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Ashok Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Mar-04-1998

Reported in : 1998(2)AWC1224

Judge : S.K. Phaujdar and ;J.C. Misra, JJ.

Acts : Essential Commodities Act, 1955 - Sections 3 and 7; Fertiliser Control Order, 1985 - Order XXVII; Indian Electricity Act - Sections 50; Code of Criminal Procedure (CrPC) - 1973

Appeal No. : C.M.W.P. No. 503 of 1998

Appellant : Ashok

Respondent : State of U.P. and Another

Advocate for Def. : A.G.A. and; S.C.

Advocate for Pet/Ap. : L.S. Yadav. Adv.

Judgement :

S. K. Phaujdar and J. C. Misra, JJ.

1. The matter was heard yesterday, and, as directed, the order is being recorded today.

2. In this writ petition the petitioner has made a prayer for quashing an F.I.R. dated 17.12.1997 in case Crime No. 1005 of 1997, under Section 3/7 of the Essential Commodities Act, P. S. Kotwali, district Mirzapur, and for a consequential direction of protection against arresl of the petitioner in the instant case.

3. The F.I.R. was lodged by Sri Abhimanyu Dubey, Sub-Inspector of Police and officer in-charge of the Mandi Samiti outpost of P. S. Kotwali Katara, District Mirzapur. It was indicated in the F.I.R. that he and other police personnel had intercepted a truck of one Shanker Lal Kasera, which was being loaded with bags of fertilisers. The present petitioner was allegedly the driver of the said truck. In all 90 bags of fertiliser were recovered. Allegations of violation of the provisions of the Fertiliser Control Order were made.

4. Two points were raised by the petitioner in pressing the writ petition. It was stated that the police officer had no authority to make a search and seizure as he was not empowered under Order XXVII as an inspector by any notification and when a separate machinery was there for search and seizure, the power could not have been exercised by a police officer. Reference was made to a decision of the Supreme Court in relation to inspectors under the Electricity Act wherein prosecution at the instance of persons other than such inspectors was held to be improper. Section 50 of the Indian Electricity Act clearly bars initiation of prosecution except on the report of the inspectors, and the order was recorded only in an interpretation of Section 50 of that Act. In the Fertiliser Control Order. 1985, there is no such clause whereby right of action by a police officer in a cognisable case has been taken away. In our view, if a cognisable case is made out and if there be no bar for initiation of prosecution by a police officer, the general rights given to a police officer under the Code of Criminal Procedure could always be exercised and the first objection may not, therefore, be entertained.

5. In this connection, reliance was placed on a decision of a Division Bench of this High Court in which there was a search of a godown by a Block Development Officer. The Court found the search and consequential prosecution by the B.D.O. valid as the B.D.O. was notified as the inspector under clause 27 ofthe Fertiliser Control Orders. There is a positive difference between the powers of a B.D.O. as

such and the power of a police officer. The B.D.O. is out and out an administrative officer and he would have no right to make a search unless specially empowered under clause 27 of the Fertiliser Control Order. This analogy may not, however, be applicable to a police officer who has been given a right of search and seizure under the Cr. P.C. Itself and unless specifically prohibited by any provision of law. this right may not be deemed to have been curbed.

6. As regards existence of a cognisable case, we are to go by the allegations made in the F.I.R. without commenting on the truth or otherwise of the allegations. Under the Fertiliser Control Order of 1985. a dealer means a person carrying on the business of certain fertiliser, whether wholesaler or a retailer. Under Part IV of the Order, dealers are to be registered. There is no defence averment that the petitioner had been a registered dealer. Moreover, there are allegations that the stock of fertiliser was taken out for sale in black market. These matters are to be investigated into and, in our view, the F.I.R. may not, therefore, be quashed.

7. Accordingly, we are not inclined to give any Interim protection against arrest to the present petitioner, subject only to an observation that in making any arrest, the law laid down by the Supreme Court in Joginder Rumor's case are to be kept in mind. The petition stands rejected.

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