

Himmat Singh Vs. State of Bihar

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Court : Patna

Decided On : Feb-23-2000

Judge : D.N. Prasad, J.

Appeal No. : Criminal Misc. No. 4721 of 1999 (R)

Appellant : Himmat Singh

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

D.N. Prasad, J.

1. This application has been filed under Section 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding including the order taking cognizance dated 22.7.1985 in Govindpur PS. Case No. 10/85 (G.R. Case No. 35/85).

The short facts giving rise to this application is that one Sub-Inspector, CISF, submitted a written report, alleging therein that on secret information, a truck bearing No. BPA-955 loaded with steam coal was transporting the same illegally for selling in black-market. The informant, along with others intercepted the truck on the G.T. Road. Thereafter, the informant seized the truck loaded with coal and

submitted the written report before the police on the basis of which the FIR was registered against the petitioner and others for the offences under Sections 467, 468, 471, I.P.C. and Section 7 of the Essential Commodities Act. The police investigated the case and submitted the charge-sheet. The learned Special Judge took cognizance by order dated 22.7.1985 for the offence under Section 7 of the Essential Commodities Act.

2. Heard the learned Counsel for the petitioners and the learned APP for the State.

3. The learned Counsel for the petitioner at the very outset submitted that on the face of the allegation made out by the Sub-inspector, C.I.S.F., the whole prosecution case is illegal and bad in law as the Sub-Inspector CISF is not competent authority to search and seize the truck loaded with coal as he is not empowered to search and seize under Section 30 of the Bihar Trade Articles (Licences Unification) Order, 1984 and, as such, the whole prosecution has been initiated without jurisdiction. It is further argued that the said coal was being transported by the truck in question under the valid challan and there is no material to show that the said challan is forged or fabricated, rather the FIR lodged only on mere presumption and suspicion which cannot take a shape of positive evidence. The learned Counsel for the petitioner also relied upon the case of *Nitai Chandra Rawani v. State of Bihar and Anr.* reported in 1993 BBCJ 542. It was held that 'the Central Industrial Security Force Act empowers arrest and search restricted to a situation engrafted in Section 11 of the Act and there is no power to investigate all cognizable offences. Search and Seizure by a member of the Force made beyond the ambit of the provisions of the Act is illegal and without jurisdiction.'

By Section 3 of the Central Industrial Security Force Act, 1968, it is enacted that there shall be constituted and maintained by the Central Government an armed force of the Union to be called the Central Industrial Security Force for better protection and security of industrial undertakings owned by the Government.

Section 4 of the said Act provides for appointment of one. Director-General of the Force and other persons to be Inspector-General, Deputy Inspector-General, Commandants, Deputy Commandants or Assistant Commandants of the Force.

Section 10 of the said Act lays down the duties of every members of the Force. The main function of the Force is to protect and safeguard the industrial undertakings owned by the Central Government and such other installations and as specified by the Government to be vital for the carrying on the work in those undertakings.

4. Thus, it is clear that the Central Industrial Security Force Act also empowers arrest and search restricted to a situation engrafted in Section 11 of the said Act and there is no power to investigate all cognizable offences.

5. In the instant case, the truck loaded with coal was intercepted on the G.T. Road which is not within the jurisdiction of the establishment undertaking for which the informant is authorized to protect the same.

6. The learned Counsel for the petitioner also relied upon the case of Roshan Lal Arjun Lal v. State of Bihar and Ors. reported in 1993 (2) BLJR 1167. The similar view was taken that a seizure by an Officer, being not competent, under the law, is invalid and no prosecution can be launched on the basis of an illegal seizure and for which criminal proceedings in such a case have to be set aside. The learned Counsel for the petitioner further relied on the case on Suresh Singh v. State of Bihar and Anr. reported in 1990 East Cr.C.137 (Pat).

7. Obviously, Section 30 of the Bihar Trade Articles (Licences Unification) Order does not indictate anywhere that the informant, who is the C.I.S.F. official, is empowered to search or seize the coal loaded in truck on G.T. Road. It is apparent from the FIR itself that the challan was produced at the relevant time and there is nothing material to show that the said challan was found to be forged and fabricated as it is apparent that the coal in question was seized on the G.T. Road which is not inside of any installation. Therefore, the search and seizure can be said to be beyond the ambit of Sections 10, 11 and 12 of the C.I.S.F. Act. The learned Counsel for the petitioner has also placed reliance on the case reported in 1993 PLJR 108 where it was held that Central Industrial Security Force has no power of search and seizure.

8. In the result, I find that the seizure of coal by the informant/Sub-Inspector Central Industrial Security Force was illegal and without jurisdiction which is liable to be quashed. Thus, I find merit in the application which is allowed. Accordingly, the entire proceeding including the order taking cognizance dated 22.7.85 is, hereby, quashed.

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