

Anil Kumar Misra and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-04-1993

Reported in : 1994CriLJ2898

Judge : H.N. Tilhari, J.

Acts : Uttar Pradesh Regulation of Cold Storage Act, 1976 - Sections 2, 2(2), 2(6), 5, 12, 17, 19, 27, 28, 37, 37A, 39, 39A, 39(1), 40, 40B and 46; Criminal Procerure Code , 1973 - Sections 155(2), 156(1) and 482; Uttar Pradesh Regulation of Cold Storage Rules; Criminal Procerure Code , 1898 - Sections 561A

Appeal No. : Criminal Misc. No. 477 of 1990

Appellant : Anil Kumar Misra and anr.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Shri. S.C. Misra

Disposition : Petition allowed

Judgement :

ORDER

H.N. Tilhari, J.

1. By the petition under Section 482 of the Code of Criminal Procedure, the petitioners have sought for the quashing of the first information report dated 26-10-1990 purporting to have been made under Sections 12, 19, 27, 28, 39-A, 40, 40-B, 46 of U.P. Regulation of Cold Storage Act, 1976, lodged by opposite-party No. 2 at Police Station Itaunja, District Lucknow which has been recorded as Crime No. 156/90. The petitioners have annexed the copy of the first information report as annexure- 1 to the petition under Section 482 of the Cr. P. C.

2. The petitioners are the partners of the firm named as 'Misra Cold Storage' which is running Cold Storage & Ice Factory in village Itaunja, District Lucknow. According to petitioners' case the petitioners' cold storage was established in 1979 and it was daily licensed under the aforesaid U.P. Regulation of Cold Storage Act, 1976 (hereinafter referred to as the Act). The licences, according to petitioners, used to be duly renewed from time to time and it was also renewed in the year 1990. According to petitioners case the petitioners have been running the aforesaid cold storage absolutely in accordance with the provisions of the Act, rules and relevant Control Orders during all this period since its establishment without any complaint from either the hirers or from any authority under the provisions of the Act of the Cold Storage. The petitioners' case is that they store in their cold storage only potatoes during the season which commences from middle of May and runs up to the middle of November each year. The petitioners' case is that they have always taken due and reasonable care of the goods deposited as man of ordinary prudence would do. That petitioners themselves are also agriculturists they also keep their produce of potato in the said cold storage. The petitioners' case is that in the current year i.e. 1990 the petitioners stored approximately two thousand bags of potatoes which was their own produce. According to petitioners' case in the current year out of Fifty four thousand bags of potatoes which had been stored in the petitioners' cold storage about Fifty one thousand bags have been taken out by hirers without any complaint about the condition of the potato stored in the cold storage. The petitioners have further alleged that their cold storage is being run by electricity for maintaining (sic) duplicate feeder (sic) direct feeder for (sic) regular supply of electricity. In paragraph 10 of the petition, the petitioners have stated that the temperature of each chamber is recorded every days in the log book several times and that there

are three chambers in the petitioners cold storage. The petitioners have given the shiftwise temperature of the three chambers during dry and wet season which is as under:-

Room No. 1	Room No. 2	Room No. 3	Dry	Wet	Dry	Wet	Dry	Wet	10 A.M.	34	1/2	32
1/2	35	33	35	33	12	Noon	34	32	34	1/2	32	1/2
34	1/2	32	1/2	34	1/2	32	1/2	22	P.M.	34	32	34
32	34	32	34	32	34	32	34	32	34	32	34	32

The petitioners have mentioned that their cold storage is managed by Shri Dinesh Chandra Shukla Manager and two others Shri Bhim Shanker Misra and Shri Suresh Chandra Shukla who maintain the record of the cold storage.

3. According to the petitioners on 25-10-1990, the District Horticulture Officer opposite party No. 2 without having given any prior notice of his visit for inspection of cold storage reached the cold storage and gave a written notice to Shri Narendra Singh, Chaukidar, in general terms that he wants to inspect the, potato lying in the cold storage premises, Narendra Singh, Chaukidar according to the petitioners expressed inability and noted on the side of notice as there was no responsible person present in the cold storage so he was unable to get inspection done. The petitioner's case is that they live in Lucknow and they or any one of them visiting the cold storage sometimes in a day or two as and when required and that on 25-10-1990 none of the petitioners was in Itaunja nor were they present when District Horticulture Officer visited the cold storage around noon time. The petitioners have further alleged that on 26-10-1990 petitioner No. 1 visited the cold storage and then Narendra Singh handed him over the notice which had been served on Narendra Singh by opposite party No. 2, the District Horticulture Officer i.e. Annexure 2, to the writ petition. The petitioners further state that immediately thereafter petitioner No. 1 sent a registered letter to the District Horticulture Officer requesting him to fix a date and time when the records may be shown to him. The said letter was sent by registered post vide receipt No. 915 dated .2)6-10-1990 and has been annexed as Annexure 3. The petitioners' case is that it has falsely been stated in the first information report that records of the cold storage were not being shown to him and that petitioners violated the provisions of Section 27/28 and 40 of the Act The petitioners have further denied and stated

that it has wrongly been mentioned in the first information report dated 26-10-1990 that a written direction was given for appearance of 'the petitioners or sending an employee for Helping at inspection. The petitioners further case is that petitioners had no prior notice of the District Horticulture Officer's visit to inspect the premises of the cold storage and the potato stored therein. The petitioners' case is that report dated 26-10-1990 had been lodged with haste and with mala fide and malicious intention of the District Horticulture Officer and paragraph 19 of the petition the petitioners have mentioned that on account of those facts and circumstances narrated therein the District Horticulture Officer Shri Durg Vijai Singh did bear ill will against the petitioners and so the District Horticulture Officer purposely made a visit on 25-10-1990 i.e. at a time when the season of cold storage was almost over on the false grounds as hardly any stock was left and the report was lodged to harass the petitioners with malicious intention particularly when the inspection visit on 25-10-1990 was made without any prior notice. The petitioners' case is that neither in the Act nor in the Rules nor in the Control Order there is any mandatory condition prescribed as to the maximum or minimum temperature to be maintained by the licensee. They have further stated that no case has been made out of violation of any provision referred to in the first information report nor the first information report prima facie makes out a case of cognizable criminal offence involving complicity of the petitioners. It has further been mentioned that at the instance of the District Horticulture Officer the Station Officer of Police Station Itaunja arrested the petitioners' Manager Shri Dinesh Chandra Shukla from the cold storage of the petitioners on 27-10-1990. The Station Officer of Police Station Itaunja also took away cold storage records. The police accompanying the Station Officer, according to petitioners, did not only arrest Shri Dinesh Chandra Shukla and take the record but maltreated and misbehaved with Shri Shukla and when no case was made out and when the seized record did not disclose any violation of law the Station Officer released on bail Shri Shukla on the furnishing of the bail bonds by petitioner No. 2 for his release and returned all the seized goods. The petitioners further asserted that the District Horticulture Officer had been putting serious threat on the Station Officer to arrest the petitioners and put all kinds of pressure on the pretext of his being close to senior politicians and if the Station Officer did not arrest the petitioners the

Station Officer was threatened that he will be in hot waters. The petitioners' case is that the first information report does not make out any ground for violation of the provisions of law and is misconceived in the eye of law. The petitioners' case is that the first information report is the result of malice and ill will borne by the District Horticulture Officer as per allegations in paragraph 19 of the petition under Section 482 of the Cr.P.C. Paragraph 19 reads as under:-

19. That the District Horticulture Officer Shri Durg Vijai Singh has been constructing a house in Mahmood Nagar Society on Sitapur Road under the jurisdiction of Police Station (sic) Mandiem. He has an associate ('middle man') named, Jai Karan, resident of village Digoi. In the end of July, 1990 the said Jai Karan had contacted petitioner No. 1 and conveyed the message that the District Horticulture Officer is constructing the house and he needs money. The petitioner No. 1 was informed by Jai Karan that he should pay Rs. 10,000/- failing which he may be put in trouble. The petitioner No. 1 was further informed that other similarly placed cold storage owners had obliged the District Horticulture Officer. The petitioner No. 1 in order to ascertain whether the aforesaid demand was really made by the District Horticulture Officer even contacted him. The District Horticulture Officer admitted having sent Jai Karan for the purpose stated above. However, the petitioner No. 1 expressed his inability to him. Since then the District Horticulture Officer is annoyed and bent upon harassing the petitioners. The District Horticulture Officer, despite his previous visits in the month of August and Sept. 1990 in the said cold storage when he did not find any irregularity of any sort. He, therefore, could not take any action. It is noteworthy that if the temperature in the chamber was really as is mentioned in the first information report in August, 1990 and was inadequate then why for all this period, he did not write to the petitioners that it violated any Act, Rule or Orders.

4. To this petition, supported by an affidavit, counter-affidavit has been filed on behalf of opposite parties 1 and 3 but no counter-affidavit has been filed on behalf of the District Horticulture Officer, irrespective of the fact that specific allegations of mala fide and malice have been made. In the petition. It may be mentioned here that it has admitted in paragraph 11 of the counter-affidavit with reference to the allegations of paragraph 11 of the petition that it is correct that neither in the Act

nor the Rules framed under the Act nor under any Control Order there is any condition which may be said to have prescribed mandatorily the minimum or the maximum temperature to be maintained by the licensee. It has only been stated that from technical point of view the chambers of cold storage must have the temperature of 3 degree F.H. It may also be mentioned here that allegations of paragraph 4 of the petition to the effect that for the last 12 years prior to the relevant year 1990 the petitioners had been running the cold storage in accordance with the provisions of the Act and Rules and relevant Control Order since the establishment of the cold storage and there had been no complaint either from hirers or from any of the parties in respect of the goods stored there or for proper functioning of the cold storage have not been denied or commented in the counter-affidavit filed by the opposite party No. 3 i.e., Sub Inspector Police Station Itaunja. It is also admitted that potato. season runs from the middle of May to middle of Nov. each year during which the potato is stored in the cold storage. According to the case of opposite-party No. 3 the petitioners' cold storage have violated the provisions of law. In the counter-affidavit it has also been stated that there is no provision for giving any prior notice by the District Horticulture Officer to the licensee running the cold storage and that the sudden inspection by a competent officer, according to the affidavit of Sub-Inspector had been perfectly valid. The Sub-Inspector in his affidavit has stated that no first information report was lodged against Shri Durg Vijai Singh, the District Horticulture Officer when he had demanded Rs. 10,000/- from the petitioners nor was any information or complaint sent to any police officer. In the counter-affidavit it was stated by Sub Inspector that some nineteen cultivators had made complaint to the Director Horticulture but the complaint was sent by the Director to the competent officer and in those circumstances the competent officer i.e. District Horticulture Officer inspected the cold storage and he having found the breach of law and rules lodged the first information report and the same had been entered as a crime case as mentioned above. Rejoinder affidavit had been filed in reply to the counter-affidavit filed on behalf of opposite-party No. 3. In the rejoinder-affidavit it has further been stated that since after 25-7-1987, the District Horticulture Officer does not exercise the power of Licensing Officer, as such, he could neither have carried out inspection of the petitioners' cold storage nor was he entitled nor could be, as

such, lodge the first information report, Annexure 1 to the writ petition and that according to the averments In the rejoinder-affidavit the District Horticulture Officer acted without jurisdiction and legal authority in lodging the first information report on the basis of the alleged inspection, which, according to the petitioners was an illegal act. It was also stated in the rejoinder-affidavit that in fact none of the cultivators or hirers had any grievance against the petitioners while taking the delivery of the stored potatoes nor the District Horticulture Officer had forwarded to the petitioners the alleged complaints of the cultivators or farmers said to have been received by the District Horticulture Officer (sic) which, according to the petitioners ought to have been brought to the notice of the petitioners if the said complaints had been received by opposite party No. 2, the District Horticulture Officer. According to the petitioners the said allegations in the first information report were a mere concoction. The petitioners in the rejoinder-affidavit have also denied the correctness of the required temperature for the storage of potato in the cold storage to be 34 degree F. Dry and 32 degree F. wet or 1.30 Celsius, the petitioners have denied the correctness of the data. The petitioners case is that there being nothing on record to indicate about the qualification, knowledge or experience of the officer concerned who purports to have issued the opinion (Annexure-3) to the counter-affidavit i.e. the opinion of the alleged expert cannot be deemed to be an expert opinion. Supplementary affidavit had been filed on 11-7-1991 whereunder it has been stated that the District Horticulture Officer had been delegated only the powers under Section 40 of the Act vide Notification dated July 11, 1978, Annexure-61 and so according to the petitioners the District Horticulture Officer had no power to lodge the first information report as the delegation was limited to the exercise of powers under Section 40 of the Act. To this supplementary affidavit a counter-affidavit has been filed on behalf of the opposite party No. 2 i.e., the District Horticulture Officer and this counter-affidavit to supplementary affidavit appears to have been sworn and filed by Shri Durg Vijai Singh, District Horticulture Officer, Lucknow. Only paragraph 4 of the supplementary counter affidavit is material In reply to paragraph 4 of the supplementary-affidavit it has been stated that though Section 40 of the Act deals with the power of Licensing Officer regarding inspection of the cold storage. In the present case the Licensing Officer was not allowed to inspect the records of the

cold storage, as such there was no option left with the Licensing Officer and he lodged the first information report against the owner of the said cold storage. A perusal of this paragraph shows that there was no specific denial of the allegation contained in paragraph 4 of the supplementary-affidavit that there was no delegation under Section 40 of the Act, of the power to lodge the first information report vide counter-affidavit dated 5-9-1991. A rejoinder-affidavit to the counter-affidavit of opposite party No. 2 to the supplementary-affidavit was filed on behalf of the petitioners on 26-11-1991 whereunder it has been re-asserted that it is wrong to say that Licensing Officer was not allowed to inspect the records of the cold storage and, therefore, he lodged the first information report. The petitioners further reasserted that as a matter of fact neither the petitioners nor any of their clerks, were present in the cold storage premises at the time when the District Horticulture Officer, Lucknow had visited the cold storage on 25-10-1990, and, as such, on being informed about this fact that neither the petitioners nor any of their clerk was available by Shri Narendra Singh Chaukidar, on the gate the District Horticulture Officer had returned without making inspection and there was no question of not showing the records by the petitioners to District Horticulture Officer on the said date of visit of the District Horticulture Officer as petitioners had no prior information or notice of the same. The petitioner further stated that power though had been delegated to the District Horticulture Officer by earlier order dated 11-7-1978 but that had been withdrawn and the said order was cancelled by subsequent orders dated 25-7-1987 by the Director of Horticulture and Fruit Utilisation, Uttar Pradesh, in exercise of power under Section 2(g) of the Act, and, as such, according to the petitioner District Horticulture Officer had no power of Licensing Authority and so he could neither make lawful inspection of the cold storage and its records nor could lodge the impugned first information report. The petitioners have annexed the order dated 25-7-1987 passed by Director of Horticulture whereunder it has been provided that 'exercising the power conferred under Section 2(g) of the Act,' the Director Horticulture empowered the Deputy Director (Potato) Uttar Pradesh to exercise the powers of Licensing Authority, Cold Storages, Uttar Pradesh, where by all the orders passed earlier were cancelled. The learned counsel for the petitioners submitted that by this order the Deputy Director (Potato) Uttar Pradesh had been authorised and conferred the power of

Licensing Authority cold storage and all other earlier notifications issued in this regard were being cancelled. On behalf of the opposite parties a further supplementary counter-affidavit was filed and along with that supplementary counter-affidavit, true copies of notifications dated 11-8-1978 as well as dated 28-2-1987 and 25-7-1987 have been annexed. By notification dated 27-7-1987 a modification was introduced to the effect by adding the following expression, the expression added is:

NIDESHALAYA STAR PAR LICENSING ADHIKARI KE SHAKTIYON KA PRAYOG KARNANE HETU'.

On behalf of the petitioners the petition had been argued vehemently by Shri S.C. Misra, learned counsel for the petitioners at great length and on behalf of the opposite-parties Shri Bireshwar Nath, learned Loka Abhiyojak Government Advocate did put in appearance and made his submissions contesting the petition.

5. Shri S.C. Misra, learned counsel for the petitioners submitted before me that the first information report does not prima facie make out a case against the petitioners and further that it has been lodged by an unauthorised person. Shri Misra submitted that the District Horticulture Officer had no authority to make inspection or to lodge first information report as the District Horticulture Officer after 25-7-1987 did not have any power of Licensing Authority. He submitted that according to G.O. dated 25-7-1987 the Deputy Director (Potato), Uttar Pradesh was empowered, to exercise the powers and to discharge the functions of Licensing Authority, Cold Storage, Uttar Pradesh and all notifications issued earlier had been cancelled by notification dated 25-7-1987. Shri Misra submitted that once by notification dated 25-7-1987 the Deputy Director (Potato) had been appointed the Licensing Authority for Cold Storage, Uttar Pradesh and all earlier notifications whereby any other authority had been so authorised to exercise the powers of Licensing Authority, Cold Storage having been cancelled with immediate effect no subsequent amendment made on or after 25-7-1987 could revive all earlier notifications that had been cancelled with immediate effect by notification dated 28-7-1987, as such, Shri Misra's contention is that on 25-10-1990, the material date in the present case on which the District Horticulture Officer is alleged to have

made inspection or on the date i.e. 26-10-1990 the impugned first information report was lodged, the District Horticulture Officer had no jurisdiction and authority to inspect the petitioner's cold storage or to make or lodge the first information report dated 26-10-1990, and as such, the first information report is a void document emanating from one who had no authority to lodge it. Shri Misra further contended that the first information report in question firstly does not make out a case against the petitioners and secondly it is really malicious and mala fide, act of opposite party No. 2 and the proceedings have been falsely instituted with an ulterior motive to wreak vengeance on the petitioners as well as with a view to spite him due to personal grudge. With these submissions Shri Misra for the petitioners contended that the first information report, as such, is liable to be quashed, under Section 482 of the Code of Criminal Procedure.

6. On behalf of the opposite-parties the petition was contested by the learned Government Advocate Shri Bireshwar Nath, who had contended that this court should not ordinarily interfere with the first information report or the investigation with reference to the facts alleged in the first information report. He further submitted that there is no question of mala fide and the allegations of mala fide are vague and not specific and even if they are specific Shri Durg Vijai Singh has not been made a party in the petition, and, as such, in absence of Shri Durg Vijai Singh and he not having been impleaded personally, the allegations made against him should not be considered and be not given any weight. Shri Bireshwar Nath contended that the questions of fact involved have got to be investigated by competent court and this court need not interfere with the first information report at this stage. I have given my due consideration to the facts and the material on record as well as to the law on the subject as well as the contentions of the learned counsel for the parties.

7. Before I proceed to examine the respective contentions of the learned counsel for the parties, it will be just and proper on my part to make a reference to the provisions of Section 482 of the Cr. P.C. Section 482 of the Present Code of Criminal Procedure (1973 Cr. P.C.) is similar and analogous to Section 561-A of the Act No. 5 of-1898.

Section 482 reads as under:-

482. Saving of inherent powers of High Court, - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Dealing with the powers of this Court under Section 482 of the Cr. P.C. in the regard of their lordships of the Supreme Court have been pleased to lay down the law in the case of State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335 : (1992 Cri LJ 527) as under :-

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principle of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may be possible to lay down any precise, clearly and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against or accused.

(2) Where the allegations in the first information report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare, cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

8. In the present case when I examine the facts of the case, I find firstly that the present case appears to be coming within the category of cases covered by illustration (7). Illustration (7) consists of those cases where a criminal proceeding is manifestly attended with mala fide and has been instituted maliciously with ulterior motive for wreaking vengeance on the accused or has been instituted with a view to spite him due to private or personal grudge. In the present case the petitioners have made out a case of mala fide against opposite-party No. 2 which appears from the perusal of allegations of paragraph 19 of the petition under

Section 482 of the Cr. P.C. supported by an affidavit and in particular when I find that the District Horticulture Officer Shri Durg Vijai Singh had not filed any counter-affidavit denying those allegations though Shri Durg Vijai Singh had filed a counter-affidavit to the supplementary-affidavit. A perusal of that counter-affidavit to supplementary-affidavit will per se show that allegations of paragraph 19 of the petition in particular have not been denied which allegations are to the effect that Shri Durg Vijai Singh, District Horticulture Officer desired the petitioners to oblige him with a sum of Rs. 18,000/- but when the petitioners did not oblige him he developed vengeance and to wreak his vengeance he is alleged to have made inspection without prior notice or he tried to get the first information report with false and incorrect facts to the effect that he made inspection of the cold storage etc. and the account books were not shown and the like and lodged a first information report. Why I take the first information report to have been lodged to wreak vengeance (sic) as the allegations made in paragraph 19 of the petition made out prima facie case and in spite of the fact that Shri Durg Vijai Singh appeared and filed counter-affidavit to the supplementary-affidavit but he did not deny the allegations of paragraph 19 of the petition and it is the well settled principle of law that allegations made on affidavit or counter-affidavit should be taken to be correct on their face value itself when those allegations are not controverted or denied by filing a counter-affidavit or by making a statement on affidavit denying those allegations. The non-denial of the allegation of paragraph 19 quoted above in the earlier part of this judgment leads one to an inference that had those allegations been false and incorrect the said allegations would have been denied but when there is no denial of those allegations, the necessary implication is that the said allegations are per se correct and are to be relied and that being so the first information report in question appears to be emanated and attended with ulterior motive of wreaking vengeance. This is one of the grounds on which the first information report can be quashed. The first information report has been lodged under Sections 12, 19, 27, 28, 39, 40, 40-B and 46 of the U. P. Regulation of Cold Storages, Act, 1976. According to the first information report (annexure-1) it appears that on 25-10-90 from the Office of District Horticulture Officer, Lucknow, a letter bearing No. 1466 - Sheetgrih was issued to the Station Officer;, Police Station Itaunja, whereunder it is mentioned that the informant Shri

Durg Vijai Singh, district Horticulture Officer, Lucknow, claiming himself to be entitled to make inspection and to regulate and control, on the complaint from certain farmers dated 25-10-90, inspected Misra Cold Storage and Ice Factory on 25-10-90. At the time of inspection he was accompanied by Man Mohan Singh, Bishan Kumar Clerks and Jai Karan Singh, Mali. He found in the compound of the cold storage certain quantity of potatoes lying in bad condition and the farmers told that inside the cold storage the conditions were also bad. On 19-8-90, according to the informant, when this cold storage was being inspected at that time as well the temperature of the chambers of the cold storage was 38.5 and 37.5 F. H. respectively and the potatoes appear to have frozen on account of higher temperature in the cold storage and according to the informant as per first information report the entire potato was deteriorated as the owner of the cold storage did not keep the temperature therein in proper standard and it appears that with the object of saving the electricity the machines were purposely not kept in working order and on account of their fault therein the potato was damaged and rotten and so there was, according to the informant, open violation of the provisions of Section 12 of the Act as per first information report and this violation or breach was committed, according to the informant as per allegation in the first information report by the owner of the cold storage. It has further been mentioned in the first information report that at the time of inspection when the records relating to the cold storage were required for inspection. One worker informed the informant, the District Horticulture Officer in writing that (sic) the keys of the Almirah were with that worker (Karyakarta). In the first information report it has further been mentioned that when again it was written that log book, ledger, despatch register and cash books are kept separately so it is not possible (sic) that because of one worker going to jail all records have been kept in the locked Almirahs and (sic) in those records are kept in the locked Almirahs or the like let it be got opened so as to enable the records being inspected but that worker refused to allow the record to be inspected and thus according to the informant on breach of provisions of the Act offence under Sections 27, 28 and 40 of the Act has been committed. It was further mentioned that the owner of the cold storage did nothing to co-operate at the time of inspection with the informant, the District Horticulture Officer. The cold storage owner, according to the first information report did not

send any of his worker in spite of written directions given and so according to the first information report Section 40-B of the Act was clearly flouted and violated and so according to the first information report the petitioners also committed the breach of Sections 37 and 39 (1) of the Act. It is relevant to have a glance of the relevant provisions of the Act.

9. The Uttar Pradesh Regulation of Cold Storages Act, 1976 was passed by the State Legislature to provide for the Licensing, Supervision and Control of cold storages in the State of Uttar Pradesh and for matters connected therewith. Under the provisions of Section 5 of this Act restriction has been put on the carrying on the business of cold storage and it has been provided that no person shall carry on the business of storing any agricultural produce in a cold storage except under and in accordance with the terms and conditions of a licence granted under this Act. Chapter III deals with the Licensing of the Cold Storages. Section 2 of the Act is the definition clause and it defines the Licensing Officer. Section 12 of the Act imposes a duty on every licensee to take care of the goods stored in his cold storage as a man of ordinary prudence would to take of his own goods under similar circumstances. Section 19 of the Act provides for the delivery of goods by the licensee to the hirer, it reads as under:-

19. (1) Every licensee shall on demand made by or on behalf of the hirer, deliver the goods stored in the cold storage provided the hirer surrenders the receipt and pays all charges due to the licensee.

(2) Every receipt so surrendered to the licensee shall be defaced and shall not be reissued.

(3) Subject to an agreement between the parties, the hirer may take partial delivery of the goods stored in a cold storage and in every such case, the licensee shall make necessary endorsement on the receipt and return it to the hirer.

10. Section 27 of the Act provides and reads as under:-

27. Every licensee shall maintain account books and records in such form and manner as may be prescribed.

Section 28 of the Act reads as under:-

28. Every licensee shall be bound to comply with such directions of the Licensing Officer under this Act as may be issued by him from time to time for carrying out the purposes of this Act.

11. Section 27 of the Act per se shows that it fastens a liability on the licensee to maintain account books and the records in such form and manner as prescribed from the perusal of the first information report it does not appear that there is any complaint regarding breach of Section 27 of the Act in the sense that the licensee has not been maintaining or is not maintaining the account books or records or that the licensee was maintaining the records or account books not in the form or manner prescribed, the breach could be said to have been committed of the provisions of Section 27 of the Act if a case would have been alleged against the licensee i.e. the petitioner (sic) did not maintain the account books or records in the form and manner prescribed or not at all but there is no such case. Section 28 of the Act requires the licensee to comply with such directions of the Licensing Authority as may be issued by the licensing Authority under the Act from time to time for carrying out the purposes of the Act, i.e. the directions which a licensee is bound to comply with should have been issued by the Licensing Officer and that those directions should have been issued for the purposes of carrying out the purposes of the Act and the directions should have been issued by the Licensing Officer. The expression 'issued' carries with itself and connotes the idea of directions in writing and not orally. The expression 'issued' connotes with itself the idea of some orders or directions in writing which should be issued. The directions should be specific to do certain thing for the purpose of fulfilment of the objects of the Act, the directions to do a thing must indicate also the time or date when and at what time or by what date directions should be complied with i.e. the directions should be specific as regards the work to be done and as regards the time when and by which time the thing or act directed to be done so the directions need be in writing specifically. The first information report does not indicate that any such direction was issued to the petitioners specifying the date and time and place where and when the petitioners or either of them or their responsible employee should be present to give assistance in course of inspection because on 25-10-90

as per the first information report as well as per annexure-2, one Narendra Singh appears to have informed in writing that as no responsible person present at the cold storage on 25-10-90 and on coming to a responsible person of the cold storage the inspection (sic) could be done. A perusal of annexure-2 does not indicate that it was given to the proprietors of the cold storage, namely, the petitioners. It does not indicate when this letter was sent to the petitioners before the inspection being made, while petitioners' case is that no prior intimation was given to the petitioners by the District Horticulture Officer that he will make inspection on 25-10-90. The document also does not indicate and if this document, annexure-2, as it prima facie appears to have been given to Narendra Singh on 25-10-90 at the cold storage then definitely it shows that petitioners were not present otherwise the District Horticulture Officer could have taken the signature of either of the petitioners. In fact it is not addressed to the licensees, namely, petitioners and, further, it cannot be deemed to be containing specific direction for being carried out because the direction to be present at Sheetgrih or to send some representative at the time of inspections the writing Annexure 2 does not indicate as to when the District Horticulture Officer had intended to inspect and there being no taxation or specification of time or date, the direction not being specific in the eye of law prima facie annexure-1 if read with annexure-2 does not make out a case of violation or breach of any direction under Sections 27, 28 of the Act by the petitioners and when orders were not specific the first information report read with annexure-2 cannot be said to have made out a prima facie case against the petitioners for trial for offence or alleged offence under Section 27, 28 or 37 of the Act. Section 40 of the Act reads as under:-

40. The Licensing Officer may,-

(a) require any licensee to furnish such information as he may specify in respect of the cold storage owned or run by such licensee;

(b) enter upon and inspect or cause to be inspected any cold storage, its machinery and equipment goods stored therein, and the account books and records relating thereto, for the purpose of satisfying himself that the requirements of this Act and the rules made thereunder are being complied with;

(c) collect samples of agricultural produce stored in any cold storage and get them analysed examined or tested in any laboratory selected for the purpose.

According to sub section (b) no doubt Licensing Authority has been conferred with the power to enter upon and to inspect or cause to be inspected any cold storage, its machinery and equipment goods stored therein as well as the account books or records relating thereto for the purpose of satisfying himself that the requirements of the Act and the rules made thereunder are being complied with. This section read with section 28 of the Act very clearly suggests that when the Licensing Authority intends to enter upon to inspect or cause to be inspected any cold storage its machinery and equipment goods stored therein as well as the account books and records relating there-to in order and for the purpose of satisfying himself as to the compliance of the requirements of the provisions of the Act and rules made thereunder from time to time issue directions and orders in that regard to the licensee to allow him to enter the premises of Cold storage on a specified date and time thus the direction is required to be issued in writing within reasonable time for compliance and if in spite of that direction i.e. direction with specification of date and time etc. is issued and served on the licensee and then it is not complied with it may be said to be a case of breach of the provisions or contravention of the provisions of Section 27 or 28 of the Act but when the directions are not clear or no directions have been issued and served on the licensee no case for breach can be said to arise. When directions are to be issued to the licensee it means the directions are to be issued and served on licensee because until it is served on him in the eye of law till that time the question of compliance does not arise it is only after service of the directions on the licensee the issuance of directions may be said to be complete for compliance. The expression 'licensee' has been defined in the Act vide Section 2 (f) of the Act which reads as under:-

2(f) Licensee means any person to whom a licence is granted under this Act.

When the legislature has defined the expression licensee then it means the direction must be addressed to the person to whom the licence has been issued or in whose favour the licence has been issued. The person competent to make

inspection and to issue the direction under Section 28 of the Act is the Licensing Authority 'Licensing Officer' at the relevant time. Licensing Authority Licensing Officer has been defined under Section 2(g) of the Act which reads as under :-

2(g) 'Licensing Officer' means the Director of Horticulture and Fruit Utilisation Uttar Pradesh, and except in the Explanation to Section 17 includes :-

(1) any other officer of the Horticulture Department, not below the rank of a District Horticulture Officer;

(2) an officer of the Revenue Department, not below the rank of the Sub-Divisional Officer,

empowered by the Director of Horticulture and Fruit Utilisation in his behalf to exercise some or all of the powers of the Licensing Officer under this Act.

The definition itself indicates that Licensing Officer means Director of Horticulture and Fruit Utilisation, Uttar Pradesh, it also includes in itself the officer of Horticulture Department, not below the rank of District Horticulture Officer and also officers of Revenue Department not below the rank of Sub-divisional Officer specifically empowered by the Director of Horticulture in his behalf to exercise some or all the powers of Licensing Authority. It means, apart from the Director Horticulture. if any of the officers of the two categories has been specifically empowered to exercise the powers of Licensing Authority some powers or all powers, he may also be taken to be Licensing Authority i.e. in other words there could be specific authorisation of those officers by the Director of Horticulture empowering them to exercise those powers and if there is no empowering then such officers of categories mentioned as 1 and 2 cannot be Licensing Authority. In the present case as I have mentioned earlier the effect of notification dated 25-7-87 has been to deprive all the officers of the powers of Licensing Authority which had been conferred upon them by the Director of Horticulture by earlier notifications which notification had been cancelled by notification dated 25-7-87 and whereunder in very clear terms only the Deputy Director (Potato) Uttar Pradesh had been authorised to exercise the powers of Licensing Authority. This notification having become operative with immediate effect of its issuance, the

other authorities, with same immediate effect had been deprived of those powers in view of the following expression used in annexure-R1 i.e. notification dated 25-7-87.

ISKE PURVA PARIT SAMAST ADESH ETADOWARA NIRAST KIYE JATEHAIN.

Once by this notification all earlier orders had been cancelled and no separate further notification having been proved or shown to have been issued to confer powers afresh on other authorities, the District Horticulture Officer, in the present case on the relevant and material date i.e. 25-10-90 was not and could not be deemed to have been the Licensing Authority/ Licensing Officer nor even on 19-8-90 and as it is only the Licensing Officer who could make inspection or could issue directions under Section 27 or 28 of the Act to a licensee, and none else (sic) there cannot be said to be any breach or contravention of any provisions of law done by petitioners. In other words no case or say prima facie case of contravention of any provision of law has been made out in the first information report and the first information report having been lodged by a person not competent and no prima facie case having been made out by the opposite parties the first information report deserved to be quashed on these grounds in addition to the ground that it appears to be an undisputed case of malicious institution of proceedings with mala fide intention to wreak vengeance.

12. Shri Bireshwar Nath, learned Government Advocate laid great emphasis on the notification dated 27-7-87 and urged that by notification dated 27-7-87, annexure-s. CA-5 it was provided thereby amending notification dated 25-7-87, Annexure-s. CA-5 that Deputy Director (Potatoes) had been empowered to act as Licensing Officers at Directorate level only by adding the expression 'Nideshalaya Star Par Licensing Adhikari Ki Shaktiyon Ke Prayog Hetu' just before the last sentence of notification dated 25-7-87 and he contended as such Deputy Director was Licensing Authority at Directorate level while opposite-party No. 2 i.e. District Horticulture Officer was at district level. This contention of Shri Bireshwar Nath, learned Government Advocate is without substance as by notification dated 25-7-87 all earlier notifications whereby other officers had been empowered to act as Licensing Officer had been cancelled with immediate effect. So from 25-7-87

District Horticulture Officer ceased to be Licensing Officer and it is only Director of Horticulture and Fruit Utilisation, U.P. and Deputy Director (Potatoes) no doubt continued to be the Licensing Authority until and unless any fresh notification authorising any other officer of category mentioned in Section 2(g)(l) and (2) of the Act was issued so far none has been brought to the notice of this Court. The notification dated 25-7-87 reads as under:-

Uttar Pradesh Cold Storage Viniyaman Adhiniyam 1976 Ki Dhara 2 (6) Men Pradatt Adhikaron Ka Prayog Karte Huye Adhiniyam Ke Adhin Licensing Adhikari Sheetgrih Uttar Pradesh Ke Karya Hetu Main, Upnideshak (Aloo) Uttar Pradesh Ko Shakti Yukt Karta Hun. Iske Purva Parit Samast Adesh Etadowara Nirast Kiye Jate Hain.

13. Thus considered, in my opinion, the present case of the petitioners is covered by the cases of category (1), (3) and (7) contained in paragraph 102 of the decision in Bhajan Lal's case (1992 Cri LJ 527) (supra) and; as such, in order to prevent the abuse of the process of the Court, it would be just and proper for this Court to exercise the powers vested in it under Section 482 of the Code of Criminal Procedure to quash the first information report itself and to further direct that no further proceedings on the basis of this first information report shall be taken against the petitioners. Thus considered, I think it a fit case for interference and for exercise of power under Section 482 of the Code of Criminal Procedure and, as such, I do hereby in exercise of the power under Section 482 of the Cr. P. C. quash the first information report dated 26-10-90 bearing chik No. 147 relating to Crime Case No. 156/ 90, under Sections 17, 19, 27, 28, 37A, 40 and 40B of the Uttar Pradesh Regulation of Cold Storages, Act, 1976, Police Station Itaunja, District Lucknow. The opposite parties are directed to stop all further proceedings based, on the first information report dated 26-10-1990 referred to above and that no punitive action or proceeding be taken or continued against the petitioners.

14. The petition is thus allowed with costs.