

Shri Daniel Vs. State and Another

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Court : Mumbai

Decided On : Nov-17-1998

Reported in : 1999(5)BomCR493; 1999BomCR(Cri)493

Judge : R.M.S. Khandeparkar, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3 and 7; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397; Goa, Daman and Diu Kerosene Oil (Export and Price) Control, Order, 1975 - Sections 4; Kerosen (Fixation of Ceiling Prices) Order, 1970

Appeal No. : Criminal Revision Application No. 20 of 1998

Appellant : Shri Daniel

Respondent : State and Another

Advocate for Def. : A.P. Lawande, ;P.P. and ;V.A. Lawande, Adv.

Advocate for Pet/Ap. : N. Sardessai, Adv.

Judgement :

ORDER

R.M.S. Khandeparkar, J.

1. This Criminal Revision Application arises from order dated 29th August, 1998, passed in Special Criminal Case No. 1/94 by the District and Sessions Judge, Panaji. By the impugned Order, the learned Sessions Judge while rejecting the application of the petitioner has been pleased to frame the charge against the petitioner under section 3 r/w section 7 of the [Essential Commodities Act, 1955](#) for the alleged violation of the Notification dated 13th November, 1990 issued under the Kerosene (Fixation of Ceiling Prices) Order, 1970.

2. The facts in brief relevant for the decision are that the petitioner along with respondent No. 2 were served with the copy of the charge-sheet in Criminal Case No. 1/94 with the allegation that on 4th February, 1991 at about 19.30 hours at Zuarinagar, the petitioner and respondent No. 2 were selling Kerosene Oil to the public at Rs. 4/- per litre which is in excess of Rs. 2.69 and hence, the petitioner and respondent No. 2 had committed the offence punishable under Clause 4(i) of Goa, Daman and Diu Kerosene Oil (Export and Price) Control Order, 1975, issued under section 3 of the [Essential Commodities Act, 1955](#). Along with the charge-sheet, the petitioner was served with the copies of complaint dated 5th February, 1991 and the statements of the various persons recorded by the Police which included the statements of one Shri Magttum Saka, Shri Laximan Durgappa Naik and Shri Shivprasad Kumar Bhat.

3. Clause 4(i) of Goa, Daman and Diu Kerosene Oil (Export and Price) Control Order, 1975 provided for restriction on sale of Kerosene oil and the same reads thus :-

'4. Restriction on sale of Kerosene oil:(1) No person shall sell or abet the sale of Kerosene oil to any person at a price in excess of the price notified by the administrator from time to time in the Official Gazette'.

The contention of the petitioner is that there is no material even to show prima facie that the petitioner has sold Kerosene in excess of Government rates and/or in violation of section 3 r/w section 7 of the [Essential Commodities Act, 1955](#) or in violation of the Notification dated 13th November, 1990 issued under the Kerosene (Fixation of Ceiling Prices) Order, 1970. It is not in dispute that in terms of the said Notification dated 13th November, 1990, the retail price per litre of Kerosene in the

taluka of Mormugao was fixed at Rs .2.69. The petitioner, therefore, prayed for discharge.

4. Shri N. Sardessai, learned Advocate appearing for the petitioner drawing my attention to the various statements recorded by the Police and copies of which are placed on record submitted that there is not even an allegation in any of the statements that at any time the petitioner was found selling Kerosene. According to the learned Advocate, the statement of Shri Magttum Saka apparently discloses that the said witness had not purchased the kerosene from the petitioner and that he had not witnessed the petitioner selling the kerosene to any other person. So also the statements of Shri Laximan Durgappa Naik and Shri Shivprasad Kumar Bhat do not implicate the petitioner being the seller of Kerosene. Reference to the petitioner in the statements of Shri Laximan Durgappa Naik and Shri Shivprasad Kumar Bhat is only relating to the abuses and shouts by the petitioner in the shop of the father of the petitioner. According to the learned Advocate that by itself would not show that the petitioner had committed any offence of sale of Kerosene at a price higher than the one fixed by the Government. Placing reliance upon the judgment of the Apex Court in the matter of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others, reported in : 1976 CriLJ1533 , the learned Advocate submitted that the order issuing process against an accused can be quashed and set aside when the statements of the witnesses recorded in support of the prosecution case taken at their face value do not make out any case against the accused or do not disclose the essential ingredients of an offence alleged against the accused. Further, referring to another judgment of the Apex Court in the matter of Shree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia and another, reported in : [1989]1SCR560 he submitted that all that the Court has to consider at the time of framing of charge is to see whether the material on record, if generally accepted, would reasonably connect the accused with the crime alleged to have been committed by the accused.

5. Shri A. P. Lawande, Public Prosecutor on the other hand submitted that the materials placed on record as rightly held by the learned Sessions Judge are sufficient to create strong suspicion about the commission of offence by the petitioner along with the respondent No. 2. and therefore, no fault can be found

with the impugned order framing charge against the petitioner along with the respondent No: 2. Placing reliance upon the judgment of the Apex Court in the matter of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and others, reported in : 1979 CriLJ1390 , the learned Public Prosecutor submitted that the Apex Court has clearly held that at the stage of framing charges, the prosecution evidence does not commence and the Magistrate had, therefore, to decide about the framing of charge on a general consideration of the materials placed before him by the Investigating Police Officer. The standard test of proof which can be applicable finally before finding the accused guilty or otherwise is not to be applied at the time of framing of charge. At that stage, even a very strong suspicion founded upon the materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of the offence. Therefore, considering the materials on record and particularly the statements of the witnesses including the complaint by Shri D.R. Govekar, it cannot be said that there is absolutely no material to frame the charge against the petitioner in respect of the offence alleged against him. Referring to the statement of Shri D.R. Govekar along with those of Shri Magttum Saka, Shri Laximan Durgappa Naik and Shri Shivprasad Kumar Bhat, the learned Public Prosecutor submitted that the reading of all the statements in proper perspective would show that the petitioner was very much involved in the case of selling of kerosene at a price higher than the one prescribed by the Government. He further submitted that it is not necessary for the Court to scan through the evidence at the stage of the framing of charge and if the materials are sufficient to raise a strong suspicion about the commission of offence by the petitioner, the same would be justification to frame charge against the petitioner in respect of the alleged offence.

6. There cannot be any doubt that at the stage of framing of charge, the Court has not to apply the standard of test, proof and judgment which is to be normally applied at the final stage while deciding whether the accused is guilty of the offence or not. It is equally true that the Apex Court in the matter of Superintendent and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja and others (supra) has held that at the stage of framing of charge the Court has to consider

the question on a general consideration . of the materials placed before it by the Investigating Police Officer. The Apex Court has further held that at that stage, even a very strong suspicion founded upon the materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of the offence of which the person is accused of. In other words, at the stage of framing of charge, the Magistrate has to find out from the materials before it whether such materials disclose factual ingredients constituting the offence alleged. The conclusion regarding strong suspicion about the commission of offence can be arrived at only when the Court finds existence of such factual ingredients alleged against a person. The decision of the Apex Court in the matter of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others (supra) is also on similar lines. Therein it has been held that an order of the Magistrate issuing process against the accused can be quashed or set aside when the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or when the complaint does not disclose the essential ingredients of the offence which is alleged against the accused or where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach to a conclusion that there is sufficient ground for proceeding against the accused or where the discretion exercised by the Magistrate in issuing the process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible or where the complaint suffers from fundamental legal defects such as want of sanction or absence of a complaint by legally competent authority and the like. In other words, the Apex Court has time and again held that where the materials placed before the Magistrate or the Court do not disclose the essential ingredients of the offence alleged against the accused then the process issued against such accused can be quashed. Certainly, if the process issued against the accused can be quashed on no ground being disclosed against the accused it goes without saying that no charge can be framed in a case where materials do not disclose necessary ingredients of the offence alleged against the accused.

7. In the case in hand, the petitioner is accused of selling Kerosene oil to the public at Rs. 4/- per litre which is in excess of retail price of Rs. 2.69. The complaint dated 5th February, 1991 is undoubtedly based on the materials collected by the Investigating Officer in the course of investigation. The complaint does refer to one Hussein in relation to the sale of 200 litres of Kerosene by a person to him and the said person having disclosed his name as Daniel, son of Florence Britto, resident of Zuarinagar and the same corresponds to the name of the petitioner. Moreover, in the statement of Shri Magttum Saka, there is no reference to any person by name Daniel, son of Florence Britto, resident of Zuarinagar. In fact, the witness Shri Magttum nowhere refers to the petitioner as such in his statement recorded on 4th February, 1991. As regards Shri Laximan Durgappa Naik, he does refer to the petitioner by name Daniel having abused and shouted at the people and threatened them that if they did not like to take kerosene they might go away from his shop. Moreover, there is no statement by the said witness of either sale or even attempt of sale by the petitioner himself of kerosene at a rate higher than Rs. 2.69 to any person including Shri Laximan Durgappa Naik. Similar is the case in respect of the statement of Shri Shivprasad Kumar Bhat. In fact, the said witness refers to a person by name Britto to be the father of Daniel as the person who was selling kerosene. The witness also refers to the shop where the kerosene was being sold as 'Shri Britto's shop'. There are no materials on record nor is the case of the prosecution that the petitioner is the holder of licence for sale of kerosene. Apart from these three statements undisputedly, there is no other statement on record or any other materials to show that the petitioner at any time attempted to sell Kerosene at the rate higher than the one prescribed by the Government. Taking into consideration the materials on record, therefore, it cannot be said that the same disclose essential ingredients of the offence alleged against the petitioner. As already seen above, Clause 4(i) of the Goa, Daman and Diu Kerosene Oil (Export and Price) Control Order, 1975 requires that no person shall sell or abet the sale of kerosene oil to any person at a price in excess of the price notified by the Government. The materials, therefore, should disclose that the accused person has either attempted to sell or abet the sale of kerosene at the price in excess of the price notified. As already seen above, the materials on record do not disclose such ingredients of Clause 4(i) of

the said Order.

8. While dealing with the matters pertaining to the allegations of criminal offences by a person, the courts have always to remember that the judicial process should never be used or can never be allowed to be used as an instrument of oppression. The Apex Court while dealing in the matter of Punjab National Bank and others v. Surendra Prasad Sinha, reported in : 1992 CriLJ2916 has observed that:-

'It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance.'

No doubt, the observations were made in a case instituted by a private complaint. Moreover, the same cannot be ignored even in cases instituted on police report when the materials on record not only disclose absence of prima facie case against the accused person but on the contrary the same disclose a case against some other person against whom the police have not filed any charge-sheet. A plain reading of the statement of Shri Laximan Durgappa Naik with the statement of Shri Shivprasad Kumar Bhat discloses that both these witnesses have referred to a person by name Britto to be the father of the petitioner selling Kerosene in his shop and some attempt to sell the same at the rate of Rs. 4/- per litre. Moreover, for the reasons best known to the Investigating Police Officer Shri D.R. Govekar at Verna Police Station at the relevant time, he had chosen to file the charge-sheet only against the petitioner and his mother respondent Ho. 2. Certainly in such cases, the observations of the Apex Court referred to above assume great

importance and the Court dealing with such matters have to apply their mind properly to the materials placed before it and decide about the framing of charge against the persons who are named as accused in the charge--sheet. From the plain reading of the materials on record as already seen above, in my considered opinion, it does not appear that the learned Sessions Judge had applied his mind properly to the materials on record.

9. In the result, therefore, considering the materials on record, there is no case made out for framing of charge for the alleged offence against the petitioner and, therefore, the impugned order cannot be sustained and is liable to be quashed and set aside. The petition, therefore, succeeds. The impugned order is quashed and set aside. The petitioner is discharged. The Bail Bond is cancelled. Interim stay granted is hereby vacated. Rule is made absolute in above terms. No order as to costs.

10. Petition succeed.

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