

Vinod Kumar Sanghai Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-10-1996

Reported in : 1997(2)MPLJ371

Judge : A.S. Tripathi, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3 and 7; Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Regulation and Control) Order, 1980; Code of Criminal Procedure (CrPC) , 1974 - Sections 228

Appeal No. : Cri. Revision No. 33 of 1995

Appellant : Vinod Kumar Sanghai

Respondent : State of Madhya Pradesh

Advocate for Def. : Jai Prakash Sharma, Panel Lawyer

Advocate for Pet/Ap. : J.P. Gupta, Sr. Adv. and ;Sanjay Gupta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.S. Tripathi, J.

1. This revision has been preferred against the order dated 8-2-1995 passed by the Sessions Judge of Vidisha, proceeding to frame charge against the petitioner Under Section 3/7 of the Essential Commodities Act, and for the breach of Clause 10 of the Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Regulation and Control) Order, 1980.

2. The allegation against the petitioner was that the petitioner owns a petrol pump at Sehora. The Inspector concerned had taken three samples of the high speed Diesel from the said petrol pump on 13-7-1992. Two samples were sent to the Public Analyst for chemical examination and they were reported to have been found not upto the standard prescribed in the Control Order referred above. Further a breach of Section 3 read with Section 7 of the Essential Commodities Act was also found.

3. When the case proceeded, the petitioner applied to the Court that the third sample available in the Court be sent for chemical examination by a Public Analyst. The said sample was sent to the Public Analyst and in its analysis the Public Analyst did not find any sub-standard material, rather it was found to have been upto the prescribed standard.

4. The only allegation against the petitioner was that at the time of the taking of the samples, one of the samples was found to be sub-standard and on that count, a breach of Clause 10 of the Control Order, referred above was found and simultaneously since the sub-standard material was being sold, a breach of the provision of Section 3/7 of the Essential Commodities Act was also found against the petitioner.

5. When the third sample was chemically examined by the Public Analyst, it was reported that the material was of prescribed standard and there was no breach of any clause of the aforesaid Control Order or any of the provisions of the Essential Commodities Act.

6. At the time of the framing of the charge, the trial Court found that in spite of the fact the material was found of prescribed standard, yet there may be some other breach of the provisions of the Essential Commodities Act and, therefore, the

charge was found to be framed against the petitioner.

7. The impugned order simply speaks that the third sample which was sent to the Public Analyst by the Court was found to be of prescribed standard does not absolve the petitioner of his responsibility of other breach. Any other breach has not been mentioned in the order itself. However, breach could not be assumed simply on the basis of oral assertions. There must be some material available on record to prima facie indicate that the petitioner had committed breach of any provisions of the Control Order referred above or any of the sections of the Essential Commodities Act. It is not at all mentioned in the impugned order by the trial Court. The trial Court simply observed that in spite of the fact that the third sample sent to the Public Analyst was found to be of prescribed standard, the benefit of the two contradictory reports could not be given to the petitioner, at this stage, therefore, the charge is to be framed and then the matter can be clarified only at the stage of examination of Public Analyst in Court.

8. After hearing learned counsel for the petitioner S/Shri J. P. Gupta, Senior Advocate with Shri Sanjay Gupta, Advocate, and Shri Jai Prakash Sharma, Learned Panel Lawyer for the State and examining the record, it appears that the trial Court ignored the basic principle of law that when there is no material to proceed against an accused, no charge can be framed. In this case, the only material which was said to have been against the petitioner was that the sample was found to be not according to the prescribed standard. But at the same time, the first report was belied by the second report of the same Public Analyst that the sample sent through Court was found to be of prescribed standard. Once the very basis of the prosecution was belied by the Public Analyst report, there was no material left over to proceed against the petitioner so far as the alleged breach is concerned.

9. The Court could not fish in the matter to find out any breach at the time of the trial, when the same was not in existence at the time of framing of charge. Reference was made to the case of State of Karnataka v. L. Muniswamy and Ors., AIR 1977 SC 1489, in which Hon. the Supreme Court held that when there was no material on record on the basis of which the Court could reasonably come to a

conclusion that the accused were in any manner connected with the incident, leading to the prosecution, the trial Court could not proceed to frame charge. While dealing with this case, Hon. Supreme Court observed in para 10 of its judgment in the following terms :-

'...As observed in the latest case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the Court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In Vadilal Panchal's case, Section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section there was in his judgment no sufficient ground for proceeding with the case. To an extent Section 227 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said to be reasonably possible.'

10. Another case of Beniprasad v. State, 1965 MPLJ 103 was referred by the trial Court itself in which it was held that when there is no other sufficient material to frame a charge, the accused must be discharged. Another case law reported in 1983 Criminal Appeal Reporters, 64 was also referred by the trial Court on the same point.

11. On the other hand, learned Panel Lawyer for the State placed reliance on the case, reported in 1993 MPLJ 61 = 1993 JLJ 276, Shahazad Khan v. State of M.P. In this case, this Court, while dealing with the provisions of Clauses 10 and 11 of the M.P. Cement (Dealers Licensing and Control) Order, 1973 read with Section 3/7 of the Essential Commodities Act, held that the offence under Clause 3 of the

Order could not be limited to the person who deals with the levy cement, any person transporting or selling levy cement without permit enumerated under Clause 10(2) is also included and may be proceeded against.

12. In that case, the question was not that of absence of material to frame charge, rather the question was that of prosecution of third party who Had committed breach of transportation against the provisions of the aforesaid Cement Control Order without any permit. Therefore, the prosecution/State could not place reliance on the aforesaid case of Shahzad Khan to claim that the trial Court was bound to frame charge in absence of any material. In this particular case, the petitioner was only said to have committed breach of Clause 10 of the M.P. Motor Spirit and High Speed Diesel Oil (Regulation and Control) Order, read with Section 3/7 of the Essential Commodities Act. There was no third party involved in this case. Therefore, when the very basis on which the prosecution was launched being the sample was not found to be of prescribed standard was itself nullified by the second report of the same Public Analyst, stating therein that the sample sent through Court was found to be of prescribed standard, and as such, nothing remains on record on which any charge could be framed against the petitioner under the aforesaid Control Order or under Essential Commodities Act. Therefore, the case of Shahzad Khan, referred above is entirely based on different facts and does not apply to the facts of the present case.

13. Another case of Union of India v. Prafulla Kumar Samal, AIR 1979 SC 366, was referred in the impugned order, but the same was not followed by the trial Court. Hon. the Supreme Court in that case clearly laid down the test in respect of application of Section 227 of the Code of Criminal Procedure. It was held that :-

'The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion, against the accused, he will be fully within his right to discharge the accused.'

14. In this particular case, there is no question of even suspicion. It is clearly borne out on record that there is absolutely no material on which the petitioner could be proceeded with for trial. As such, no charge could be framed against the petitioner either under the Control Order of 1980 referred above, or under any provisions of Section 3/7 of the Essential Commodities Act. Therefore, this petition is allowed and the impugned order dated 8-2-1995 is set aside. The petitioner is directed to be discharged of the allegations made for breach of the Clause 10 of the M.P. Motor Spirit and High Speed Diesel Oil (Regulation and Control) Order, 1980, and Under Section 3 read with Section 7 of the Essential Commodities Act.

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