

Surendra Mohan Sarin and anr. Vs. K.P Maintripathi and ors.

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Court : Allahabad

Decided On : Dec-16-1985

Reported in : 1986CriLJ1324

Judge : K.C. Agrawal and ;R.P. Shukla, JJ.

Appellant : Surendra Mohan Sarin and anr.

Respondent : K.P Maintripathi and ors.

Judgement :

ORDER

1. Surendra Mohan Sarin, who is the sole proprietor of Varanasi Housing Development, has filed this petition for Mandamus directing K. P. Mani Tripathi, Deputy Superintendent of Police, Varanasi Sector, U.P. Vigilance Establishment, Varanasi, to confine the exercise of his powers under Section 91 Cr. P.C. to specific queries pertinent to the charge of corruption against K. P. Srivastava, Competent Authority under Urban Land (Ceiling and Regulation) Act, 1976, and from resisting to enforce the summons dt. 26-10-1986 sent by him under Section 91 Cr. P.C. by which petitioner 1 has been called upon to produce certain papers and documents mentioned therein. A prayer for quashing of the said summons dt 26-10-1985 has also been made.

2. Surendra Mohan Sarin, petitioner 1 established Varanasi Housing Development, petitioner 2, for carrying on the business of construction and

development of housing colonies as the sole proprietor. In Varanasi a good deal of vacant land formerly belonging to Maharaja of Banaras, situated at various places, was declared excess vacant land under the Urban Land (Ceiling and Regulation) Act, 1976. On the applications moved by the owners of the vacant lands, the same were released under Section 21(1) of the Ceiling Act for utilization by construction of dwelling units by the weaker section of the society.

3. A number of complaints were received against K. P. Srivastava, Competent Authority, ' Urban Ceiling, Varanasi, who is alleged to have released the lands under Section 21. A vigilance enquiry was set up against him for investigating the charges of corruption and nepotism while discharging his duties as Competent Authority under the Urban Ceiling Act. K. P. Mani Tripathi, Respondent 1 was appointed as Enquiry Officer to investigate into the charges levelled against him. Respondent 1 issued the impugned summons dt. 26-10-1985 under Section 91 of the Cri. P.C. directing the petitioner 1 to produce certain documents, books of accounts for the years 1975 to 1984, and various other papers which are mentioned in the same. The petitioner has filed this writ petition challenging the power to issue such a blanket summons calling upon the petitioner 1 to produce the documents mentioned therein.

4. The case of the petitioner was that under Section 91 of the Cri. P.C. an officer making investigation is entitled to call upon a party to produce only those papers which are necessary and desirable for the purposes of investigation. His case was that the impugned summons is too sweeping and omnibus in character which could not be regarded as covered by Section 91 Cr. P.C.

5. On our direction, K. P. Mani Tripathi, Deputy Superintendent of Police, Varanasi, Respondent 1, appeared in Court. He stated that he was not interested in harassing the petitioner 1 and would be even prepared to see and examine the books of accounts and other papers at the residence of petitioner himself. He stated that he could not successfully give effect to his duties if the papers summoned were not permitted to be produced.

6. After hearing counsel for the petitioner, we are of opinion that the summons issued to petitioner 1 to produce documents and other things mentioned in the

same could not be quashed inasmuch as the Investigating Officer is entitled to certain amount of latitude in such a matter. Merely because an order made by the Investigating Officer to produce books of accounts and other things would cause inconvenience to the person from whom it is summoned, it could not be said that the order is beyond the purview of Section 91. Under Section 91 of the Cr. P.C. it is for the Investigating Officer to decide as to whether a particular document or any other thing is necessary or desirable for the purposes of investigation or not. Since there is no material before us to show that the summons was issued by Respondent No. 1 with mala fide intentions, we cannot hold it to be beyond Section 91.

6A. Section 91 has to be liberally constructed in order to find whether the production of any document or any other thing is necessary or desirable for the purposes of investigation. The proceeding before an Investigating Officer is purely investigatory rather than adjudicatory in nature. Investigation is an informal proceeding held to obtain information to govern a future action as distinguished from a proceeding which is taken as against any person. Such a proceeding has no parties. It is non-adversary. It contemplates procedure which is less formal and more flexible. The investigatory and inquisitorial powers of police agencies through which they acquire information on which they act may be called as preliminary to their legislative action as a step in adjudicatory or determinative action. If an investigation is duly authorised, it is no more subject to obstruction by passing orders which may annul it.

7. Sri Murli Dhar, counsel appearing for the petitioner, produced before us along with the supplementary affidavit an extract of the report of the Director of Vigilance which has been submitted to the Government as against K. P. Srivastava. It was argued on the basis of the said report that accounts for the years 1975 to 1984, including full records of payments, vouchers, details with addresses of flat owners and Bank pass books etc. would not be necessary for the purposes of making the enquiry on the charges of corruption, which is under investigation by Respondent No. 1. We have already stated above that it is not possible for us to hold that the documents summoned by the Respondent 1 from petitioner No. 1 Surendra Mohan Sarin are neither necessary nor desirable for investigating the allegations

of corruption. We could not be persuaded to agree that the summons for production of documents is either based on extraneous considerations or is an arbitrary exercise of power.

8. Having found no merit, we reject the writ petition summarily.

9. The oral prayer for leave to appeal to the Supreme Court made by the petitioners is refused inasmuch as no substantial question of law of public importance is involved in this case.

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