
(1970) 10 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 1139 of 1968

Shingara Singh and Gujjar Singh	Vs	APPELLANT
The State of Punjab		RESPONDENT

Date of Decision : 05-10-1970

Acts Referred:

Constitution of India, 1950 — Article 154(1), 163 , 166, 166(3), 245
Explosive Substances Act, 1908 — Section 7
General Clauses Act, 1897 — Section 2(60)

Citation : AIR 1971 P&H 246 : (1971) CriLJ 966 : (1973) 1 ILR (P&H) 51

Hon'ble Judges : Man Mohan Singh Gujral, J

Bench : Single Bench

Advocate : B.S. Chawla, for the Appellant; Mela Ram Sharma, D.A.G. and H.S. Toor, for the Respondent

Judgement

1. This is an appeal by Shangara Singh against his conviction u/s 5 of the Explosive Substances Act and Section 25 of the Arms Act imposed by the Sessions Judge, Ferozepore, by order dated 30th November 1968 whereby he was sanctioned to three years" rigorous imprisonment u/s 5 of the Explosive Substances Act and to six months" rigorous imprisonment u/s 25 of the Arms Act. Both the sentences were ordered to run concurrently Being aggrieved the convict has come up in appeal to this Court.

2. The case of the prosecution is that on 11th August 1967 Baldev Sharma, Station House Officer, Police Station Mamdot, received secret information that Shangara Singh had illicit weapons in his possession. He then sent for the accused and interrogated him in the presence of Ram Lal and Gurbax Singh P. Ws. As a result of which he made a statement that he had buried a hand-grenade and five live cartridges in his courtyard. This statement was reduced to writing. The accused then led the police party to his house and got these articles recovered. The hand-grenade was sent to the Inspector Explosives, North Circle, Agra, who opined that it was a hand-grenade used by military personnel and was charged with explosive mixture. Sanction was then obtained from the

Government for prosecution u/s 5 of the Explosive Substances Act and from the District Magistrate for prosecution u/s 25 of the Arms Act.

3. At the trial the appellant denied the allegations and stated that he had been falsely implicated at the instance of Gurbax Singh. It was also stated that Baldev Sharma was inimical to him as his father had refused to give evidence for the prosecution in some case.

4. The conviction of the appellant rests of the testimony of Ram Lal P. W. 2, Gurbax Singh P. W. 3 and Baldev Sharma P. W. 4. All these witnesses have given a straight forward account of the manner in which the recovery was made from the possession of the appellant.

5. While urging that the evidence of Ram Lal and Gurbax Singh P. Ws. Be not accepted it was pointed out by the learned counsel for the accused that both Ram Lal and Gurbax Singh had enmity with the accused and that Gurbax Singh was also a stock witness of the police. Ram Lal has admitted that one Raghbir Singh opposed him during the election to the office of Sarpanch and that the accused and his father were supporting Raghbir Singh. Even if it be accepted as true no inference can be drawn that Ram Lal would develop malice against the accused and his father merely because like many other persons they were supporters of opposing candidate.

It was then pointed out that one Beli Ram had filed a suit against Ram Lal and Gujar Singh, the father of the accused, and in that case Beli Ram had compromised with Ram Lal while a decree was passed against Gujar Singh. Gujar Singh has filed an appeal in which Ram Lal is a respondent. This circumstance is also not capable of leading to an inference that Gujar Singh bore a grudge against Ram Lal. The suit was filed by Beli Ram and the decree was passed in his favour. The contest was between Beli Ram and Gujar Singh. The fact that Ram Lal made a settlement with the plaintiff in that case would not give rise to the inference that Ram Lal was inimical towards Gujar Singh or his son. I, therefore, find that Ram Lal is an independent witness and his evidence can be believed.

As far as Gurbax Singh is concerned it was suggested that he had got a case registered against one Mohinder Singh and had cited Gujar Singh, father of the appellant, as one of the witnesses. It was further suggested that Gujar Singh was given up as having been won over. While admitting that he had cited Gujar Singh, Gurbax Singh denied that Gujar Singh was given up on the ground that he had resiled from his statement. It has not been shown that the denial of Gurbax Singh was false. In any case, even if it be accepted that Gujar Singh did not support Gurbax Singh in the case against Mohinder Singh it would not imply that Gurbax Singh had any animus against the appellant. The evidence of Gurbax Singh can also, therefore, be believed.

6. Besides these two witnesses, we have also the evidence of Baldev Sharma, Sub-Inspector of Police, who had interrogated the accused and recovered the hand-grenade. There is no suggestion that he had any grudge against the

appellant. The only suggestion was that he had asked the father of the accused to appear as witness in a case and as the accused's father had refused to appear as witness, the accused had been falsely involved in the present case. This suggestion was denied and even otherwise it does not appear believable that if the father of the appellant had refused to appear as witness Baldev Sharma would have implicated the son in a false case. In that case the target would have been the father and not the son.

7. For the foregoing reasons, the conclusion is inescapable that the appellant had made a statement which had led to the recovery of the hand-grenade and the cartridges. The accused was, therefore, rightly found to be in possession of the hand-grenade and cartridges.

8. Faced with the situation the learned counsel for the appellant urged that there was no valid sanction for the prosecution of the accused u/s 5 of the Explosive Substances Act as the sanction was accorded by the Deputy Secretary who had no jurisdiction to grant sanction.

9. Section 7 of the Explosive Substances Act provides that no Court shall proceed to try a person for an offence against this Act except with the consent of the Central Government. In view of this provision consent for the prosecution had to be given by the Central Government. However, in the exercise of the powers conferred by Clause (1) of Art. 258 of the Constitution the President has delegated to the State Government u/s 7 of the Explosive Substances Act. The notification issued by the President is in the following terms:

"No. 33/2/57-Police (IV)

Government of India,

Ministry of Home Affairs,

No. 48303, New Delhi-2, the 4th May, 1957.

NOTIFICATION

In exercise of the powers conferred by Clause (1) of Art. 258 of the Constitution and in suppression of all previous notifications on the subject the President hereby entrusts to all State Governments, with their consent, the functions of the Central Government u/s 7 of the Explosive Substances Act, 1908 (VI of 1908)."

Clause (1) of Art. 258 of the Constitution provides-

"Notwithstanding anything in this Constitution the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends."

In view of the above notification and the provisions of Art. 258(1) and Art. 246 of the Constitution which lays down that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh

Schedule, which is known as the Union List, it cannot be seriously challenged that the State Government had the authority to grant sanction u/s 7 of the Explosive Substances Act.

10. The argument raised by Mr. Bhagat Singh Chawla appearing for the appellant is twofold. It is firstly stated that the President having delegated to the State Governments the functions of the Central Government u/s 7 of the Explosive Substances Act the State Government could not further delegate this power to the Secretary or Deputy Secretary on the basis of that delegated power was consequently without jurisdiction. The second contention of Mr. Chawla is that the State Government while giving sanction was in fact performing the function of the Central Government and the rules of business framed by the Governor under Art. 166(3) would not govern the performance of this function by the State Government.

Mr. Chawla states that as the executive power of a State Government extends to matters with respect to which the legislature of a State has power to make laws and as the subject of arms, firearms, explosives, etc., is the Union List the executive power of the State Government does not extend to matters connected with explosives. The rules of business framed by the Governor under Art. 166(3) could, therefore, not be pressed into service by the State Government while performing the functions of the Central Government under Article 258(1).

11. Before examining these arguments it is necessary to observe that the sanction in this case was authenticated by the Deputy Secretary, Home, for Secretary to Government, Punjab, Home Department, and expressed to be granted in the name of the Governor, Shri K. G. Bhatnagar, Deputy Secretary, Home, was examined as Court witness and he stated that Shri T. K. Nair who was then working as Deputy Secretary Home, had granted the sanction. It is further in his statement that the file relating to the grant of sanction was not sent to the Minister in charge of the Home Department. He, however, added that in those days the Chief Minister, was the Minister in charge of the Home Portfolio and he had passed a standing order for the disposal of the business of the Departments in his charge. He proved copy of standing order Exhibit C. w. 1/1 Item 54 of the Standing Order provides that cases relating to sanction for the prosecution under Explosive Substances Act could be disposed of by Deputy Secretary, Home.

12. While considering the first argument raised by Mr. Chawla it may be remarked that a State Government is not a personal body and it can only function in the manner and through the machinery prescribed by law. The maxim "*delegata potestas non potest delegari*" makes sub-delegation of delegated power unauthorised unless the person on whom power is conferred is allowed to delegate expressly or by necessary intendment. The general rule of sub-delegation of statutory power has to be looked from the point of view whether a mere administrative power has been delegated or whether it is legislative or quasi judicial power. Administrative power is general to be exercised by officials of the Government. Moreover, in cases where delegation does not involve a

matter of trust or discretion, power to sub-delegate is implied.

Considering that the State Government is an impersonal body and was performing purely administrative power, the power to sub-delegate could be implied. Leaving this apart, the question is not so much of sub-delegation of power as of whether the Deputy Secretary while granting sanction u/s 5 of the Explosive Substances Act could be considered to be acting as State Government within the meaning of the notification issued by the President under Art. 258(1). When a function is vested by a statute in the State Government the statutory provisions, which in this case is the notification issued by the President, has to be interpreted with the aid of the General Clauses Act. Clause (60) of S. 2 of the General Clauses Act, 1897, defines "State Government" as respects anything done or to be done after the commencement of the Constitution (VII Amendment) Act, 1956, to mean in a State, the Governor, and in a Union Territory, the Central Government.

Article 154(1) of the Constitution provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 163 further provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in exercise of his functions. Article 166(1) requires that all executive action of the Government of State shall be expressed to be taken in the name of the Governor. Clause (3) of this Article provides that the Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. The combined effect of all these provisions was considered by the Supreme Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, and it was observed as follows:-

"The effect of the aforesaid provisions may be stated thus: A State Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions. The Governor made rules enabling the Minister in charge of particular department to dispose of cases before him and also authorising him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department. Pursuant to the rule, the record discloses, the Chief Minister, who was in charge of Transport, had made an order directing the Secretary to Government, Home Department, to hear the objections filed against the scheme proposed by the State Transport Authority."

13. The meaning of the expression "State Government" was also considered by this Court in *Manmohan Singh Johal Vs. State*, wherein Sarkaria, J., observed as under-

"The Government" spoken of in Section 196-A, Criminal P. C., means the Governor acting on the advice of the Council of the Minister, or on the advice of the individual Minister to whom the Department concerned has been allocated under the Rules of Business framed by the Governor. In the ultimate analysis it may also mean a Secretary to the Government to whom the transaction of that business has been delegated by the Minister concerned by a standing order or otherwise in accordance with the Rules of Business framed by the Governor under Cls. (2) and (3) of Art. 166 of the Constitution. If an order according the consent for the purposes of sub-section (2) of S. 196-A, Criminal P. C., is passed by the Council of Ministers, authorised Minister, or the authorised Secretary, and is thereafter expressed in the name of the Governor as required by Clause (1) of Art. 166 and authenticated in accordance with the rules of business, then in view of the provisions of Clause (2) of Art. 166, this order cannot be challenged on the ground that it was not passed or made by the Governor."

In view of the above it is clear that if the order is passed by the Secretary to Government who was authorised by a standing order in accordance with the rules of business framed by the Governor under Cls. (2) and (3) of Art. 166 and is expressed in the name of the Governor as required by Clause (1) of Article 166 and is further authenticated in accordance with the rules of business, then this order would be considered to be the order of the State Government. I, therefore, find no merit in the first argument raised by Mr. Chawla.

14. The second argument raised by Mr. Chawla is equally without force. The General Clauses Act, 1897, defines "State Government" to mean the Governor. A statutory function of the State Government becomes the function of the Governor and the business of State Government under Art. 166(3) such statutory business. It is, therefore, competent for the Governor to allocate such statutory functions to the Ministers by making rules under Art. 166(3). The State Government while according sanction u/s 7 of the Explosive Substances Act would no doubt be discharging the function of the Central Government and not of the State Government, but the performance of this function would be the business of the State Government for the convenient transaction of which the Governor can make rules of business under Art. 166(3). While making rules under Art. 166(3) the Governor is not legislating in respect of the matters included in List I of the Seventh Schedule of the Constitution and is only regulating the manner in which the business of the State Government is to be performed.

The case of *Mount Corporation v. Director of Industries and Commerce in Mysore, Bangalore*, AIR 1965 Mys 143, on which reliance was placed by Mr. Chawla, does not in fact support his argument. In this case, Central Government made an order called the Imports (Control) Order, 1955, in exercise of the powers contained in Section 3 of the Imports and Exports (Control) Act, 1947. By this order the Central Government regulated the grant of licence for the import of stainless steel. In pursuance of a public notice issued by the Iron and Steel

Controller, Calcutta, for the licensing period April-September 1963 the petitioners applied for the grant of licences to import stainless steel., These applications were to be made to the sponsoring authority which authority has to make his recommendation to the licensing authority.

The recommendations of the sponsoring authority were called "essentiality certificate". As the sponsoring authority did not issue the essentiality certificate to the petitioners the licensing authority rejected the application for licences and the petitioners challenged the action of the State Government in the High Court under Art. 226 of the Constitution. One of the main grounds on which the order was challenged was that the essentiality certificate was not received by the licensing authority from the sponsoring authority as the authority of the sponsoring authority had been encroached upon and usurped by the State Government under the device of a committee constituted by the State Government. The object of the constitution of the committee was to deal with the distribution of raw material like stainless steel.

The grievance of the petitioners was that though the sponsoring authority was one of the members of the committee but he without exercising independent judgment merely acted as a messenger for conveying the decision of the committee of the licensing authority. Though on behalf of the respondents it was contended that the committee was only an advisory committee but it was observed that the sponsoring authority being an officer of the Government of Mysore it was not possible to expect of him to disregard the decisions of the committee constituted by the Government which was presided over by the Deputy Minister of that Government. On these facts the following observations were made:

"Unlike in the Constitution of United States of America, where there are two separate sets of officials namely, Federal officials and State officials, under our Constitution though the field of legislative and executive actions of the Central Government and State Government are demarcated, the Central Government executed several of its functions through officers of the State Government, and when it so does, the officers of the State Government are really discharging the functions of Central Government and not of the State Government. The scheme of federation would be a myth if the State Government, by a clever device could direct the actions of their officers when they exercise statutory powers in the discharge of the affairs of the Central Government.

The subject-matter of regulation of imports into the country is a matter included in List I of Schedule VII of the Constitution, and therefore, within the exclusive jurisdiction of the Union Government, and the legislative power of the State with which its executive power is co-extensive, does not extend to the subject of regulating imports into the country.

By the device of appointing the Sponsoring Authority as a member of the Committee, and conveying the decisions of the committee through the conduit

pipe of Sponsoring Authority, the State Government had attempted to do indirectly what it could not do directly, and therefore, the order constituting the committee was ultra vires of the powers of the State Government, and that all action taken by the Committee constituted under that order was illegal, without jurisdiction, and null and void.

Moreover, when an authority exercises his jurisdiction under a statute, he has to exercise his own individual judgment or discretion as the case may be. He cannot adopt the decision of any other body as his own.

The constitution of the Committee was a device by the State Government to exercise the power of distribution of import licences when it had no such powers. The appeal provided against the refusal to grant licences was not an effective or adequate remedy in the circumstances of this case."

From the above observations it would be clear that in Mount Corporation's case, AIR 1965 Mys 143 the orders of the Sponsoring authority were not considered bad because it had framed its own rules to regulate its own business but because the decision taken by the sponsoring authority was not a decision of that authority but of another committee which the State Government had constituted and which the State Government had no authority to constitute and because the sponsoring authority was turned into a channel through which those decisions were conveyed to the licensing authority. The above observations, therefore, do not support Mr. Chawla's contention that the Governor while granting sanction u/s 7 of the Explosive Substances Act read with notification No. 33/2/57 Police (IV) Government of India, Ministry of Home Affairs, No. 48303 dated 4th May 1957, issued under Art. 258(1) of the Constitution could not make rules to regulate the business of granting sanction even though the State Government was performing the function of the Central Government while giving sanction.

15. The result of the above discussion is that sanction Exhibit P-7 had been validly granted. The appellant having been found to be in possession of the hand-grenade and the cartridges, I find no merit in this appeal and dismiss the same.

16. Appeal dismissed.