

Jodhsingh and Another Vs. State of M.P. and Another

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Court : Madhya Pradesh

Decided On : Mar-13-2015

Judge : S.K. Palo

Appeal No. : M.Cr.C. No. 8836 of 2013

Appellant : Jodhsingh and Another

Respondent : State of M.P. and Another

Judgement :

1. Heard.

This petition has been filed under Section 482 of Cr.P.C. for quashing the FIR registered as Crime No. 183/2013 at Police Station Mungawali for offence under Section 3/7 of Essential Commodities Act, 1955 (hereinafter referred to as "the Act").

2. Brief facts just necessary for disposal of this petition are as follows:-

Respondent No. 2 - Assistant Sub-Inspector of Police on information received through informer that a vehicle Metador bearing registration No. MP09-GF-8487 was carrying surreptitiously wheat and rice which are food items of the Public Distribution System for illegal means, he along with staff intercepted the vehicle. The vehicle contained 103 bags of wheat and 27 bags of rice, which were food articles for Public Distribution to poor persons in subsidised rates. The vehicle and

the articles were seized under Section 3/7 of "the Act". FIR under challenged was lodged on 04.08.2013 against the driver Arif Khan and cleaner Shabbir. During the investigation, memorandum was prepared, in which the driver and the conductor have stated that these food items belong to the Government control shop. In 50 kg bags, these food articles were supplied in 50 kg bags. The food items were shifted to 100 quintal gunny bags and loaded in the Truck and were being transported for disposal in the market.

3. The present petition has been filed by the petitioners on the ground that the said food items are produced in their agricultural field. The petitioners do not run any "control shop" under the Public Distribution System. Assistant Sub-Inspector of Police has no jurisdiction to seize the food articles and lodge and register any offence under "the Act". FIR can only be made with permission of the Collector. It is also claimed that with regard to the said seizure, the FIR lodged by respondent No. 2 is therefore liable to be quashed.

4. Learned counsel for the respondents No. 1 and 2 opposed the above contentions and submitted that the sister-in-law of the petitioner has a "fair price shop/control shop" for supply of food articles of Public Distribution System. The bags which contained the food items by Public Distribution System have special marks on them and are supplied in 50 Kg bags. But the same were shifted into 100 kg bags. Therefore, offence under Section 3/7 of the Act is made out.

5. On perusal of the police diary, it is also found that Junior Supply Officer, Mungawali District Ashoknagar submitted a report dated 24.06.2014 to the Sub-Divisional Magistrate, Mungawali district Ashoknagar. Copy of which was sent to the District Supply Officer, Ashoknagar and to the Chief Judicial Magistrate, Ashoknagar, in which it was mentioned that the fair price control shop, Sonai (Sheetalpur) was verified by him and no irregularity has been found. A Panchnama was also drawn on the same day in presence of the villagers, which is attached with the report. It is also to be noted that the Junior Supply Officer, Sub-division, Mungawali District Ashoknagar vide letter dated 07.07.2014 intimated the Chief Judicial Magistrate, Ashoknagar that the food articles wheat and rice seized by Police Chowki, Sehrai Thana Mungawali verified. Stock register and distribution

register of fair price shop village Sonai for the period of January, 2013 to August, 2013 were verified and no irregularity was found. At the same time, it is also mentioned that the food articles seized by the Police does not seem to be of "fair/control price shop".

6. Having gone through the contentions of both the parties, this Court observed that the seizure of food articles by respondent No. 2 and subsequent register of Crime No. 183/2013 at Police Station Mungawali seems to be without jurisdiction. Clause 10 of MP Public Distribution System (Control) 2009 provides that:-

"10. Power of entry, search and seizure - (1) any officer not below the rank of junior supply officer under the food, civil supplies, and consumer protection department or a person not below the rank of Naib Tehsildar under the revenue department shall be authorised to do inspection supervision and such other related activities and officer of the cooperative department not below the rank of sub-auditor are authorised to inspect, supervise and conduct such other related activities in the fair price shop and the lead societies under this order."

It is also noted that Clause 11(5) of MP Public Distribution System (Control) 2009, contained that "in the event of fair price shop violation of the condition of the central order or this order, the Collector can initiate action under Section 7 of the Act". Meaning thereby, the absence of such permission by the Collector for initiating action under Section 7 of "the Act" is patently without jurisdiction. The words at Section 7 of "the Act" which provides the penalties that "the person contravenes any order made under Section 3" denotes that penalties can be imposed only when Section 3 of "the Act" is violated. The report does not show which "order" has been violated or contravened. For better understanding, Section 7 of "the Act" is reproduced here:-

"7. Penalties: (1) any person contravenes any order made under Section 3:

(a) he shall be punishable:

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section

(2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and,

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine: Provided that the Court may, for any adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the Court so orders be forfeited to the Government."

7. In the present case, violation of the "Control Order" has not been clearly stated that how and which condition of the "Control Order" has been violated. As noticed above, It is not prima facie found that the petitioners have violated any "order" under Section 3 of "the Act". Therefore, the petitioners cannot be punished under Section 7 of "the Act".

8. In ***Hema Bhadoriya v. State of M.P. reported in 2008 (1) EFR 198***, and in ***Mahesh Chourasiya v. State of M.P. and others decided on 11.10.2013 in M.Cr.C. No. 2967/2008*** and ***Narottam Singh Tomer v. State of M.P. decided on 11.10.2013 in M.Cr.C. No. 3882/2008***, coordinate Benches of this Court in similar circumstances have quashed the complaint cases pending before the Magistrate and the FIRs for the offences punishable under Section 3/7 of the Act.

9. In a similar case, the prosecution was quashed and it was held that investigation was illegal and unauthorised, a coordinate Bench of this Court in ***Umesh Kumar Chaubey v. State of M.P. reported in 2000 CRI.L.J. 1760***. It is held that:-

"Prevention of Corruption Act, 1988 Section 17, 2nd Proviso- Offence under Section 13(1)(e) - Investigation conducted by Deputy Superintendent of Police

without order of authorisation by Superintendent of Police - Is without jurisdiction - This defect cannot be cured by application of S.P. Before JMFC for issuing warrant of search to be conducted by said D.S.P. - Consequent challan under Section 173, Criminal Procedure Code would also be unauthorised - Investigation and Police report liable to be quashed under Section 482 of Criminal P.C."

10. In the case of ***State of Haryana and others v. Bhajan Lal and others reported in 1992 (Suppl.) (1) SCC 335***, the Hon'ble Apex Court has laid down the principle of law, which enunciate in a series of decisions relating to exercise the inherent powers under Section 482 of Cr.P.C. and formulated the following guidelines:-

"This Court in the backdrop of interpretation of various relevant provisions of the Cr.P.C under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482, Cr.P.C gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specified provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. The present case is covered under the guidelines mentioned at Point (1). In the result, this petition is allowed. The FIR registered as Crime No. 183/2013 at Police Station Mungawali for offence under Section 3/7 of Essential Commodities Act, 1965, is hereby quashed.

Petition allowed.

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