

Dharamendrappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-04-1991

Reported in : 1991CriLJ2262

Judge : Mirdhe, J.

Acts : Karnataka Cement Control Order, 1983; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Cr. R.P. No. 735 of 1990

Appellant : Dharamendrappa

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadav, HCGP

Advocate for Pet/Ap. : B.H. Kaleel Khal, Adv.

Disposition : Petition dismissed

Judgement :

Mirdhe, J.

1. This Revision Petition is preferred by the petitioner against the order dated 4-10-1990 of the learned Sessions Judge, Hassan, in Special Case No.2/1988.

2. The case was posted for hearing on admission on 2-1-1991. The learned Counsel for the petitioner remained absent. Hence the Court adjourned the case to today to hear the learned Counsel for the petitioner. The learned Counsel for the petitioner is absent even on this day. Hence the Court has no other alternative but to hear the learned Government Pleader and to peruse the records and to proceed to pass orders.

3. The impugned order in this case is passed by the learned Sessions Judge, Hassan, holding that there is material to frame a charge accusation for contravention of Rule 8 of Cement Control Order, 1983, read with Sections 3 and 7 of the Essential Commodities Act and he proceeded to frame a charge-accusation against the accused.

4. The main contention of the Revision-Petitioner is that the Police Officer had no authority or power under the Karnataka Cement Control Order, 1983, to conduct a search of the petitioner's shop. There is a Ruling of our High Court reported in the case of STATE OF KARNATAKA v. P.M. NAGESHWAR RAO AND ANR., 1987(1) KLJ @ 236 wherein it has been held that-

'Although as provided under Section 10A of the Essential Commodities Act, offences committed under the Act are made cognizable, but the supervisory power regarding the enforcement of the under are specifically given to the other officers, other than (sic) as provided under Rule 17(1).'

5. In that case, on facts, it has been held that the Police Officer should not have taken the responsibility on himself of supervising the enforcement of the order and therefore the search made by him being in violation of Section 165 Cr.P.C. was held illegal and without jurisdiction. But the Supreme Court in the case of SATYANARAIN MUSADI AND ORS. v. STATE OF BIHAR, : 1980 CriLJ227 has taken a contrary view. It reads as follows:-

'5. Section 10A of the Act provides notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act shall be cognizable which would imply that an officer incharge of police station on receipt of the information of such cognizable offence without the order of a Magistrate to

investigate into the offence according to the procedure prescribed in Chapter XII of the Code.'

In the Ruling of the Karnataka High Court cited above, this Ruling was not considered by His Lordships. The Supreme Court has made it clear in the Ruling cited above that an officer incharge of the police station, may, without the order of the Magistrate investigates into the offence according to the procedure prescribed under Chapter XII of the Code. This Court is bound to follow the Ruling of the Supreme Court. In view of this Ruling of the Supreme Court, the contention of the petitioner is untenable.

6. Hence I make the following order. Petition not admitted. Dismissed.

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