
(2009) 10 MP CK 0021
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 5409 of 2009

O.P. Yadav and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 34

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 200, 482

Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 — Section 13

Penal Code, 1860 (IPC) — Section 394

Citation : (2010) ILR (MP) 745

Hon'ble Judges : Indrani Datta, J

Bench : Single Bench

Judgement

Indrani Datta, J.—With the consent of parties, matter is finally heard.

2. Invoking the extraordinary jurisdiction of this Court conferred u/s 482 of Code of Criminal Procedure, the Petitioners have filed this petition u/s 482 Code of Criminal Procedure for quashing the proceedings of complaint case No .5/09 pending in the Court of Special Judge (Dacoity) Gwalior by which on complaint of Respondent No. 2 cognizance has been taken against present Petitioners u/s 394 IPC and Section 13 of MPDVPK Act and arrest warrants have been directed to be issued against the Petitioners.

3. Facts in a nutshell giving rise to the petition are that a complaint has been lodged by Respondent No. 2 in the Court of Special Judge (Dacoity) alleging that on 8.6.05 complainant after purchasing five bottles of Rum and other articles of household use was coming towards his village on motorcycle with one Jitendra, at that time present Petitioners restrained him and asked him to give three bottles of Rum and half share of household articles. When complainant refused to fulfill their demand, they assaulted him and thereafter robbed Rum bottles and household articles and also took him to Police Station Maharajpura and got registered a false case against him for an offence punishable u/s 34 of Excise

Act. On the anvil of complaint filed by Respondent No. 2, the learned Special Judge (Dacoity) Gwalior after considering the preliminary evidence adduced by complainant so also the statement of complainant, has taken cognizance and issued arrest warrant against the present Petitioners.

4. Many folds submission has been advanced by the counsel for Petitioners that the Petitioners have been falsely implicated in the case. It is further submitted that prima facie case u/s 394 IPC and 13 of MPDVPK Act is not made out against the Petitioners. It is further asserted that bar of Section 197(1) Code of Criminal Procedure is available in the instant case and the Petitioners cannot be prosecuted for the aforesaid offence without there being obtaining previous sanction of superior authority. It is vehemently argued on behalf of Petitioners that taking of cognizance and issuance of arrest warrants against present Petitioners directly instead issuing summons or bailable warrant, is the abuse of process of court, which requires interference by this Court while exercising inherent power enshrined u/s 482 of Code of Criminal Procedure.

5. Combating the claim of the Petitioners, learned Counsel for Respondent No. 2 vehemently argued that u/s 197 Code of Criminal Procedure sanction to prosecute is only required when act. is done in discharge of official duty but it does not include the case of abuse of power. It is further submitted that committing a criminal offence which was not part of duties of Respondent No. 2 could not be said to be an act performed in course of discharge of official duties. Hence protection of Section 197 Code of Criminal Procedure is not available to the Respondent No. 2. Bolstering his arguments, learned Counsel drew this Court's attention to a citation in the case of Choudhury Parveen Sultana Vs. State of West Bengal and Another, in which while mentioning the case of Bhagwan Prasad Srivastava Vs. N.P. Mishra, , it is held by the Hon'ble Apex Court that

All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. The underlying object of 197 is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 and have to be considered *dehors* the duties which is public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

6. Similar is the stand taken in case of Prakash Singh Bindal v. State of Punjab AIR 2009 SCW 1415 where same question was considered and similar

observation was made. In case of Ramesh Chandra v. State of M.P. ILR (2009) MP 255 allegation against applicant/accused was that he availed money of LTC without travelling, then it is held by bench of this Court that no sanction for prosecution u/s 197 Code of Criminal Procedure is necessary as act of applicant was not in discharge of his official duties. Thus, Bar of Section 197 Code of Criminal Procedure is not available in the case at hands. It is further submitted that learned Special Court (Dacoity) Gwalior has taken cognizance after recording and considering the statement of complainant so also on the basis of documents available on record. Therefore, prima facie case is made out against the present Petitioners. It is further asserted that there is no reason to falsely implicate the Petitioners and therefore there is no ground available for quashing the proceedings of criminal case pending in the court of Special Judge (Dacoity) Gwalior.

7. A combined reading of the provisions of Section 197 Code of Criminal Procedure with the facts and circumstances of the case, depicts that Bar of Section 197 Code of Criminal Procedure is not available in the present case as alleged acts have not been done by Respondent No. 2 in discharging official duty, therefore, umbrella of Section 197 Code of Criminal Procedure is not available to the Petitioners and no protection can be sought for under the provisions of Section 197 Code of Criminal Procedure.

8. A perusal of documents available on record reveals that prima facie there is no material in this context that complainant had. filed the complaint with malafide intention in order to falsely implicate the Petitioners. Taking of cognizance by the learned Special Judge (Dacoity) at that stage considering the allegations made in complaint and documents and statements of complainant recorded u/s 200 Code of Criminal Procedure, cannot be said to be perverse or without any legal basis nor it can be said that proceedings are instituted maliciously. In my considered opinion the learned Special Judge (Dacoity) has not erred in taking cognizance against present Petitioners after considering prima fade case and the same is infallible at that stage and does not warrant any interference in the instant petition.

9. So far as learned Special Judge (Dacoity) after taking cognizance has directly issued arrest warrants against Petitioners is concerned, in the case of Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors. (2007) 12 SCC 1 it is held by Hon''ble Supreme Court that in complaint cases at the first instance the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable warrant. In the third instance, when the court is fully satisfied that the accused in avoiding the court's proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants.

10. Reverting to the facts of the case at hands, it is suffice to say that there is no

reason for quashing the proceedings pending in the court of Special Judge (Dacoity) nor does it suffice to interfere in the aforesaid proceedings at this stage while exercising the power conferred u/s 482 of Code of Criminal Procedure. Accordingly, the petition is dismissed.

11. Adverting to the alternative prayer made by learned Counsel for the Petitioners that learned trial court has directly issued the arrest warrant against the Petitioners without issuing either summons or bailable warrant in the case. The aforesaid prayer appears to be reasonable. The power being discretionary one must be exercised judiciously with extreme care and caution and the court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. It is also worth appreciating that this Court had occasion on 19.8.2009 while staying the execution of warrants of arrest issued against Petitioners. On consideration of the totality of the facts and circumstances of this case, the impugned order so far as it relates to issuance of arrest warrants against Petitioners is recalled and the impugned order is modified with a direction to the learned Special Judge (Dacoity) that without being influenced by this order, the learned Special Judge (Dacoity) shall first issue summons or bailable warrant against the Petitioners and if they appear and move application for regular bail, then proceed to decide the application in accordance with law.

12. With the aforesaid direction and modification, the petition is disposed of.

Certified copy as per rules.