

Harendra Prasad Sahu Vs. State of Orissa

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Court : Orissa

Decided On : Mar-27-2008

Reported in : 2008(II)OLR35

Judge : S.C. Parija, J.

Appellant : Harendra Prasad Sahu

Respondent : State of Orissa

Advocate for Pet/Ap. : Sri. D.P. Dhal

Disposition : Petition allowed

Judgement :

S.C. Parija, J.

1. The petitioner has filed this application under Section 482, Cr.P.C. challenging the initiation of criminal proceeding against him and Ors. in Saintala P.S. Case No. 172 of 2006, corresponding to G.R. Case No. 461 of 2006 pending in the Court of learned S.D.J.M., Titilagarh, for alleged commission of offence punishable under Sections 47(a)/57(c) of the Bihar and Orissa Excise Act (for short the 'Act').

2. The facts as alleged in the F.I.R. is that on 07.11.2006 at about 9 P.M. one Santosh Kumar Agarwal, son of late Jugal Kishore Agarwal of village Belgaon, P.S. Saintala, reported to the Saintala Police Station that on last July, 2006 one

Ashok Srivastav of Titilagarh came to him and requested him to give a stall from his market complex, which is located at Belgaon on rental basis to open a grocery shop. In this regard the said Ashok Srivastav rented stall No. 4 for opening of grocery shop. Subsequently, he came to know that said Ashok Srivastav has used the shop room for selling of foreign liquor to the public. So he reported the matter to the O.I.C., Saintala P.S. and on receipt such report, the O.I.C., made necessary entry in the Station Diary and proceeded to the spot for enquiry and verification. On arriving at the spot, he found the stall No. 4 was opened and a person was selling liquor in the shop. On further enquiry, the informant found that a huge amount of foreign liquor was stored in the stall and accordingly, the informant seized those articles and took all these articles to the Police Station. He also seized one licence bearing No. 19/2006-07, which appears to be the original in the name of Atul Sahu, son of Harendra Prasad Sahu of Raghunath Pada, P.S. Titilagarh, Dist-Bolangir, authorized to open the shop at Belgaon. On further enquiry, the informant did not find any specification of plot number, holding number or any number of R.O.R. in the said licence. So the informant suspected the licence and seized all the materials and took it to the Police Station and drew a plain paper F.I.R. at the spot which was registered as Saintala P.S. Case No. 172 of 2006 under Sections 47(a)/57(c) of the Act, which was subsequently registered as G.R. Case No. 461 of 2006 in the Court of learned S.D.J.M., Titilagarh.

3. It is the case of the petitioner that pursuant to the order of the Commissioner, Excise, the District Excise Officer, Bolangir invited application for settlement of IMFL 'Off' shop through lottery for the year 2006-07 vide Notification No. 534/Ex. Dated 03.07.2006. The son of the petitioner namely, Atul Sahu participated in such lottery and he was selected for grant of licence for the year 2006-07 and accordingly, the said Atul Sahu was given licence for the retail sale of IMFL 'Off' shop from 21.7.2006 to 31.3.2007.

4. It is the further case of the petitioner that in the licence the name of the authorized agent and the sales man had also been mentioned and that apart, the present petitioner has been appointed as a Power of Attorney holder of said Atul Sahu for conducting and attending the auction made by the Excise Department and to receive the licence and to enter into agreement on behalf of said Atul Sahu

for promotion of the business. So, the petitioner being the Power-of-Attorney holder of Sri Atul Sahu filed the site details of the shop room before the Suptd. of Excise on 21.7.2006 which clearly reveals that the site details of the shop has been given by the Power-of-Attorney holder before the Suptd. of Excise, Bolangir, which is alleged to have been used for storing and selling of foreign liquor. The said site for opening of the IMFL 'Off' shop has been taken into account by the Excise authorities and after due enquiry, the said authorities have given consent for opening of IMFL 'Off' shop over the said plot and accordingly the shop was opened.

5. It is submitted by the petitioner that some unscrupulous persons being envious towards the petitioner's family, started creating disturbances in the smooth functioning of the 'Off' shop. So the authorized salesman Sri Rajesh Kumar Sahu lodged an F.I.R. before the Officer-in-Charge, Saintala P.S. regarding the threat and inconvenience caused by those unscrupulous persons but no action was taken on such F.I.R. The petitioner was therefore constrained to write a letter to the Suptd. of Excise, Bolangir drawing his attention to the inconvenience and sought for providing security for operating the 'Off' shop. Subsequently, one Abhi Sahu and 15 others came to the said 'Off' shop and forcibly closed the shop by putting lock at the entrance. The petitioner being the Power-of-Attorney holder of Sri Atul Sahu, the owner of the 'Off' shop, lodged F.I.R. against such persons before the Saintala Police Station but no action was taken on the same. Accordingly, the petitioner wrote a letter/representation dated 06.11.2006 to the Suptd. of Police, Bolangir regarding the above incident with a copy marked to the Collector, Bolangir.

6. It is the case of the petitioner that because he complained to the higher authority regarding the inaction of the O.I.C., Saintala P.S. with regard to the illegal interference by unscrupulous persons in smooth operation of the 'Off' shop, the O.I.C., Saintala P.S. became aggrieved for which the impugned F.I.R. has been lodged against the petitioner for alleged commission of offence under Sections 47(a)/57(c) of the Act for unauthorized possession, import and selling of foreign liquor. It is specifically pleaded that as the petitioner is an authorized licensee in respect of the IMFL 'Off' shop, the offence under Sections 47(a)/57(c) of the Act

are not attracted at all.

7. Learned Addl. Standing Counsel appearing for the State admits that the IMFL 'Off' shop managed by the petitioner had a valid licence issued under the Act and that because of the local disturbances, the Excise Commissioner, Orissa, had asked the District Excise Administration to allow shifting of the IMFL 'Off' shop to a suitable and unobjectionable site and accordingly the Collector, Bolangir has already passed orders to find out another suitable site for opening of the said IMFL 'Off' shop at Bolangir, vide letter dated 17.01.2007.

8. The contention of Sri D.P. Dhal, learned Counsel for the petitioner is that the allegations made in the impugned F.I.R. stands nullified in view of the admitted fact that the IMFL 'Off' shop operated by the petitioner as the Power-of-Attorney holder of Sri Atul Sahu had a valid licence issued by the Excise authority under the provisions of the Act. Hence, even accepting the allegations made in the F.I.R. to be true, no prima facie case is made out against the petitioner under the provisions of the Act.

9. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. Section 482 does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such

powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle '*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest*' (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court, to allow any action which would result in injustice and prevent promotion of justice, in exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to 'abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the Court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

10. In the case of *State of Karnatak v. L. Muniswamy and Ors.* reported in : 1977 CriLJ1125 , the Supreme Court has observed that the wholesome power under Section 482, Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Supreme Court observed in that case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. The aforesaid ratio of the case has been followed in a large number of subsequent cases of Apex Court and other Courts.

11. In the case of *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao* reported in : 1988 CriLJ853 , the Supreme Court has observed as follows:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

12. In the case of *Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharaful Haque and Anr.* reported in : 2005 CriLJ92 the Supreme Court has observed as follows:

It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

13. Keeping in view the nature of allegations made in the impugned F.I.R. and the offences alleged under Sections 47(a)/57(c) of the Act and considering the materials on record, I am of the view that no *prima facie* case is made out against the petitioner, so as to warrant continuance of the criminal proceeding against him. Moreover, as the alleged violation of the provisions of the Act is erroneous and misconceived, in view of the fact that the IMFL 'Off' shop had a valid licence to

operate, the continuance of the criminal proceeding against the petitioner on the basis of the impugned F.I.R. is an abuse of the process of Court.

Accordingly, this application under Section 482 Cr.P.C. is allowed and the impugned F.I.R. registered as Saintala P.S. Case No. 172 of 2006 as well as the corresponding G.R. Case No. 461 of 2006 pending in the Court of learned S.D.J.M., Titilagarh, against the present petitioner is hereby quashed.

The CRLMC is accordingly allowed.

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