Prasad Petitioner No. 1 is the proprietor and Ayodhya Prasad Dubey Petitioner No. 2 is the Munim of the Firm M/s. Mahabir Trading Company Payagpur district Bahraich. The firm is whole seller of food-grains, oil seeds and pulses and Commission Agent of food-grains, pulses etc. On 24-3-1988 at about 2 P.M. the premises of the firm were inspected by Sari Sarvesh Narain Gaur, Marketing Inspector, Payagpur opposite party No. 2 alongwith some other Marketing Inspectors and members of the police force. Mahabir Prasad Petitioner No. 1 was not present at the shop. According to the first information report Ayodhya Prasad Dubey Munim Petitioner No. 2 was present at the time of inspection but it has been disputed in the petition. The Marketing Inspector found shortage in the stock of paddy, Khali and Alsi. According to the First Information

Report the paddy was short by 11 bags, Khali was short by 9 bags one quintal and 50 kilograms in weight and Alsi was short by one bag 90 kilograms in weight. It was also alleged in the first information report that 356 quintals 40 kilograms maize was sold on 20-2-1988 but it was not shown in the Satti Bahi. Similarly Khali sold on 16-2-1988 and 9-3-1988 was not shown in the Satti Bahi of the firm. The Petitioners alleged that there was no shortage in the stock as alleged in the first information report and relevant entries were made in the account books. It was also alleged in the first information report that the food-grains, oil seeds and other articles were kept in the premises which were not provided in the licences granted to the firm. With regard to it, it has been alleged in the petition that the Petitioners had given intimation about it to the authorities concerned much before the inspection. According to the first information report, the proprietor and the Munim committed breach of the provisions of the U.P. Food-Grains Dealers (Licensing and Restriction on Hoarding) Order, 1976, U.P. Oil Seeds and Oil Seed Products Control Order, 1966 and U.P. Essential Commodities (Display of Prices and Stocks and Control of Supply and Distribution Order) 1977 and thereby committed an offence punishable u/s 3/7 Essential Commodities Act. The Petitioners contend that they did not commit any breach of the provisions of these Control Orders. It has also been pleaded by them in the petition that the Marketing Inspector had no right to inspect the premisei and Ayodhya Prasad Dubey Munim who has been shown present in the first information report was not at the shop on account of his illness. The Petitioners, therefore, contend that they did not commit any offence u/s 3/7 Essential Commodities Act and the proceedings arising out of the first information report should be quashed and the Petitioners may not be arrested.

3. Heard learned Counsel for the Petitioners as well as Assistant Government Advocate who put in appearance on behalf of the State.

4. In the present case the Petitioners did not make any prayer for quashing the first information report. It seems that they have not prayed for it in view of the observations made in Kurukshetra University and Another Vs. State of Haryana and Another, and State of Punjab Vs. Dharam Singh and others, 1987 (Supp) SCC 89 . It has been held in Kurukshetra University v. State of Haryana that inherent powers u/s 482 of the Code of Criminal Procedure do not confer arbitrary jurisdiction on the High Court to act according to whim or caprice. The High Court in exercise of its inherent powers u/s 482 Code of Criminal Procedure cannot quash first information report more so when the police had not even commenced the investigation and no proceeding is pending in any Court in pursuance of the said FIR. In the other case State of Punjab v. Dharam Singh the High Court allowed the petition u/s 482 Code of Criminal Procedure and quashed the first information report registered against the Respondents and the proceedings taken in pursuance thereof. In this connection the following observations were made by the Hon''ble Supreme Court:

The order of the High Court cannot be sustained because the police authorities

are enjoined by law to register a case and conduct investigation whenever information is laid regarding the commission of cognizable offences. As such quashing of a first information report will amount to restraining the police authorities from performing the duties enjoined upon them by law.

It has been further held in this case that:

The High Court has, however, not confined its scrutiny to the averments contained in the first information report but has traversed beyond and examined the case in the light of the contentions put forth by the Respondents-in their petition u/s 482 Code of Criminal procedure. By indulgence in such exercise the High Court has come to the conclusion that the second Respondent Cooperative Society cannot be termed a dealer of the alleged adulterated fertilizer distributed to its members because there was no sale involved in the transaction, that for the same reason the second Respondent Society was not bound to obtain a Registration Certificate for selling fertilizer and further-more the alleged sale of adulterated fertilizer was itself open to serious doubt because of conflicting analysis reports issued by the Chemical Analyst regarding the fertilizer and hence the emergent position is that the first information report does not disclose the commission of cognizable offences. Thus what the High Court has done is to go far beyond the contents of the first information report and enter into a discussion on the merits of the case before the Investigating Agency had conducted investigation and collected evidence.

5. With these observations the appeal was allowed and the order of the High Court was set aside and the first information report was restored and further investigation was directed to proceed in accordance with law. The observations made in this case make it clear that the scrutiny should be confined to the averments contained in the first information report and the High Court should not examine the facts narrated in it in the light of the contentions put forth by the Petitioners in their petition u/s 482 Code of Criminal procedure.

6. It has been held in *Puttan Singh v. State of U.P.* 1987 AWC 404 that the power of the police to investigate a cognizable offence is unfettered and cannot be interfered with by the Court in the exercise of its inherent powers u/s 482 Code of Criminal Procedure and the arrest cannot be stayed during the pendency of such an application. This view was expressed on the basis of a case of Privy Council and some Supreme Court cases. They are (1) *King Emperor v. Khwaja Nazir Ahmad* 1946 CriLJ 413 PC, (2) *State of West Bengal v. Section N. Basak* 1963 CriLJ 341 SC, (3) *S.N. Sharma v. Bipen Kumar Tewari* AIR 1970 SC 486 , (4) *Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc.,* , (5) *Jehan Singh Vs. Delhi Administration,* , (6) *State of Bihar and Another Vs. J.A.C. Saldanha and Others,* and (7) *State of West Bengal and Others Vs. Sampat Lal and Others,* .

7. It may be added here that there are observations of the Privy Council and the Supreme Court to the effect that the inherent jurisdiction of the High Court can

be exercised to quash the proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In this connection some of the categories of such cases have been specified in *R.P. Kapur Vs. The State of Punjab*, . It has been held in this case that where the allegations in the first information report, even they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. Similarly in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, in an appeal against the judgment in a petition under Article 226 of the Constitution of India it has been observed that if the offence is disclosed the High Court under Article 226 of the Constitution will not normally interfere with the investigation into a case and will permit the investigation into the offence alleged to be completed and if the materials do not disclose an offence no investigation should normally be permitted. Since the scope of the powers under Article 226 of the Constitution of India are wide enough, the word "normally" was used and it was further made clear that some other relevant material may also be examined in order to find out if there is any prima facie case against the Petitioners. The position in the present case is distinguishable because it is a petition u/s 482 Code of Criminal Procedure where the scope is limited by the wording of the Section. Moreover the observations made in *State of Punjab v. Dharam Singh* 1987 (Suppl.) SCC 89 clearly show that the High Court in a petition u/s 482 Code of Criminal Procedure should not examine the averments made in the first information report by going into the merits of the case and in the light of the contentions put forth by the Petitioner, All this make it evident that in such a case it should be seen on the basis of the first information report if it makes out a case prima facie in connection with the alleged offence.

8. In *King Emperor v. Khwaja Nazir Ahmad* 1945 CriLJ 413 PC also it has been held that if no cognizable offence is disclosed and still more if no offence of any kind is disclosed the police would have no authority to undertake investigation and if they do so, the High Court may interfere u/s 561-A Code of Criminal procedure. Section 561-A of old Criminal Procedure Code corresponds to Section 482 of the present Criminal Procedure Code and the contents of both the Sections are the same. In *Drugs Inspector, Palace Road, Bangalore Vs. Dr. B.K. Krishnaiah and Another*, , it has been observed that in quashing the proceedings u/s 482 Code of Criminal Procedure the High Court has to see whether the allegations made in the complaint petition if proved make out a prima facie offence and that accused has prima facie committed an offence. In *J.P. Sharma Vs. Vinod Kumar Jain and Others*, it has been observed that in order to see if any prima facie case has been made out, the allegations made in the complaint without adding and subtracting anything should be seen and that is the limit of the power to be exercised by the High Court u/s 482 Code of Criminal procedure. It has been further observed in this case if the High Court considers some extraneous material like CBI report, it exceeds its jurisdiction.

9. It is, therefore, to be seen if the first information report lodged against the Petitioners contains necessary facts to constitute the alleged offence prima facie

against the Petitioners. There are three allegations against the Petitioners. They are (1) shortage in their stock (2) absence of entries in their Sattibahi of certain commodities and (3) keeping of stock in the premises other than the premises disclosed in the licences. They are questions of fact. The Petitioners have disputed these allegations and they cannot be decided in the proceedings u/s 482 Code of Criminal procedure. For the purposes of the petition u/s 482 Code of Criminal Procedure the facts narrated in the first information report are to be accepted on their face value. The investigating agency can determine during investigation if the facts narrated in the first information report are correct or not and if finds them untrue he can submit final report, against the Petitioners.

10. Clause 4 of the U.P. Oil Seeds and Oil Seed Products Control Order 1966 lays down that no dealer or a commission agent shall occupy or set up any premises for purchase or sale of oil seeds or oil seed products except under and in accordance with the terms of the licence granted by the Regional Food Controller under the Order. Clause 2(b) of the licence issued under this Control Order is to the effect that Oil Seeds and Oil Seed products shall not be stored in any place other than the godown mentioned in the Licence and if the licensee stores them in a place other than specified in the licence he shall give an intimation thereof within 48 hours of the actual occupation and shall produce the licence for making the requisite changes by the licensing authority. Under Clause 3 of the licence it is provided that the licensee shall complete his accounts every day and shall maintain a register of daily accounts showing correctly the quantity of oil seeds and oil seed products handled, received, delivered or otherwise removed on each day and the closing stock in that account book of every day. Similarly under U.P. Foodgrains Dealers (Licensing and Restriction on Hoarding) Order 19/6, Clause 8 provides that conditions of licence should not be contravened by the licence holders. The Petitioner are holding licence in Form B under this Order. It is Annexure No. 19. Its Clause 2 provides that food-grains shall not be stored at any place other than any of the godowns mentioned in the licence and if the licensee stores its food grains in a place other than those specified he shall give an intimation thereof within 48 hours of its actual occupation and shall produce the licence for making requisite changes by the licensing authority. Its Clause 3 further provides that daily accounts of the food grains shall be kept by the licensee and such account shall show daily stock and sale etc. The U.P. Essential Commodities (Display of Prices and Stock and Control of Supply and Distribution) Order, 1977, show that every whole seller before commencement of business on any day except at instant or some other prominent place of his business the scheduled commodities actually held in stock. Its Clause 6 further provides that wholesaler shall not withhold from selling any scheduled commodities held in stock by him for sale. Clause 8 further provides for maintenance of account books, registers etc. by the whole seller in order to give correct information about the stock, sale etc. The facts disclosed in the first information report show that contravention of the provisions of the aforesaid Control Orders have been made by the Petitioners. It is, therefore,

evident that the first information report discloses a prima facie case of cognizable offence against the Petitioner.

11. It is true that the Petitioners dispute the correctness of the facts mentioned in the first information report but they have not placed any such material on the record on the basis of which it can be said that first information report do not make out a case prima facie against the Petitioner.

12. It has been alleged by the Petitioners that the Marketing Inspector had no power to inspect the premises. I am not prepared to accept this contention. Clause 10 of the U.P. Oil Seeds and Oil Seeds Products Control Order 1966 and Clause 2(e) read with Clause 14 of the U.P. Food Grains Dealers (Licensing and Restriction on Hoarding) Order, 1976 clearly show that the Marketing Inspector could inspect the premises, stock and the account books of the Petitioners. It is true that the definition of "Enforcement Officer" given in Clause 2(d) of U.P. Essential Commodities (Display of Prices and Stock and Control of Supply and Distribution) Order 1977 does not include the Marketing Inspector but much importance cannot be attached to this fact in view of the fact that he could inspect the premises, stock etc. under two other Control Orders.

13. It has also been alleged by the Petitioner that the Petitioner No. 2 was not present at the time of inspection and affidavits have been filed by the witnesses of Supurdnama denying that any inspection was made by the Marketing Inspector. These are all questions of fact and can be seen and considered by the investigating agency. They cannot be considered and attached any importance at this stage.

14. It is therefore, clear that the Petitioners have not been able to make out any case for interference with the investigation and for issuing any direction for staying their arrest during the pendency of the petition.

15. The petition is, therefore, dismissed.