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Court : Allahabad

Decided On : May-16-1985

Reported in : 1986(26)ELT922(All)

Judge : I.P. Singh and ;R.P. Shukla, JJ.

Acts : Indian Penal Code (IPC) - Sections 353 and 395; Code of Criminal Procedure (CrPC) - Sections 165

Appeal No. : Criminal Appeal No. 1250 of 1977

Appellant : State of U.P.

Respondent : Lavkush Kumar and ors.

Advocate for Def. : A.D. Giri, Adv.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeal dismissed

Judgement :

I.P. Singh, J.

1. This is a government appeal against the judgment and order of Sri P. Bishnoi, II Addl. District and Sessions Judge, Mirzapur dt. 31-3-1977 passed in S.T. No. 168-A of 1974 State v. Lavkush Kumar acquitting all the three accused-respondents of

the offences punishable under Ss. 395 and 353, I.P.C.

2. The prosecution case is that during the days of the occurrence Hari Mohan Prasad (P.W.I) was posted as Inspector, Central Excise Department in Allahabad Division and Mirzapur also was within his jurisdiction. On 24-8-1971 he had gone to Mirzapur for surprise checking. On 25-8-1971 at 4.30 p.m. while patrolling on the road he found that some copper alloys circles were being carried on a cart from the, rolling mills of Bihari Lal. Ram Prasad Upadhya (P.W.3) the Jamadar of the said rolling mill was accompanying the said cart. The Inspector (P.W.I) stopped the said cart for the purposes of checking and demanded Gate-Pass from them. The cartpullers handed over the Gate-pass to the said inspector who found that although the name of Amar Nath consignee was mentioned therein, yet his full address was missing. His address could not be supplied by the cart-pullers or the Jamadar (P.W.3). They also could not tell him where they were carrying the goods. He got suspicious that perhaps the consignment was being taken away without payment of Central Excise Duty. He seized the goods and started investigation into the matter. He took the seized goods in the said cart to the Pratap Rolling Mills where he got the alloys circles weighed. The said weight and the number of the circles tallied with the particulars given in the Gate-Pass. Weighment-sheet was got prepared from B.P. Misra (P.W.2) who was then locally posted as Inspector of Excise. All this was completed by 7.25 P.M. Hari Mohan Prasad (P.W.I) the Inspector started taking down statements of the labourers who were carrying the alloys circles in the said cart. Just then son of Sri Govind Das who was a partner in firm Badri Prasad Hari Das arrived there and told one of the labourers not to give any statement. However, the said labourer made the statement and signed the same. After sometime Lavakush Kumar accused-respondent arrived there and told the Inspector (P.W.I) in strong language that he had made the seizure wrongly so he should hand over the alloys circles to him otherwise it would not be good for the Inspector. The Inspector told him that the Gate-Pass was not properly filled in and was invalid. Lavakush Kumar, accused-respondent told that the Inspector that the said alloys circles had come from his mill known as Bihari Lal Umar Roiling Mills. The Inspector (P.W.I) told Lavkush Kumar, accused-respondent that the goods in question had been seized by him so he should approach the higher authorities for getting them released. Lavkush

Kumar, accused-respondent told the Inspector (P.W.I) to wait for about ten minutes so that he could bring his father. Saying so Lavkush Kumar, accused-respondent left on his motor-cycle.

3. The Inspector (P.W.I) apprehending use of force on the part of Lavkush Kumar, accused-respondent sent B.P. Misra, Inspector (P.W.2) to the Kotwali for police aid. He left for Kotwali.

4. In the meanwhile Hari Mohan Prasad, Inspector (P.W.I) remained sitting on the Gaddi of the firm where the alloys circles were weighed by him. At about 9.45 p.m. Lavkush Kumar, Dhan Prasad and Ghanshyam Das the three accused-respondents arrived there with 10 or 12 persons and demanded the release of the goods on the point of threats. They then directed their companions to take away the alloys circles. The Inspector again told them that the goods had been seized by him and taking them away forcibly would be illegal. The three accused-respondents pushed him aside and got the alloys circles loaded on the cart and forcibly took them away.

5. The prosecution assertion is that the Inspector (P.W.I) wanted to give the said seized goods in the supurdagi of one Sita Ram Singh but he was prevented from doing so by the highhandedness of the accused-respondents who forcibly carried away the same. This occurrence was seen by Sita Ram Singh, Uma Shanker, Yagnya Narain Dubey and others who were present there at that time.

6. Hari Mohan Prasad, Inspector (P.W.I) then went to Kotwali but did not find the police-force there co-operative. He from public telephone booth made three calls, one to the Superintendent of Police (city) another to the City Magistrate and the third to the Assistant Collector, Central Excise at Allahabad and on the intervention of the Superintendent of Police, the Inspector (P.W.I) was given police help at about 4.30 in the morning but nothing could be recovered by them. The Inspector (P.W.I) lodged the F.I.R. at police station Kotwali. The case was investigated and the accused-respondents were charge sheeted.

7. The accused-respondents pleaded that the alloys circles in question were manufactured by Bihari Lal Umar Rolling Mills. On the day of occurrence the alloys

circles in question were! sent by Lavkush Kumar accused-respondent on a correct Gate-pass. It was further pleaded that the Inspector Hari Mohan Prasad (P.W.I) was inimical towards the accused-respondents who filed a complaint against him much earlier to the occurrence in question. The Inspector (P.W.I) was harassing them so they had filed a writ petition before the High Court seeking relief against the conduct of the said Inspector (P.W.I). They had also complained against the said Inspector (P.W.I) to the Central Government. It was contended that the accused-respondents were falsely implicated in the case due to enmity. However, they did not give any evidence in defence.

8. The prosecution examined in all five witnesses Hari Mohan Prasad (P.W.I), Bhagwati Prasad (P.W.2) and Ram Prasad Upadhya (P.W.3) who were on the, spot at the time of the alleged occurrence and deposed about certain parts of the events in question. The other two are formal witnesses. The learned Sessions Judge after assessing the evidence on record and circumstances of the case, acquitted the accused respondents. The State has, therefore, filed the present appeal.

9. The learned Sessions Judge on the basis of evidence on record both oral and documentary (including copy of the F.I.R. lodged against Hari Mohan Prasad (P.W.1) and copy of judgment in which Lavkush Kumar and others were prosecuted and acquitted) came to the finding that Hari Mohan Prasad, Inspector (P.W.I) was not well disposed towards the accused-respondents. This part of the finding has not been challenged by the learned A.G.A. In this background we need not enter into detailed discussion of the evidence on this point.

10. Sri B.P. Misra, local Inspector (P.W.2) had gone to the Kotwali to get police-aid so he had nothing to say about the events which were alleged to have taken place in his absence. He, therefore, did not say a single word about the accused-respondent's committing any offence i.e. forcibly taking away the alloys circles after pushing the other inspector Hari Mohan Prasad (P.W.I). Ram Prasad Upadhya (P.W.3) the jamadar of the mill also did not say a single word against the accused-respondents. In this way there is the solitary statement of Hari Mohan Prasad, inspector (P.W.I) regarding the incident in question touching the offence

charged against the accused-respondents. The said solitary statement in the above background of enmity has to be scrutinised with great caution.

11. According to the Inspector (P.W.I) he had seized the alloys circles in question and once the seizure had taken place, he was in lawful possession of the goods and as such if they were taken out of his possession forcibly, then the accused-respondents were guilty of the offences charged i.e. under Ss. 395 and 353, I.P.C.

12. The whole question, therefore, depends as to whether there had been seizure of the goods or not? The factum of seizure has to be proved as a fact. For this some evidence is required and the best evidence is the seizure-list. It is very important item of evidence. The Courts have invariably held that where there is no seizure-list, then the seizure is illegal.

13. In the decision of Textiles Traders Syndicate Ltd. v. State of U.P., AIR 1960 All 405 it was held that the word 'seizure means the act of taking actual physical possession of moveable property.

14. In law there is a distinction between 'seizure and 'detention'. Seizure is affected by the preparation of a seizure-list. Since it is an important document, its absence would indicate that perhaps seizure was not effected.

15. The Inspector (P.W.I) in his statement had stated that after the said goods weighed at Pratap Rolling Mills, he wanted to give it to the Supurdagi of Sita Ram. The weighing process was over by 7.25 p.m. the alleged offences are said to have been committed at about 9.45 p.m. There was an appreciable interval in between. There is no explanation why in the meanwhile the supurdagi could not be effected.

16. Moreover, S. 165, Cr. P.C. which section would be applicable to the search and seizure made by the Inspector of Central Excise, provides that if delay in effecting the search is to be avoided, then the officer undertaking the search has to pre-record in writing the grounds of his belief that the thing required to be obtained through search would not be obtainable without undue delay and has to specify in such writing the thing for which search is to be made. The provisions of S. 165, Cr. P.C. are mandatory. Their non-compliance renders his action of

carrying out search illegal.

17. In the present case no such writing was recorded by Hari Mohan Prasad, Inspector (P.W.I). The seizure-list was also not prepared. Accordingly, the seizure has not taken place. The goods had not come into his possession legally. At best - it can be said that he had detained those goods for investigation, the said detention was also illegal for want of the non-recording of the reasons as discussed above.

18. In this background even if it be presumed that the overt acts assigned to the accused-respondents by the prosecution were there, yet they had every right in self-defence of their property to take away the alloys circles in question from the illegal detention of the inspector (P.W. 1). We agree with the finding of the learned Sessions Judge that they had not used any force against the person of the inspector (P.W. 1) and they had not pushed him away as alleged by him.

19. The view taken by the learned Sessions Judge of the entire matter cannot be said to be perverse to which a reasonable man could not arrive at.

20. In the result we see no force in this appeal and it is hereby dismissed.

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