

(2005) 09 AHC CK 0008

In the Allahabad High Court

Case No : Criminal M. Application No. 5123 of 2000

Purshottam Das Jaiswal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7
Uttar Pradesh Krishi Utpadan Mandi Niyamawali, 1965 — Rule 76(12)

Citation : (2005) 3 ACR 3231

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Ravi Kant and Raghuraj Kishore, for the Appellant; A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard Sri Raghuraj Kishore, learned Counsel appearing for the applicant and learned A.G.A. for the State. Counter-affidavit has been filed by the State but no rejoinder-affidavit is on record.

2. This application has been filed for quashing the charge-sheet submitted against the applicant in Case No. 8 of 1994 pending in the court of Special Judge (E.C. Act) Varanasi. Submission on behalf of the applicant is that he carried on business of manufacturing and sale of pulses in the name of M/s. Purshottam Das Ashok Kumar, he has a valid licence issued by R.F.C. Kanpur, vide licence No. 472. He has a composite licence for processing various kinds of pulses vide licence No. 282/90. Counsel for the applicant submits that it is one time licence and is valid till the same is cancelled by the Mandi Samiti. A copy of the licence has been annexed as Annexure-1 to the affidavit filed in support of this application. On 9.10.1990, the applicant sold 150 bags of masoor dal weighing 151.10 quintals and transported through truck No. U.A.N. 9343, the same was dispatched to M/s. Assam State Cooperative Marketing and Consumers Federation Limited, Gauhati, Assam. It is further submitted that there were three trucks loaded, which were dispatched by the applicant and each of the truck, was

in possession of all the necessary documents, Gate Pass bearing No. 28650 of 97 dated 9.10.1990, 9-R.U serial No. 090/89 dated 9.10.1990, truck challan No. 549 dated 9.10.1990, letter pad of the consign bearing No. 3/KP/90-91 of the same date, that is 9.10.1990 as well as the Transport Bilti No. U.R.N. 5027 dated 9.10.1990. He was also in possession of licence issued by the Mandi Samiti. All these facts have not been disputed by the State in the counter-affidavit. On the date and time of occurrence two trucks were allowed to cross the check post without any hindrance but third truck was apprehended by Radha Ram Yadav, Marketing Inspector. Naubatpur Check Post, Varanasi at 11.00 a.m. on 12.10.1990. The documents in possession of the driver was checked but an F.I.R. was registered for alleged reason that the applicant has violated the provisions of Uttar Pradesh Scheduled Commodities (Licence and Restriction of Hoarding) Order, 1989 (hereinafter referred to as the Order). The truck was detained at Police Station Syed Raja, Varanasi, by the Marketing Inspector, an F.I.R. was registered. A copy of the same has been annexed as Annexure-2 to the affidavit filed in support of this application. The allegation was that documents handed over by the driver of the truck do not bear licence number but it is not disputed that Gate Pass and Form 9R was shown, which is sufficient proof of fact that the applicant possesses valid licence of Mandi Samiti. On the basis of the first information report, Investigating Officer recorded statement of the applicant on 24.4.1992, he has given clear statement that he was issued a valid composite licence and the licence number is clearly shown on the letterhead of the Firm. Surprisingly identical documents were in possession of other two trucks, which were not stopped but for the reasons best known, this truck was apprehended and a charge-sheet has been submitted against the applicant after completion of the investigation, which is sought to be quashed in this application. After hearing learned Counsel for the applicant and learned A.G.A. for the State, it transpires that Gate Pass and Form 9R issued by the Mandi Samiti was produced by the driver of the truck. Under Rule 76 (12) of Uttar Pradesh Krishi Utpadan Mandi Niyamawali, 1965. Every commission agent is obliged to present a bill in Form No. IX to the purchaser on the same day or the following day, mentioning the purchase price and trade charges. He is also required to retain a counterfoil with himself. Rule 76 (12) extracted below:

76. Sale of specified agricultural produce Section 40 (2) (xxxii) (1) to (11) (12) every commission agent shall, on delivery of the specified agricultural produce to a purchaser, present a bill in Form No. IX to the purchaser on the same day or the following day, mentioning the purchase price and trade charges admissible under these rules and the bye-laws of the Committee and shall retain a counterfoil thereof with himself.

3. In the circumstances, it is absolutely clear that the documents handed over by driver of the truck clearly exhibits that there is no illegality and the agricultural produce has been permitted to go out of the market yard only after Mandi Samiti, which is also an Agency of the State was satisfies that there is a valid Gate Pass, which is issued only to licensee/traders. These facts have not been

disputed by the learned A.G.A. appearing for the State. Learned Counsel for the applicant has prayed for quashing the charge-sheet on the basis of two decisions of the Apex Court in the case of R.P. Kapur Vs. The State of Punjab, where the Court has held three categories as quoted below:

(1) Where it manifestly appears that there is a legal bar against the institution or continuation of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish case under this category.

(2) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged ; in such cases, no question of appreciating evidence arises ; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(3) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge.

Similar view has been expressed by the Apex Court in the second decision, i.e., State of Haryana and Ors. v. Chaudhary Bhajan Lal, (28) 1991 ACC 111 (SC). The documents shown by the driver clearly go to establish that the applicant was valid licensee and there was no illegality in the movement of the truck as he had been granted permission and the Gate Pass was produced by the driver. In the circumstances, this is one of the categories where allegations in the first information even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. There is no legal evidence in support of the case of the first information report. Assuming that the prosecution adduces certain evidence, it will manifestly fail to prove the charge as the documents annexed with the application are issued by the State Agency itself.

4. Looking to the facts and circumstances of the case, I am of the view that in case prosecution is allowed to continue, it will only amount to abuse of the process of the Court. It is, therefore, a fit case for interference in exercise of inherent powers u/s 482, Cr. P.C. The charge-sheet submitted against the applicant in Case No. 8 of 1994 arising out of Case Crime No. 131 of 1999 u/s 3/7, E.C. Act is hereby quashed. The application is allowed.