
(2010) 04 PAT CK 0172

In the Patna High Court

Yogendra Prasad Singh and Sitaram Sharma

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482

Unlawful Activities (Prevention) Act, 1967 — Section 10, 13, 17, 3, 4

Citation : (2010) 04 PAT CK 0172

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two petitioners have challenged the order dated 12.8.1998 passed by the learned Sessions Judge, Sitamarhi in Cr. Revision No. 226/98. By the said order, the learned Sessions Judge, Sitamarhi has rejected the Revision petition filed by the petitioners against the order dated 27.3.1998, whereby the learned Judicial Magistrate, 1st Class, Pupri at Sitamarhi had rejected the discharge petition filed on behalf of the petitioners.

2. The short facts of the case is that on 15.12.1992, an F.I.R. vide Pupri P.S. Case No. 105 of 1992 was registered for offences under Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967(hereinafter referred to as "the Act") on the written information given by the Sub-Inspector of Police of Pupri Police Station. The said F.I.R. was lodged after arresting these petitioners and five others on the charge that petitioners were members of Vishwa Hindu Parishad . Thereafter, it appears that the police after investigation submitted chargesheet and the learned Magistrate also took cognizance for said offences.

3. At the charge stage, a petition was filed on behalf of the petitioner for their discharge. In the discharge petition, a specific plea was taken by the petitioner that Vishwa Hindu Parishad was not banned u/s 3 of the Act nor the Central Government ever referred to the tribunal for its confirmation. It was submitted that without declaring an association as banned association u/s 3 of the Act, no

one can be prosecuted on an allegation that he was a member of such association. It was further argued that the prosecution under the Act was launched without obtaining prior sanction from the Central Government. On these grounds, the discharge petition was filed. However, the learned Magistrate by its order dated 27.3.1998 rejected the discharge petition. While rejecting the discharge petition, the learned Magistrate has mentioned that since in this case cognizance has already been taken, it would not be appropriate to discharge the accused/petitioners.

4. Aggrieved with the order of rejection of discharge petition by order dated 27.3.1998, passed by the learned Judicial Magistrate, 1st Class, Sitamarhi, the petitioners filed a Revision petition vide Cr. Revision No. 226 of 1998, which too stood rejected by the order dated 12.8.1998 passed by the learned Sessions Judge, Sitamarhi. From the order of the Revisional Court, it appears that the learned Sessions Judge examined the case diary and he observed that during investigation, some of the witnesses, i.e. the Block Development Officer and Circle Officer, Pupri had stated that the District Magistrate, Sitamarhi under telegraphic message No. 5623C dated 14.12.1992 had declared the association as illegal. It was further observed by the learned Sessions Judge that the prosecution will prove the Gazette and other legal sanction in course of trial and, accordingly, the learned Sessions Judge, rejected the revision petition filed by the petitioners.

5. Sri Prasoon Sinha, learned Counsel for the petitioners, while challenging both the orders, firstly submits that either during the investigation or till the date of hearing on the discharge petition, no document was produced by the prosecution or Investigating Agency to show that any notification u/s 3 of the Act was ever issued declaring the association, i.e. Vishwa Hindu Parishad , as banned organization /association . He further submits that neither notification u/s 3 of the Act was ever produced, nor approval by the tribunal u/s 4 of the Act was brought on record. While referring to Section 17 of the Act, learned Counsel for the petitioners submits that the prosecution has not even produced sanction for prosecution issued by the Central Government. He further submits that before taking cognizance, sanction from the Central Government in view of Section 17 of the Act was must. In absence of sanction being granted by the Central Government under the aforesaid provisions the order of cognizance itself becomes void and all subsequent orders becomes inoperative.

6. Smt. Indu Bala Pandey, learned A.P.P. for the State submits that these material can be looked into during the trial. She further submits that this is not the stage for examining all these matters. She submits that against the rejection of discharge petition, the petitioners had already filed a Criminal Revision before the learned Sessions Judge, Sitamarhi and, as such, in the garb of filing of such petition u/s 482 of the Code of Criminal Procedure, the petitioners cannot be allowed to file a second Revision, which is barred u/s 397(3) of the Code of Criminal Procedure.

7. I have also examined the materials available on the record as well as both the impugned orders. In this case prima facie I am satisfied that the entire proceedings was unauthorized. Merely by way of mentioning the penal provisions in the F.I.R., one cannot be prosecuted unless it is satisfied that such offence was actually committed by a person. On perusal of the F.I.R. Itself, it is clear that the petitioners along with others were arrested on an allegation that they were members of an unlawful association, i.e. the members of Vishwa Hindu Parishad . Before arresting it was necessary for the police to verify as to whether the said association was declared as unlawful u/s 3 of the Act or not. From the materials available on the record, I do not find that there is any material to show that the association in question was declared as banned association u/s 3 of the Act or approved by the tribunal u/s 4 of the Act. Moreover, the provision u/s 17 of the Act is mandatory. Without sanction being granted by the Central Government u/s 17 of the Act, the order of cognizance becomes void. In the present case, even from the order of the revisional court , it is evident that at least till the hearing of revision petition, no sanction was obtained. In paragraph 8 of the revisional order, learned Sessions Judge has noticed "the prosecution will prove the gazette and other legal sanction in course of trial." Meaning thereby that neither on the date of passing order of cognizance nor till the date of hearing of the revision petition, there was any prosecution sanction u/s 17 of the Act and, as such, the order of cognizance was bad in law and totally unauthorized.

8. In view of the facts and circumstances mentioned herein above, I am of the view that allowing the proceeding on the basis of the F.I.R. vide Pupri P.S. Case No. 105 of 1992 will amount to abuse of the process of the court and , accordingly, it is necessary to intervene into the matter, even though the petitioners have lost their right of revision u/s 397 of the Code of Criminal Procedure . In the facts and circumstances of the present case, it is necessary for this Court to exercise its inherent power conferred u/s 482 of the Code of Criminal Procedure.

9. Accordingly, I set aside both the impugned orders, i.e. order dated 12.8.1998 passed in Cr. Revision No. 226 of 1998 and order dated 27.3.1998 passed in G.R. No. 780 of 1992/Tr. No. 78 of 1998 and also quash the entire proceedings/prosecution in respect of both the petitioners in the case arising out of Pupri P.S. Case No. 105 of 1992, corresponding to G.R. No. 780 of 1992 pending in the court of the learned Judicial Magistrate, 1st Class, Pupri at Sitamarhi.

Accordingly, this petition stands allowed.