

(1944) 11 PAT CK 0002

In the Patna High Court

Rameshwar Lal Darolia and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 02-11-1944

Acts Referred:

Citation : AIR 1946 Patna 162

Hon'ble Judges : Meredith, J

Bench : Division Bench

Judgement

Meredith, J.—Cases under Rule 81(4), Defence of India Rules, are pending against the petitioners in the Court of a Magistrate at Monghyr. These rules have been issued on applications of petitioners for quashing the proceedings, or, in the alternative, for transferring the cases to any district other than Monghyr.

2. In application No. 295 the petitioner Ramkishun Das is the proprietor of a Lakhisarai firm known as Badridas Jainarain, Agents of the Caltex Oil Co., at Lakhisarai. The petitioner Rameshwar Lal Darolia is the manager of the said firm. In application No. 296 the petitioner Basant Lal Singhanian is the ex-Secretary of the Local Price Advisory Committee (Economic Advisory Council), Lakhisarai. The cases pending against them are on allegations made by the servant of a Barbigha firm, Messrs. Dhaniram Madanmohan, licensed dealers in kerosene oil, to the effect that the agents declined to give them their monthly quota of kerosene oil because they did not agree to pay Rs. 20 per tin extra over the controlled rates, and secondly, that they kept incorrect accounts by entering oil supplied, in one register in November, and in another register in December, so as to make it appear that one delivery of oil was really two. The petitioner Basant Lal Singhanian is accused of abetting these offences by writing certain letters which it is said were not bona fide and showed that the Secretary was in league with the firm and connived at profiteering.

3. I do not wish to enter any further into the facts, because there is the danger that anything I might say, no matter how carefully worded, might tend to prejudice the trials one way or the other. It is enough to mention that allegations

of fact have been made; and out of the several officers who enquired into them, some have reported unfavourably to the petitioners. It is, therefore, proper that these allegations should be put to the test in a regular trial. In the case of the proprietor of the firm and the manager, no real ground has been put forward for quashing the proceedings.

4. In the case of the ex-Secretary, however, a point of law has been made. Rule 180 of the Defence of India Rules provides that no Court shall take cognizance of any alleged contravention of these Rules, except on a report in writing of the facts constituting such contravention, made by a public servant. As regards the firm and its manager, there was the report of the local Sub-Registrar, a Public Servant, and President of the Price Control Committee, Lakhisarai, this officer having made the first enquiry into the allegations. It is pointed out, however, that in none of the officers' reports made by the several officers who enquired into the matter has any specific allegation been made against the ex-Secretary. It is contended, therefore, that in his case there was no report under Rule 130, by a public servant, and the learned Subdivisional Officer had no jurisdiction to take cognizance.

5. There is, I consider, an answer to this contention. Though no allegation was definitely made by any public servant, the facts relating to him were reported by at least one of the enquiring officers, namely, Mr. B.N. Singh, Deputy Magistrate, in his report of 25th March 1944. He stated that the Caltex Agent had argued before him that he withheld the quota of the Barbigha firm on the instructions of the Secretary, Economic Advisory Committee, Lakhisarai. He further expressed the opinion that the Secretary, Economic Advisory Council, without any jurisdiction whatsoever, had disallowed the quotas to be issued to the Barbigha dealers. He said that the Secretary had referred to a certain circular letter on the basis of which he had disallowed the quota, but that circular obviously did not vest any such powers in the Secretary. He did not definitely express the opinion that the Secretary had abetted any criminal offence, nor did he recommend the prosecution of the Secretary. In the view I take of Rule 130, however, that was not necessary.

6. This rule does not say that a charge on contravention must be made by a public servant before cognizance can be taken; it merely says that there must be a report in writing of the facts constituting such contravention. The learned Subdivisional Officer had the facts before him, and on the facts in the report he took the view, rightly or wrongly, that these facts disclosed abetment by the Secretary of contravention of the rules. That, in my judgment, was enough to empower him to take cognizance. I repeat, it is a report of the facts that the rule makes necessary, not a specific report alleging contravention by any particular person. It is, I think, open to the Judicial Officer who receives the report to form his own opinion as to whether these facts constitute a contravention by any particular person, named or unnamed, and, if so to order prosecution of that person. Cognizance is taken of cases, not of persons.

7. As an example of what I mean, a case of theft may be reported against persons unknown. Once cognizance has been taken of this case it is open to the Court to proceed against any person whom the evidence subsequently discloses as responsible for the theft, even though there may have been no report against that person in particular. I cite this merely as a hypothetical example to make any (sic) view clear. My attention has been drawn to the Bombay case in *Purushottam Devji v. Emperor* AIR 1944 Bom 247. But, in my opinion, nothing has been laid down in that case inconsistent with the view I have taken. I hold that there was no want of jurisdiction to take cognizance as against any of the petitioners.

8. As regards the quashing of the proceedings the applications must fail. As regards transfer, the matter is different. The learned Subdivisional Officer in his order taking cognizance has expressed himself in very strong terms with regard to the guilt of the petitioners. The allegation that in this order he has pre-judged the cases cannot be said to be without substance. The Magistrate before whom the cases are pending is directly subordinate to the learned Sub-divisional Officer. This is, in my judgment, sufficient reason why this Magistrate should not try the cases, and indeed, why no Magistrate subordinate to the learned Sub-divisional Officer should try these cases. A question of principle is no doubt involved, a principle which if once accepted may have wide repercussions. Nevertheless I have no hesitation in expressing the opinion I have just done.

9. In *Emperor v. Adambhai Abdullabhai* AIR 1942 Bom. 316 it was observed by a Bench of the Bombay High Court that the High Court will not hesitate to transfer a case from a Magistrate who may be called upon in the course of the trial to differ from the views expressed by his revenue superior on whose enquiry and report the case has been instituted. I would respectfully quote as exactly expressing my own opinion the words of Sir John Beaumont in that case. He says:

The learned Government Pleader says that to transfer a case in such circumstances is to introduce a dangerous principle. But I think the dangerous principle is the non-separation of executive and judicial functions; and so far as I am concerned, as long as those functions are not separate, I shall never hesitate to transfer a case from a Magistrate who may be called upon in the course of the trial to differ from the views expressed by his (revenue) superior.

10. The learned Subdivisional Officer has definitely expressed and recorded his opinion that the Secretary is in league with the Agent and prepared to fabricate papers in prosecution of "the common game of serious profiteering and black-marketing." He has expressed the opinion that the pleas taken by the Agent and the Secretary are all bogus, and stated in detail his grounds for this opinion and one plea he expressly characterises as false, and he winds up by saying that the materials placed before him "prima, facie prove dishonest game on the part of the proprietor of the firm Messrs. Badridas Jainarayan, Lakhisarai, and Manager Kameshwar Lal Darolia and Basant Lal Singhanian, the Secretary." "The part played by the Secretary" he says "shows that he abetted the commission of the

offence by the proprietor and the managers." After this the position of any subordinate Magistrate of the District called upon to try the case could not but be embarrassing.

11. As regards transfer, therefore, I make these rules absolute and direct that the cases be transferred to the District Magistrate of Patna, the neighbouring district, for disposal by himself or any Magistrate subordinate to him in accordance with law.