

Tej Singh and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-17-1973

Reported in : 1974CriLJ386

Judge : H.N. Kapoor, J.

Appellant : Tej Singh and ors.

Respondent : State of U.P.

Judgement :

ORDER

H.N. Kapoor, J.

1. The applicants have been convicted under rule 43 of the Defence of India Rules 1971 and have been sentenced to one year's rigorous imprisonment by S. D. M. Ghaziabad by his order dated 8-1-1973. That conviction has been maintained in appeal decided on 20-8-1973 by Illrd Temp. Civil & Sessions Judge, Meerut.

2. The prosecution allegations were that Tej Singh, Kali Charan, Faujdar and Bhagwan Prasad were the employees of the Factory Gate of Modern Industry. Ghaziabad. They were engaged in manufacturing rail wagons. They held meetings on 12-1-1972 and 14-1-72 at the factory sate and incited the workers of the factory against the management, They also incited to slow down the work and get themselves prepared for strike. Government of Uttar Pradesh had issued e

Notification No. 6323 (ST) XXXVI-1-234 (ST)-1971 dated 9-12-71 in exercise of powers under Section 3 of the U. P. Industrial Disputes Act 1947 prohibiting strike or slowing down work in any establishment or factory engaged in execution or orders, connected with the defence needs of the country and/or is in any way connected with civil defence. The applicants were, therefore, prosecuted for an offence within the meaning of clauses (g) and (i) of Sub-clause (6) of Rule 36 punishable under Rule 43 of the Defence of India Rules. 1971.

3. The applicants denied the prosecution allegations. Both the lower courts found the offence proved against the applicants on their appraisal of the evidence. In the revision it is not possible to make reappraisal of the evidence.

4. The learned Counsel for the applicant has, however, argued that the prosecution was illegal because there was no report in writing of the facts constituting such contravention made by a public servant within the meaning of Rule 183 Sub-rule (1) of the Defence of India Rules which reads as follows:

No court or Tribunal shall take cognizance of any alleged contravention of these rules, or of any order made thereunder, except on a report in writing of the facts constituting such contravention, made by a public servant.

In the present case the report was lodged by the Assistant Manager of the Factory with the police. Copies of the same were sent to the various authorities including S. D. M. Ghaziabad. S. D. M. Ghaziabad had made an endorsement on that report directing the Circle Officer to make an enquiry and register a case. After completing the inquiry the Circle Officer submitted a charge-sheet dated 22-2-1972 against Tej Singh, Faujdar and Bhagwan Prasad, It was submitted to the court on 13-4-1972. It clearly indicated that the offence under Rule 36/43 of the Defence of India Rules was proved against the three accused persons on the basis of inquiry. Copies of F. I. R., written report and the Notification No. 6323 dated 9-12-1971 were annexed to this charge-sheet. Another charge-sheet against Kali Charan was submitted on 14-4-1972. All the four applicants were prosecuted on the basis of these two charge-sheets. Learned Counsel for the opposite party has argued that the Assistant Manager of the factory which according to him is autonomous concern should be deemed to be a public servant.

For the purpose of this case it is not necessary to give any finding on that point. There can be, no doubt, that the circle officer is a public servant and the charge-sheet submitted by him is a written report within the meaning of Rule 183 Sub-rule (1). It was so held in the case of *Hatimally v. The Crown* AIR 1950 Nag 38 : 51 Cri LJ 427 and in the case of *Sagarmal Agarwala v. Emperor* AIR 1944 Pat 390.

5. Learned Counsel for the applicant has, however, argued that the charge-sheet is a brief statement and does not set out all the ingredients of the offence and as such no prosecution was possible on the basis of such charge-sheet. In support of his contention he has placed reliance on various authorities which were on Rule 130 of the Defence of India Rules 1939 Which was similar to rule 183 of the Defence of India Rules 1971. These authorities are : *Rachpal Singh v. Rex* AIR 1949 Oudh 66 : 50 Cri LJ 469. *Swarath Sao v. Emperor* AIR 1946 Pat 117 : 47 Cri LJ 434; *Purushottam Devji v. Emperor* AIR 1944 Bom 247. *Chetandas Tekchand V. Emperor* AIR 1946 Sind 37 : 47 Cri LJ 540 and *Emperor v. Parasram* AIR 1947 Sind 68 : 48 Cri LJ 564. In all these authorities all the facts were not Incorporated in the charge-sheet. There is nothing to indicate that the charge-sheets submitted in those cases were accompanied with the F. I. R. It is clear from the judgment in the case of AIR 1949 Oudh 66 : 50 Cri LJ 4691 that the F.I. R. in that case had been submitted in the court ten months after the filing of the charge-sheet In the present case the F. I. R., annexed to the charge-sheet had become a part of the charge-sheet along with some other papers. All the ingredients of the offence were fully made out after reading the charge-sheet and this F. I. R. on the basis of which an inquiry was made and it was annexed to the F. I. R. As regards the second charge-sheet it is true that the copy of the F.I. R. was not attached to the; second charge-sheet which was in continuation of the first charge-sheets Cognizance of the case was taken after both the charge-sheets had been submitted. The entire material, therefore, was before the Court before taking the cognizance and framing charges.

6. Learned Counsel for the applicant has also placed reliance on the case of *Dr. N. G. Chatterji v. Emperor* : AIR1946 All416 , It was argued that in that case the F. I. R. and the charge-sheet both were before the court but the learned Judge found that there was an illegality in the charge-sheet The rule was not mentioned for the

contravention of which the accused persons were sought to be punished. There was no mention of that rule in the charge framed by the Court also. The learned Judge also considered the case on merit and arrived at the conclusion that the offence under the Defence of India Rules was not made out on the facts stated by the prosecution in that case. That authority is, therefore, distinguishable. In the present case all the ingredients of the offence have been fully made out in the F. I. R. which was incorporated in the charge-sheet. The prosecution has also succeeded in establishing those facts to the satisfaction of both the lower courts. There is no force in this revision.

7. In the result, the revision is dismissed. The applicants are in Jail. They shall serve out the sentence awarded to them.

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