

B.C. Saxena Vs. State

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Court : Allahabad

Decided On : Mar-31-1983

Reported in : 1983CriLJ1432

Judge : Jayachandra Reddy, J.

Appellant : B.C. Saxena

Respondent : State

Judgement :

Jayachandra Reddy, J.

1. Criminal Misc. Petitions Nos. 25, 33, 35 of 1983 and 2947 of 1982.

In all these petitions, the petitioners are the employees of Andhra Steel Corporation, and the respondent is the State represented by the Inspector, Railway Protection Force, R.P.F. Post, Marripalem, Visakhapatnam.

2. The common questions of law that arise in all these cases for consideration are:

(1) When does a person against whom an enquiry is started for offences punishable under the Railway Property (Unlawful Possession) Act, become an accused within the meaning of Article 20(3) of the Constitution of India ?

(2) What is the scope of enquiry under Section 9 of the Railway Property (Unlawful Possession) Act, and at what stage can a person take shelter under Article 20(3) during such an enquiry ?

The necessary facts which give rise to this question are as follows :-

In all these cases, the respondent, viz., the Inspector, Railway protection Force, R.P.F. Post, Marripalem Visakhapatnam, is the complainant. He registered a case against the Directors and other officials of the Andhra Steel Corporation at Waltair. It is alleged that the premises of the Corporation was searched on suspicion wherein several properties belonging to the Railway were found, A regular complaint under Section 3(a) of the Railway Property (Unlawful Possession) Act was filed against one C.L. Mittal and four others on 29-11-1982 which was taken on file as a Calendar case by the Judicial Magistrate of the First Class for Railways at Waltair, But before, that, an enquiry was conducted under Section 8 of the Act and thereafter under Section 9 of the Act and a notice was issued to B. C. Saxena, Accountant of the Corporation. Thereafter a separate complaint under Section 193 I.P.C. was filed against B. C. Saxena on the same date i.e., 29-11-1982. It is alleged in this complaint that the persons mentioned therein who were found in unlawful possession of several properties belonging to the Railway, we're required to produce certain documents, but they produced false documents like challans, etc., and that, therefore, all of them are liable for the offence punishable under Section 193 I.P.C. This complaint was taken on file as C, C. No. 319 of 1982 by the learned Magistrate. To quash these proceedings, Cr. M. P. 25 of 1983 is filed in this Court. Another complaint was filed on 19-11-1982 against C. L. Mittal, Chief Executive of the Corporation, for offences punishable under Sections 174 and 175 I.P.C, on the ground that, though he was summoned to give evidence as contemplated under S: 9 of the Act, he attended only once but later failed to attend the enquiry with the necessary documents and, therefore, he deliberately and intentionally disobeyed the instructions contained in the summons served upon him. This complaint was taken on file by the learned Magistrate as C. C. No. 323 of 1982. To quash these proceedings, Cr. M. P. 33 of 1983 is filed in this Court. On the same day, another complaint was filed under Sections 179 and 180 I.P.C, against the same accused viz., C L. Mittal, Chief Executive of the

Corporation, alleging that the accused refused to give a statement and also refused to sign. This complaint was also registered as C. C, 324 of 1982. Cr. M. P. No. 35 of 1983 is filed to quash the proceedings in C. C. 324 of 1982. A complaint was also filed under Sections 174 and 175 I.P.C, against C. L. Mittal Present of the Management Committee of the Corporation, alleging that, during the enquiry in Case No. 75 of 1981, summons were served on the accused at his Office at Bangalore and he was directed to furnish records but he disobeyed the same. This case is registered as C. C. No. 187 of 1982, and to quash these proceedings, Cri. M. P- 2947 of 1982 is filed. As already mentioned, against all these persons, the Railway Protection Force registered a case Under Section 3 of the Act.

3. The learned Counsel for the petitioners submits that, all these persons against whom the case is registered by the R.P.F., under Section 3(a) of the Act, cannot be compelled to give evidence against themselves, inasmuch as, they have become- accused and are protected under Article 20(3) of the Constitution of India; and even if they refuse to participate in any enquiry, or produce false documents in an enquiry under Section 9 of the Act, they cannot be prosecuted for offences punishable under Sections 174, 175 and 193 etc. of the Indian Penal Code.

4. Before i proceed to consider this question in detail, it becomes necessary to refer to some of the relevant provisions of the Railway Property (Unlawful Possession) Act 1966. Section 3 prescribes penalty for being in an unlawful possession of railway property. Section 2(a) defines 'force' to mean the Railway Protection Force constituted under Section 3 of the Railway Protection Force Act 1957. Section 2(c) defines 'officer of the Force' to mean an Officer or and above the rank of Assistant Sub-Inspector appointed to the Force and includes a superior officer. Section 2(c) defines 'Superior Officer' means any of the officers appointed under Section 4 of the Railway Protection Force Act 1957 and includes any other officer appointed by the Central Government as a superior officer of the Force. Section 5 lays down that, notwithstanding anything contained in the Code of Criminal Procedure 1898, an offence under the Act shall not be cognizable. Section 6 empowers any superior officer or member of the Force, without an order from the Magistrate or without any warrant, to arrest any person who has been

concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned. According to Section 7, every person arrested for an offence punishable under the Act shall, if the arrest was made by a person other than an officer of the Force, be forwarded without delay to the nearest officer of the Force, Then there are the two sections which are important viz., Sections 8 and 9 of the Act, which read thus:-

8. Inquiry how to be made against arrested persons.

(1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force: may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case:

Provided that:

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate:

(b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

9. Power to Summon persons to give evidence¹ and produce documents.

(1) An Officer of the Force shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a

document, or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons, so summoned, shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908, shall be applicable to requisition for attendance, under this section. (4) Every such inquiry as aforesaid, shall be deemed to be a 'judicial proceeding' within the meaning of Section 193 and Section 228 of the Indian Penal Code.

It can be seen that under Section 8 of the Act, an officer can conduct an enquiry in respect of a person who is forwarded to him under Section 7 and who is suspected to have committed an offence; and such an officer may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure when investigating a cognizable case. During the enquiry, if the Officer finds that there is sufficient evidence or reasonable ground of suspicion against the person so produced before him, the officer shall either release him on bail or send him before the Magistrate having jurisdiction in the case, or, if there is no sufficient evidence against such a person, the officer shall make a report of particulars of the case to his official superior. It may also be noted at this juncture that the officer who is enquiring into the case can exercise the same powers as the officer in-charge of a police station viz, he can arrest and also send such a person for judicial custody. According to Section 9, an officer, who has initiated enquiry under Section 8 to gather evidence, is invested, for that purpose, with the power to summon any

person, whose evidence he considers necessary, either to give evidence or produce a document. Under Section 9(3) any person so summoned shall be bound to attend either in person or by an authorised agent, and to state the truth upon any subject respecting which he is examined or make a statement and produce such document and other evidence as may be required. According to Section 9(4) every such inquiry shall be deemed to be a judicial enquiry within the meaning of Sections 198 and 228 of the Indian Penal Code. The complainant, therefore, alleges that, since these persons have contravened the provisions of Section 9(1) to (3) of the Act, they are liable to be prosecuted for the said offences under Sections 174, 175 and 193 of the Indian Penal Code.

5. In all these cases, the complainant's case is that the persons who are required to give evidence or to produce certain documents under Section 9 of the Act either disobeyed summons or produced false documents and, therefore, they are liable for offences punishable under Sections 174, 175, 179 and 193 etc. of the Indian Penal Code.

6. The case of the accused is that a case was registered by the Railway Protection Force against all of them; one of them was arrested initially but later released on bail; the remaining accused were granted anticipatory bail; and thereafter a regular complaint was filed against all of them under Section 3(a) of the Act, as such, they have become accused even by the time the case was registered by the Railway Protection Force and long before the enquiry under Section 9 of the Act was commenced, and consequently they are protected by Article 20(3) of the Constitution of India.

7. On behalf of the prosecution, it is submitted that till the regular complaint is filed in the court these persons cannot be treated as accused. The complaint in the instant case was filed only on 29-11-82 but the offences committed by these persons viz., contravention of the provisions of Section 9 of the Act, were much prior to the filing of the complaint and therefore, they cannot claim protection under Article 20(3) of the Constitution of India.

8. The main question, therefore that arises for consideration is: 'When did these persons become accused?' So far as this aspect is concerned, generally it is well

settled that there should be a formal accusation. Section 190 Cr. P.C., lays down that a Magistrate can take cognizance of an offence upon receiving a complaint of facts, upon a police report of such facts, upon information received from any person other than a police officer, or upon his own knowledge, that such an offence has been committed. In this instant case, it is not in dispute that, though an Officer of the Railway Protection Force is empowered to investigate, he cannot file a report under Section 173 Cr. P.C., he can only file a complaint. So far as the persons against whom an enquiry is commenced under Section 9, are concerned, can it be said that merely because the Railway Protection Force have in their registers entered a case against, them and arrested them, they become accused so as to invoke Article 20(3) of the Constitution of India.

9. In *M. P. Sharma v. Satish Chandra* : 1978(2)ELT287(SC) Their Lordships considered the scope of Article 20(3) of the Constitution of India and held that Article 20(3) embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated as an article of its Constitution. Their Lordships also observed that it is a right pertaining to a person 'accused' of an offence; it is a protection against such compulsion resulting in his giving evidence 'against himself. It is. also observed-'broadly stated the guarantee in Article 20(3) is against 'testimonial compulsion.'" Then Their Lordships also pointed out that such a guarantee would be available to persons against whom a First Information Report has been recorded as accused therein. The learned Counsel, relying upon this decision, sought to contend that the Railway Protection Force have registered the case and issued First Information Report. I have perused that report. That does not show that it is the one under Sections 154 and 155 Cr. P.C. At the most it can be said that the Railway Protection Force have registered the case. The Act does not compel the Railway Protection Force to report the matter to the regular police and get the FIR issued. In *M, P. Sharma's* case (supra) their Lordships referred only to the FIR issued by regular police.

10. *Badaku Joti v. State of Mysore* : 1966 CriLJ1353 , is a case which arises under the Sea Customs Act. a question arose as to whether a Customs Officer is a

police officer. Their Lordships, after examining various provisions which confer powers on the Customs Officer, held that he is not a Police Officer, and that a Customs Officer can only make a complaint. *Ramesh Chandra v. State of West Bengal* : 1970 CriLJ863 is yet another case which arose under the Sea Customs Act. A question arose whether confession made to a Customs Officer is inadmissible, as the same should be deemed to have been made to a Police officer. Their Lordships held that Customs Officer is not a Police Officer. The scope of Article 20(3) of the Constitution was also considered, and as to when a person becomes an accused for purposes of Article 20(3) is also discussed. It is held therein that, 'in order that the guarantee against testimonial compulsion incorporated in Article 20(3) may be claimed by a person it has to be established that, when he made the statement sought to be tendered in evidence against him, he was a person accused of an offence, 'Normally a person stands in the character of an accused when a First Information Report is lodged against him in respect of an offence before an Officer competent to investigate it, or when a complaint is made relating to the commission of an offence a Magistrate competent to try or send to another Magistrate for trying the offence. Where a Customs Officer arrests a person and informs that person of the grounds of his arrest, which he is bound to do under Article 22(1) of the Constitution for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an Offence.

11. There are two other similarly important cases arising under the Railway Property (Unlawful Possession) Act itself. In *Balukishan A. Devidayal v. State of Maharashtra* 1975 Cri LJ 1891 (Bom) a Division Bench of the Bombay High Court considered the scope of Section 9 of the Act. That was a case where the accused was found to be in unlawful possession of railway property. Enquiry was conducted followed by an investigation into other offences like forgery, and an officer empowered under Section 9 of the Act. summoned several persons to tell the truth. It was contended that the officer under the Act exercised all the powers of a police officer and, therefore, any inculcating statement made to him was inadmissible. This contention was repelled. The Division Bench also further considered whether they are entitled to the protection guaranteed under Article

20(3) of the Constitution and that, unless complaint is filed against them and a case is registered in the Court, those persons cannot be deemed to have become accused. The aggrieved accused persons carried the matter 'In appeal to the Supreme Court, and the Supreme Court in *Balkishan v. State of Maharashtra* : 1980 CriLJ1424 affirmed the view taken by the Bombay High Court; One of the questions considered by their Lordships is 'whether a person arrested by an Officer of the Railway Protection Force under Section 6 of the Act, for the alleged commission of an offence under Section 3 of the Act is a 'person accused of an offence' within the meaning of Article 20(3) of the Constitution'. So far as the question whether an Officer of the Railway Protection Force is a Police Officer or not, is concerned, their Lordships also relied upon the earlier decisions in *Badaku Joti's case* 1966 Cri LJ 1353 (SC *State of Punjab v. Barkat Ram* : [1962]3SCR338 , *Ramesh Chandra's Case* 1970 Cri LJ 863 (SC) and *State of U.P. v. Durga Prasad* : 1974 CriLJ1465 . In the last case it is clearly laid down that an enquiry under Section 8 of the Act, does not amount to an investigation under Section 162 Cr. P.C. In that case, their Lordships further observe that statements made during the enquiry under Section 8(1) of the Act, are not on par with the statement made during the course of the investigation. Coming to Section 9 of the Act, Their Lordships have affirmed that an enquiry under this provision is a judicial proceeding. With regard to the nature of enquiry under Section 8, it is held that an officer conducting enquiry under Section 8 does not possess all the powers of an officer in charge of a police station; he possesses only powers which are limited to the purpose of holding an enquiry. It is also observed that on the completion of the enquiry under Section 8(1) if the officer is of the opinion that there is sufficient evidence, the only course left open for him is to file a complaint under Section 190(1)(a) of the Code of Criminal Procedure in order that the Magistrate concerned may take cognizance of the offence. Thus, their Lordships of the Supreme Court in *Balkishan's case* : 1980 CriLJ1424 while affirming the views taken in earlier cases, also affirmed the view taken by the Bombay High Court Their Lordships also observed:

The only mode of initiating prosecution of the person against whom he has successfully completed the enquiry, available to an officer of the R. P. F., is by making a complaint under Section 190(1)(a) of the Code to the Magistrate

empowered to try the Offence.

Their Lordships however referred to *Ramanlal Bhogilal Shah v. D. K. Guha* : 1973 CriLJ921 wherein the accused was arrested under Section 19B on the Foreign Exchange Act. In that case, a question arose whether, after the grounds were served on the petitioner, as provided under the provisions of the said Act, could it be said that the person was 'a person accused of an offence', within the meaning of Article 20(3) of the Constitution. Having regard to the facts and circumstances in Bhogilal's case (Supra) their Lordships of the Supreme Court held thus:

the person therein definitely 'a person accused of an offence' within the meaning of Article 20(3) of the Constitution

Thereafter, while summing up the principles, they have considered the decision of the Bombay High Court. In *Balkishan A. Devidayal v. State of Maharashtra* 1975 Cri LJ 1891 (Supra) and held:..only a person against whom a formal accusation of the commission of an offence has been made can be a person 'accused of an offence' within the meaning of Article 20(3). Such formal accusation may be specifically made against him in an F. I. R, or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in Court...

In the instant case, there is no such FIR registered against the accused by the police. I have already held that merely because Railway Protection Force have made some entries in their records, that does not mean FIR as contemplated by Chapter 12 of the Cr. P.C. is filed. The complaint also was not filed by the time these persons were asked to appear, produce documents and tell the truth as required under Section 9 of the Act. The learned Counsel, however, relies upon the above last observation of the Supreme Court viz., 'any other formal document or notice served on that person'. Their Lordships made that observ-tion having regard to the ratio laid down in Bhogilal's case which arose under the Foreign Exchange Act, wherein the provisions made it obligatory that notice should be served on the person called upon to give necessary information and which ordinarily results in his prosecution. In the instant case, the enquiry under Section 8 or the arrest of the person cannot be said to result ordinarily in his prosecution.

In State of U.P. v. Durga Prasad 1974 Cri LJ 1465 (SC) (Supra) it is clearly laid down (At p. 1469):

The officer conducting an enquiry under Section 8(1) cannot initiate court proceedings by filing a police report as is evident from the two provisos to Section 8(2) of the Act. Under Proviso (a), if the officer of the Force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he shall either admit the accused to bail to appear before a Magistrate having jurisdiction in the case or forward him in custody to such Magistrate. Under Proviso (b), if it appears to the officer that there is no sufficient evidence or reasonable ground of suspicion against the accused, he shall release him on a bond to appear before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his superior officer. The duty cast by Proviso (b) of an officer of the Force to make a full report to his official superior stands in sharp contrast with the duty cast by Section 173(1)(a) of the Code on the officer-in-charge of a police station to submit a report to the Magistrate empowered to take cognizance of the offence. On the conclusion of an inquiry under Section 8(1), therefore, if the officer of the Force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, he must file a complaint under Section 190(1)(a) of the Code in order that the Magistrate concerned may take cognizance of the offence.

This view was also confirmed by the Supreme Court in Balkishan's case : 1980 CriLJ1424 .

12. So, from the above discussion, it emerges that in cases arising under the Act, unless a complaint by the Railway Protection Force is filed in a Court under Section 190(1)(a) of the Code of Criminal Procedure, the concerned person who is directed to be present and give statement under Section 9 of the Act cannot be considered 'a person accused of an offence' Within the meaning of Article 20(3) of the Constitution. Accordingly, the petitioners in all these Cri. M. Ps. cannot claim protection of Article 20(3), of the Constitution inasmuch as they have not attained the character of 'a person accused of an offence' by that stage viz., when the enquiry was being conducted under Section 9 of the Act. The complaint in all

these cases would show that, while the enquiry in the main crime was being conducted, these persons were summoned to produce documents and to give statement. Section 9 of the Act lays down that they have to obey the summons and state the truth. Section 9(4) lays down that such an act shall be deemed to be judicial proceedings. Since these persons filed false documents or disobeyed the summons, they shall be deemed to have committed those offences in a judicial proceedings and consequently they can be prosecuted for offences punishable under Sections 174, 175, 179, 180 and 193 etc. IPC

13. In Criminal M. P. 35 of 1983 and Cri. M. P. 2947 of 1982 the learned Counsel submits that, even if the allegations contained in the complaint are taken to be true, offences punishable under Sections 180 and 175 IPC, are not made out. It is rather premature to decide this question. If there is no material in support of the prosecution so far as these offences are concerned, it is for the trial court to decide the same.

14. In the result, all the Cri. M. Ps, are dismissed.

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