

Dharmpal Sharma Vs. State of Bihar

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SooperKanoon Citation : sooperkanoon.com/121034

Court : Patna

Decided On : Mar-23-1995

Judge : R.N. Sahay and P.K. Deb, JJ.

Appeal No. : Criminal Misc. No. 506 of 1993 (R)

Appellant : Dharmpal Sharma

Respondent : State of Bihar

Disposition : Application Dismissed

Prior history : R.N. Sahay, J. 1. This application was placed for admission before B.P. Singh, J., who by his order dated 5.2.1993 referred this case for hearing before a Division Bench to decide the correctness of the decisions of this Court reported in 1992 Eastern India Criminal Case page 5 and 1987 PLJR page 678. 2. These decisions undoubtedly support the contention of the petitioner that if a person is prosecuted for violation of Bihar Essential Articles (Display of Price and Stock) Order 1977 without of

Judgement :

R.N. Sahay, J.

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decide the correctness of the decisions of this Court reported in 1992 Eastern India Criminal Case page 5 and 1987 PLJR page 678.

2. These decisions undoubtedly support the contention of the petitioner that if a person is prosecuted for violation of Bihar Essential Articles (Display of Price and Stock) Order 1977 without official sanction and at the same time he is also prosecuted for violation of another order for which no sanction is necessary, the entire order of cognizance will be rendered illegal and therefore his prosecution for latter offence shall also fail.

3 In this case the prosecution of the petitioner was launched under the following circumstances:

On 25.10.1991, the Supply Inspector, Ghatshila submitted a written report to the Ghatshila police station to the effect that at about 11 a.m. he alongwith Block Supply Officer, Ghatshila and Sri Ajit Jha, Supply Inspector of Musabani made a surprise checking in the retail grocery shop of M/s. Sharma Store belonging to the petitioner. The petitioner was present in the shop premises and some customers were purchasing articles. Though the shop was open, there was no Display Board of stocks and price list of the essential commodities not the petitioner could produce any stock Register on demand by the informant. On verification of different articles, found in the shop and his adjacent godown, articles as per the list in the report were found in the shop premises. The petitioner had no licence in connection with food grains, edible oil and other essential commodities. The petitioner had thus violated the provisions of Bihar Trade Articles (Licences Unification) 1984 Part III as also violated the storage limit in terms of the Notification No. GSR 49 dated 17.10.1985 (Clause 6 (b) and Notification No. GSR 42 dated 21.11.1987 Part II. It is alleged that the petitioner had also violated Clauses 3 and 7 of the Bihar Essential Articles (Display of Price and Stock) Order 1977 punishable under Section 7 of the Essential Commodities Act. The article as per the verification list found from the petitioner's shop and from the adjacent godown were seized under a seizure list and were given in the custody of the petitioner.

The police on the basis of the aforesaid written report took up investigation and submitted charge-sheet under Section 7 of the Essential Commodities Act being charge-sheet No. 119/91 dated 29.12.1991 against the petitioner. The Special Judge on receipt of the charge-sheet took cognizance of offence under Section 7 of the Essential Commodities Act by order dated 28.2.1991 issued summons against the petitioner.

4. Sri Tripathy submitted that in view of three decisions of this Court in (i) Satyendra Kumar Singh v. State 1992 Eastern Criminal Cases 5 (Patna) (ii) Rambilas Sao v. State (1985) PLJR 971 and (iii) Suresh Kumar Agarwal v. State Crim. Misc. 951/91 and analogous cases disposed of on 7.10.1993, the entire prosecution launched against the petitioner is liable to be quashed.

5. In Satyendra Kumar Singhs case (supra), prosecution was launched against the petitioner for violation of Display Order, 1977 and for contravention of the terms of licence with regard to maintenance of stock. The police submitted charge-sheet under Section 7 of the Essential Commodities Act and thereafter, cognizance was taken, Admittedly no prior sanction for prosecution under Display Order had been obtained. It was held, following the decision in Rambilas Sao, that as the prosecution for violation of Display Order failed in absence of sanction, the petitioner could not be prosecuted for violation of the terms and conditions of the licence as well, for the reason the entire prosecution will fail if the prosecution failed on one part of the allegation about the contravention of the Display order.

6. In Rambilas Sao's case (supra), sanction for prosecution under the Display Order was held to be bad and accordingly the prosecution for the second charge for which no sanction was required, was also quashed.

7. Both the aforementioned decisions are based on the ratio of K.P. Sinha v. Affabuddin reported in AIR 1955 Patna 453, wherein it was held by Sinha, J. as follows:

Where the facts mentioned in the complaint give rise to two offences one of which required either a complaint by the court concerned or a sanction by the prescribed authority, the prosecution cannot be started under the Section which did not

require any complaint by the Court or sanction necessary in law. for taking cognizance of the case and thus evade the provisions of sanction.

8. On a careful reading of this decision, it will be found that ratio laid down therein is absolutely inapplicable to the facts of the two cases on which Counsel for the petitioner has placed reliance. The facts of the case in AIR 1955 Patna 453 were these:

One Aftabuddin filed a complaint against one K.P. Sinha who at the relevant time, was Sub-Inspector of Police, Islampur, alleging that the said Sub-Inspector along with other police officers came to the house of the complainant to attach the properties belonging to one Faziruddin. Faziruddin was wanted in a dacoity case. The complainant was the brother of said Faziruddin. He objected to the attachment of the properties on the ground that the properties did not belong to the absconder, but it belonged to the opposite party. The accused Sub-Inspector despite objection raised by the complainant proceeded to attach the properties and to load them in a truck for the purpose of being carried to the court. The complainant further alleged that he had to pay Rs. 500/- in cash and to deliver to the accused Sub-Inspector two big gold ear rings as security for payment of another Rs. 500/- in cash some time later and the properties were released. Cognizance on the complaint having been taken, the accused Sub-Inspector moved the High Court for quashing the proceeding started against him on the ground that the offence which the complaint disclosed was an offence under Section 161 of the Indian Penal Code and, therefore, no cognizance could be taken in law without proper sanction, as required by Section 6 of the Prevention of Corruption Act, 1947.

9. It was contended on behalf of the petitioner before the High Court that the offence disclosed in the complaint may amount to an offence under Section 384 IPC as also under Section 161 of the Indian Penal Code. The latter Section requires sanction under Prevention of Corruption Act, but Section 384 does not require any sanction. Therefore, in view of the decision of the Hon'ble Supreme Court in Basirul Haque v. State of West Bengal reported in 1953 SC 293, the requirement of sanction could not be avoided by the Magistrate by issuing

processes under Section 384 IPC instead of Section 161 of the Indian Penal Code for which sanction was mandatory.

Sinha, J. applying the ratio in Basirul Haque's case (supra) held that the complaint clearly disclosed an offence under Section 161 IPC Section 5(1)(d) of the Prevention of Corruption Act, 1984 and hence requirement of sanction could not be evaded by prosecuting the accused under Section 384 IPC which does not require any sanction.

10. In Basirul Haque v. State of West Bengal reported in : 1953 CriLJ1232 (supra), Mahajan, J. as he then was stated:

Though, in our judgment Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that Section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required.

In other words, the provisions of the Section cannot be evaded by the device of charging a person with an offence to which that Section does not apply and then convicting him of an offence to which it does, upon the ground that, such latter offence is a minor offence of the same character, on by describing the offence as being one punishable under some other Section of the Penal Code though in truth and substance the offence falls in the category of Sections mentioned in Section 195, Criminal P.C.

Merely by changing the garb or lavel of an offence which is essentially an offence covered by the provisions of Section 195, prosecution for such an offence cannot be taken cognizance of by mis describing it or by putting a wrong label on it.

The facts of the case were that the appellants were charged, tried and convicted for offence punishable under Sections 297 and 500 of the Indian Penal Code, for which no sanction is necessary. The appellants challenged their conviction before

the Calcutta High Court on the plea that the facts mentioned in the complaint petition disclosed offence punishable under Section 182 or Section 211 of the Indian Penal Code, Therefore the court was not competent to take cognizance of those offences except on a complaint by a proper authority under the provisions of Section 195 Cr. P.C. The Sessions Judge accepted the plea and acquitted the accused persons. The acquittal was challenged before the Calcutta High Court in a criminal revision. The matter was subsequently referred to a Full Bench to decide the following question:

If the facts alleged in a petition of complaint or in an information received by the Magistrate, on which a Magistrate can ordinarily take cognizance of an offence under Section 190 Cr. P.C. disclose an offence of which cognizance cannot be taken by the Magistrate because of the special provisions of Section 195, or 196 or 196A or 197 or 199 Cr. P.C. is the Magistrate also debarred because of this from taking cognizance of other offences disclosed by the facts alleged, which are not in any way affected by the provisions of Section 195, or 196 or 196A or 197 or 199 Cr. P.C.

The Full Bench answered the question in the negative. In respect of the conviction under Section 297 of the Indian Penal Code, the learned Judges said that there was nothing in Sections. 195 to 199 Cr. P.C. which could in any way bar the prosecution of the appellants under that Section, as it could in no way be said that it arose out of the facts which would constitute an offence under Sections 182 or Section 211 of the Indian Penal Code. On the other hand it arose from an entirely different set of facts, namely, the trespass by the opposite parties in the burial ground and the removal of the corpse from the lighted funeral pile. With regard to the offence under Section 500, it was observed that though the prosecution for defamation was based on the false information given to a public officer, that circumstances, however, was no bar for the prosecution of the appellants under that Section. In the result, the application in revision was allowed, the order of acquittal was set aside and the Sessions Judge was directed to re-hear the appeal on the merits.

On remand, the conviction and Sentence passed by the Magistrate was confirmed by the Sessions Judge and me appeal preferred against me said authority was summarily dismissed by the High Court. The matter ultimately went to the Supreme Court where it was contended on behalf of the convicted appellants that the Magistrate had no jurisdiction to take cognizance of the complaint under Section 500 and Section 297 of the Indian Penal Code, as the facts disclosed constituted an offence under Section 182 which offence could not be tried except on complaint by a public servant. The Supreme Court rejected the argument of the counsel for the appellant for the reasons stated in paragraphs 10 and 11 of me report as extracted below:

10. In our judgment, the contention raised by the learned Counsel for the appellants is without any substance so far as the present case is concerned. The charge for me offence under Section 297, Penal Code, could in no circumstance, as pointed out by me High Court, be described as falling within the purview of Section 195, Criminal P.C. The Act of trespass was alleged to have been committed subsequent to the making of the false report and all the ingredients of the offence mat have been held to have been established on the evidence concern the conduct of me appellants during the post report period. In these circumstances, no serious contention could be raised that the provisions of Section 195 would stand defeated by the Magistrate having taken cognizance of the offence under that section.

11. As regards the charge under Section 500, Penal Code, it seems fairly clear both on principle and authority that where the allegations made in a false report disclose two distinct offence, one against the public servant and the other against a private individual, that other is not debarred by the provisions of Section 195 from seeking redress for the offence committed against him.

Reference may also be made to a decision of the Federal Court reported in AIR 1939 FC 1939 43 (B) Hari Ram Singh v. Emperor:

The appellant in that case was charged with offences under Sections 409 and 477A IPC The offence under Section 477A could not be taken cognizance of without the previous consent of the Governor under Section 270 (1) of the

Constitution Act, while the consent of the Governor was not required for the institution of the proceedings under Section 409 IPC. The charge was that the accused dishonestly misappropriated or converted to his own use certain medicines entrusted to him in his official capacity as a sub-assistant surgeon in the Punjab Provincial Subordinate Medical Service. He was further charged that being a public servant, he wilfully and with intent to defraud omitted to record certain entries in a stock book of medicines belonging to the hospital where he was employed and in his possession. The proceedings under Section 477A were quashed by the Federal Court for want of jurisdiction, the consent of the Governor not having been obtained, but the case was sent back to the Sessions Judge for hearing on the merits as regards the charge under Section 409 IPC and the order of acquittal passed by the Sessions Judge under that charge was set aside. Two distinct offences having been committed in the same transaction, one an offence of misappropriation under Section 409 and the other an offence under Section 477A which required the sanction of the Governor, the circumstance that cognizance could not be taken of the latter offence without such consent was not considered a bar to the trial of the appellant with respect to the offence under Section 409.

11. It is apparent that in that case one set of facts constituted two separate offences; one which required sanction and the other no sanction. In this circumstance it was held that the requirement of sanction could not be evaded by launching prosecution in respect of offence for which no sanction was necessary.

12. The facts of the two cases referred to above on which the counsel for the petitioner has placed reliance and the facts of the present case are altogether different from the Supreme Court case. In this case and the two decisions (supra) distinct offences are made out with reference to not the same set of facts but two distinct facts and allegations. Here the petitioner is being prosecuted for non-display of the price and stock and also for contravention of the terms of his licence. It cannot be said that in respect of same sets of fact offences under Bihar Essential Articles (Display of Price & Stock) Order 1977 as also Bihar Trade Articles (Licences Unification) Order was made out. It cannot be held that if the prosecution for violation of Display Order fails for want of sanction order or for

want of proper sanction the prosecution for violation of Unification Order would automatically fail. This question can further be clarified by giving an illustration; assuming a person is prosecuted for an offence under Section 302 IPC readwith Section 25A of the Arms Act in respect of a single occurrence, can it be argued that if no sanction under Section 25-A of the Arms Act is obtained, the prosecution under Section 302 IPC will also fail? This is precisely the case in hand.

13. I have no doubt that the decisions in 1992 Eastern Criminal Cases, 5 (Patna) and 1985 PLJR 971 and Crim Misc. 951/91 were decided on clear misapplication of the ratio in K.P. Sinha's case (supra). These decisions do not lay down the correct position of law and is contrary to the decision of the Supreme Court in Basirul Haque v. State of West Bengal (supra). The decision of learned Single Judge in 1992 Eastern Cr. Cases 5 (Patna) and 1985 PLJR 971 are therefore overruled.

14. Learned Counsel for the petitioner has tried to persuade us that as a matter of fact the petitioner had not violated any of the two Orders for which he is being prosecuted and the learned Special Judge wrongly took cognizance without considering the relevant documents submitted by the police. Counsel has placed before us facts in support of his defence stated in paragraph 9 of this application. In my opinion, it is not the stage to examine the defence of the petitioner which he may put forward during trial.

15. This application has no merit and is accordingly dismissed. Interim order of stay dated 5.2.1993 is vacated.

P.K. Deb, J.

16. I agree.

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