

(2012) 07 MP CK 0036
In the Madhya Pradesh High Court
Case No : Cr.R.No. 492 of 2012

Rajeev Kumar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 397, 401
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 467, 468, 471

Citation : (2012) ILR (MP) 2583

Hon'ble Judges : M.A. Siddiqui, J

Bench : Single Bench

Advocate : R.K. Samaiya, for the Appellant; Akshya Namdeo, P.L., for the Respondent

Final Decision : Dismissed

Judgement

M.A. Siddiqui, J.—This criminal revision u/s. 397/ 401 Code of Criminal Procedure, 1973 (hereinafter referred to for short "Cr.P.C.") has been filed in order to quash the order dated 13.12.2011 passed by 4th Additional Sessions Judge, Tikamgarh in Sessions Trial No. 244/2009 (State of M.P. v. Ashok Gurjar and another) by which learned trial Court has framed the charge u/ss. 467,468, and 471 of IPC and u/s. 3/7 of Essential Commodities Act, against the applicant. In nut shell, the facts of the prosecution case are that on 6.6.2009 at 17.30 (5.30 p.m.) at Kitakhera Tigaila (Tiraha) about 3 K.M. away from Jatara towards Tikamgarh, Ashok driver co-accused was carrying a tanker bearing registration No. MH-18-M/7182 in which 20,000/- liter kerosine oil of "blue" colour was found. The tanker was stopped by Ramesh Rajak, Brijesh Vyas, Roopesh Tiwari and Dinesh Mishra and they informed Vireriera Bahadur Singh, Inspector the incharge Police Station Jatara, who came on the spot and inquired from Driver Ashok who informed that he was carrying kerosene from Kanpur to Manjusar, Baroda (Gujrat) and built, Voucher, bill and tanker have been seized from him. On inquiry it was found that the tanker was filled with kerosene from Lalit Oil

Agency Jatara which was owned by applicant and applicant is a licence holder of controlled kerosene for government supply.

2. A Crime No. 200/09 at 18.15 on 6.6.09 of PS Jatara was registered against driver of the tanker and also against the alleged Lalit Oil Agency Jatara. The matter was investigated by Virendra Bahadur Singh and sample of kerosene was sent for chemical examination. On inquiry from Kanpur it was revealed that no bulity was made from Kanpur, so-many statements of witnesses were recorded who stated that the tanker was filled with kerosene from Lalit Oil Agency Jatara. Report of FSL shows that the kerosene was for government supply for distribution to public having specific "blue" colour.

3. After due investigation, charge-sheet was submitted to the competent court and the case was committed to the court of session for trial. Applicant being owner/proprietor of Lalit Oil Agency Jatara was made an accused and charges u/s. 467, 468, and 471 of IPC and u/s. 3/ 7 of Essential Commodities Act, were framed vide order dated 13.12.2011. Hence this criminal revision has been preferred to quash the charge-sheet on the following grounds:

(A) The complainant Virendra Bahadur Singh who lodged the FIR himself has no authority or jurisdiction to make the paralleled enquiry himself and the charges so framed on the basis of that unauthorised enquiry charge is vitiated.

(B) The enquiry report conducted by the team of Food Authorities who found the stock of Lalit Oil Agency according to the kerosene oil supplied and after verification from the record and fair price shop and semi wholesale dealers found the same which is a sufficient proof of the fact that kerosene oil was not lifted from Lalit Oil Agency.

(C) As per statement of Driver Ashok Gurjar which was recorded by the team of Food Authority, he categorically stated that the kerosene oil was lifted from Maruti Chemical Limited Kanpur and transported from Prakhyat Road Lines Kanpur.

(D) As per bare reading of First Information Report which was lodged by the Town Inspector himself the offence prima facie was found u/s. 3/ 7 of Essential Commodities Act against the driver Ashok Gurjar only and there is no offence u/ss. 467, 468, 471 of IPC but the Town Inspector without authority of law conducted the enquiry and made the offence of the Indian Penal Code. By bare reading of FIR when no offence is made out against the petitioner then it is clear that the name of the petitioner was added subsequently for the ulterior motive best known to the Town Inspector.

(E) It is settled principle of law that the complainant cannot perform the duty of Investigation Officer.

(F) As per challan papers and the enquiry conducted by Food Authorities as per mandate of the Collector there is absolutely no material that any document was tampered, fabricated so as to constitute the offence within the meaning of

sections 467, 468 and 471 of IPC.

(G) All the documents pertaining to transporting of kerosene oil were seized from Ashok Gurjar and if there is any tampering of the same, Ashok Gurjar would be held liable for the same and not the petitioner.

(H) Absolutely there is no evidence on record that these documents seized from Ashok Gurjar were given by the applicant to him, hence no offence is made out.

(I) Learned court below without considering the report of Team of Food Authorities which is integral part of the challan framed the charge without any foundation.

(J) As per law laid down by the Apex Court in famous leading Kapoor Case and Bhajanlal vs. State of Haryana no case is made out against the petitioner where the allegation made in FIR or the complaint are so absurd and inherently improbable of which no prudent person can ever reach a such conclusion that there is sufficient ground for proceeding against the applicant. As per material on record the criminal proceedings is manifestly attended with malafide and maliciously instituted with an ulterior motive for breaking vengeance on the applicant the proceedings should be quashed.

4. Learned counsel for the applicant vehemently submitted orally and also submitted written submission dated 20.7.2012 showing some case laws that as the case was registered by Town Inspector Virendra Bahadur Singh who has also conducted inquiry and submitted challan is against the interest of justice and on this ground alone the charge sheet should be quashed.

5. Reliance is placed on Megha Singh Vs. State of Haryana, in which it has been held that where u/ss. 156 and 157 Cr.P.C. investigation was done by Head Constable who has arrested the accused and recovered pistol and cartridges from him, on his complaint First Information Report was lodged, he being complainant should not have proceeded with investigation of the case. This process was not appreciated but conviction was not set aside on the sole ground. Reliance is placed on Baijnath Singh v. State of M.P. 1988 (2) J.L.J. 69 in which it has been held that Police Officer arresting the accused - seizing the weapon -- Lodging the FIR -- should not be provided with the investigation of the case.

6. Reliance is placed on Bhagwan Singh Vs. The State of Rajasthan, in which it has been held that Investigation by a Head Constable who was himself the person, to whom bribe was alleged to have been offered and who lodged the F.I.R. as informant or complainant. This was an infirmity which was bound to reflect on the credibility of the prosecution case.

7. Learned counsel for the respondent has submitted that here the position is different. Virendera Bahadur Singh, Town Inspector can not be called to be a complainant in this case. One Head Constable was also complainant and more over he is not interested in investigation of the prosecution. Since Virendera Bahadur Singh, was posted as Inspector so cognizable offence was informed and

as he reached on the spot and seized article and registered FIR he also done from investigation but his position is not as a complainant hence this authority is not applicable to the facts and circumstances of the case. Reliance is placed on B.N. Elias and Co., Ltd., Employees' Union and Others Vs. B.N. Elias and Co., Ltd., and Others, on perusal of this case it is very much clear that this case has wrongly been quoted. Reliance is placed on State of Haryana and others Vs. Ch. Bhajan Lal and others, in which it has been held that the proceedings were quashed on the ground where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive but here in the case at hand all work done by Virenera Bahadur Singh, it can not be said that he was at all interested in prosecution in a manner manifestly attended with malafide or in maliciously with an ulterior motive. It is true that as seizure and registration of FIR was done by Virenera Bahadur Singh, the then Town Inspector, and he also made some investigation so it is desirable that person who has seized the article and registered FIR should not be allowed to do investigation but only on this ground without showing or proving what prejudice has been caused by his act the case of prosecution can not be thrown on the ground that investigation was conducted by one person only.

8. Learned counsel for the State has submitted that specially there are statements of witnesses that the tanker was not filled with kerosene from Kanpur and fake documents have been prepared and produced before the police and there are statements of witnesses that the tanker was filled with kerosene from the premises owned and in possession of applicant and the applicant who is said to be dealer of kerosene so the case of prosecution can not be said to be baseless.

9. As far as report of Food Inspector is concerned, the petitioner/applicant who is said to be a dealer of kerosene firstly manage to supply to villagers and then he will let the kerosene lifted from him and moreover the report of some departmental officer is binding on the criminal court. The Criminal Court will have to decide the case independently.

10. It has been held in Paramjit Singh @ Mithu Singh Vs. State of Punjab Through Secretary (Home), that even a defect, if any, found in investigation, however, serious, has no direct bearing on the competence or the procedure relating to the cognizance or the trial. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation.

11. Learned counsel for the State has submitted that it is not only the case of violation of provisions of the Essential Commodities Act but there are also charges of making false documents and using them u/ss. 467, 468, and 471 of IPC and there are statements of Head Constable who gone to Kanpur and approached the firm and documents have been prepared and submitted that such firm is not in existence. Submission of the learned counsel for State is that even in case of strong suspicion charges are to be framed and charges can not

be quashed on the ground that case of prosecution is doubtful. There is important to see evidence in the case. Learned counsel for the State has further submitted that kerosene was of "blue" colour which is specifically made for government supply under controlled scheme to BPL Cards holder i.e. poor persons. There is report of FSL that kerosene was of Govt. Supply was "blue" in colour. Being dealer the petitioner was dealing in such kerosene. He further submits that whole investigation was not done by Virendra Bahadur Singh but one Head Constable has also done investigation in the case. Hence the case requires trial, evaluation/appreciation/marshalling of evidence.

12. It is well settled that the revisional jurisdiction can not embark upon re appreciation of evidence unless the finding of fact is on the face of it illegal or perverse. It is a cardinal principle of law that in a revision, the revisional court will not interfere with the order of the court below, unless there is some compelling reason for doing so such as where the judgment or order of the court below is vitiated by perversity or gross illegality. The impugned order does not suffer from any illegality nor there is any error of jurisdiction.

13. I have considered the contentions raised before me, First of all I take the contention regarding charges. A perusal of the charges shows that the learned trial Court has not committed any mistake in framing charges vide order dated 13.12.2011 for the offence punishable u/ss. 467, 468, and 471 of IPC and u/s. 3/7 of Essential Commodities Act, thus it is clear that charges are properly framed. The prosecution has to establish its case beyond reasonable doubt by producing the evidence. However, the defence of the applicant/petitioner will be considered by the trial Court at the appropriate stage. On due consideration and looking to the facts and circumstances of the case this petition being devoid of merit and is hereby dismissed. The charges framed by learned trial court can not be quashed. Learned trial court is directed that the observations made in this order shall not be binding on the trial Court and the trial Court shall proceed with the trial in accordance with law without prejudice to the observations made in this order.

Petition fails and is dismissed.