
(1998) 05 AHC CK 0088

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4906 of 1984

R.N.Jain and Others

APPELLANT

Vs

Jai Prakash Tyagi

RESPONDENT

Date of Decision : 04-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 196, 245(2)
Penal Code, 1860 (IPC) — Section 120B, 153A, 272, 295A, 511

Citation : (1998) 05 AHC CK 0088

Hon'ble Judges : I.M.Quddusi, J

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—By means of the present petition filed under Section 482, Cr. P.C. the petitioner have prayed for quashing of the criminal proceeding pending against them in the court of learned Chief Judicial Magistrate, Ghaziabad in a complaint case No. 1060 of 1983, Jai Prakash Tyagi v. R.N. Jain and others, for the prosecution of the offences punishable under Sections 272,295A, 120B and 511 of I.P.C.

2. It has been stated in the application that the applicants are well to do business men and Directors of various Industrial concerns engaged in the Manufacture and sale of Vanaspati and Refined hydrogenated oils, and soaps, Tubes and also in the import and sale of various articles and commodities. On 251083 a complaint was filed by one Jai Prakash Tyagi, describing" himself as a pratagonist of the Vedic Hindu Religion and a social and political worker. In the aforesaid application it has been stated that the applicants had engaged in. the import of hundred of tonnes of Beef and Pig tallow for the past about two years and had been using the same for adulterating Vanaspati Ghee produced by them.

3. After recording the statements under Section 200 and 202, Cr. P.C. the Chief Judicial Magistrate, Ghaziabad issued summons to all the applicants on 12184 under Sections 272,295A, 153A, 120B and 511, I.P.C. Thereafter the applicants moved an application for discharging them under Section 245(2) of Cr. P.C. on

the ground that no cognizance could be taken against them for the offences mentioned in the summon as there was no sanction of the Central or State Government which was mandatory under Section 196, Cr. P.C. and there was no evidence whatsoever to support a charge under Section 272, I.P.C.

4. The learned Magistrate dismissed the aforesaid application by his order dated 5684. It has been further contended that not a single sample of Vanaspati produced by M/s. Jain Shudh Vanaspati, the firm of the applicants has been drawn by the complainant and even there is no report of the Public Analyst also which could show that there was some adulteration in a single tin of Vanaspati produced by M/s. Jain Shudh Vanaspati or it was manufactured by beef pig tallow and there is absolutely no evidence against the applicants to sustain a charge under Section 372, Cr. P.C. on 10784 the State Counsel was directed to file counteraffidavit and the matter was posted for 31784, but till 27884 no counteraffidavit was filed. Ultimately the petition was admitted and notice was ordered to be issued and the interim order was granted staying the proceedings of the criminal case in question. Still no counteraffidavit has been filed by any of the opposite parties.

5. I have pursued the statements recorded under Sections 200 and 202, Cr. P.C., copy of which has been filed by the applicants with their application. The statements of Jai Prakash Tyagi S/o Bhagirath Singh Tyagi, complainant, Baleshwar Tyagi S/o Harish Chand Tyagi have been perused by this Court. They have only stated that the accused persons had mixed beef and pig tallow, but they have not made it clear as to from where they have gathered such information. However, they have referred the News Paper which cannot be accepted as a piece of evidence. They have not stated about the basis of their statements and merely stating that the Ghee in question contained beef and pig tallow, without producing any corroborative evidence. It is a case of no evidence.

6. In the matter of Rupan Deol Bajaj v. K.P.S. Gill, AIR 1996 S.C. 309, the Hon"ble Supreme Court has held as under:

"Where the allegations made in the F.I.R. or Complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

7. In the matter of Ganesh Narayan Hegde v. S. Bangarappa and others, (1995) 4 S.C.C. 41, the Hon"ble Supreme Court has held as under:

"The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges."

8. In the matter of Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686, the Hon"ble Supreme Court has held that in proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous,

vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482, Cr. P.C."

9. In the instant cases the whole complaint is based on the basis of the item published in the news paper and no other basis. Hence the statement recorded by the Magistrate on the basis of the knowledge derived from the newspaper, the Magistrate issued summons. Obviously the learned Magistrate has committed error in issuing summons in such a case.

10. It is a case of no evidence. The summoning order was issued on the basis of no evidence and hence I think it is a fit case for interference under Section 482, Cr. P.C. as in case the complaint is allowed to proceed, it will amount to abuse of process of court.

11. In the result the application is allowed. The proceedings in case No. 1060 of 1983, Jai Prakash Tyagi v. R.N. Jain and others, under Sections 272/295A/511/153/153A/120B, I.P.C. P.S. Sihani Gate, Ghaziabad are quashed and the summoning order is set aside. There shall be no order as to cost.

Application allowed