

Balwant Singh Vs. District Food and Supplies Controller and anr.

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Court : Punjab and Haryana

Decided On : Jul-31-1974

Reported in : 1975CriLJ687

Judge : D.S. Tewatia, J.

Appellant : Balwant Singh

Respondent : District Food and Supplies Controller and anr.

Advocate for Pet/Ap. : Mr. Bhal Singh Malik

Judgement :

ORDER

D.S. Tewatia, J.

1. The petitioner through the present criminal miscellaneous application seeks to have the First Information Report No. 225/74 dated 27-4-1974 lodged by the Food and Supplies Controller, Amritsar, quashed in exercise of inherent powers of this Court under Section 482 of the Criminal Procedure Code on the ground that the facts stated therein do not disclose any offence including the one alleged. The said F.I.R. is in the following terms :

A permit was issued in favour of the Executive Engineer vide Permit No. 374/386 dated 15-3-1974 in favour of Shri Balwant Singh, Brick-kiln Owner, Ha-raipura.

The Executive Engineer vide his letter No. 172 dated 15-8-1974 informed us that the Brick-kiln Owner refused to supply him the bricks. After this, Inspector, Food and Supplies, Shri R. K. Goel, along with Shri Gurcharan Singh, Overseer, went to the kiln. Nobody was present there. Shri Netter Pal, who is told to be a partner of kiln, refused to supply the bricks when they went to his house. The Brick-kiln Owner has violated Clauses 9, 10 and 11 of the Punjab Control of Bricks Supply Order, 1972. A copy of the directions were sent to the Superintendent of Police vide Memo. No. 72/30092 dated 15-5-1972 issued under the Punjab Control of Bricks Supply Order, 1972, issued under Section 3 of the East Punjab Control of Bricks Supply Order, 1949.

It is requested that a case be registered and necessary action taken.

Today 26-4-1974 vide D.S.P. letter No. 74/1254 dated 22-3-1974 a case is being registered and papers be sent under Section 3 of the Punjab Control of Bricks Supply Order, 1949.

Mr. Bhal Singh Malik, learned counsel for the petitioner, relying on a Division Bench decision of this Court rendered in Civil Writ No. 1474 of 1972 (Punj & Har)(M/s. Chhaju Ram Babu Ram v. State of Punjab) decided on 14-12-1973, has argued that it is not within the jurisdiction of the Director, Food and Supplies, or the District Magistrate to issue permits to the Government Departments and Semi-Government Organisations for bricks under Clause (9) of the Punjab Control of Bricks Supplies Order, 1972, and hence the petitioner by refusing to supply bricks against the permit referred to in the F.I.R. did not commit any offence, as alleged.

2. Mr. T. N. Bhalla, learned counsel for the State, on the other hand argued that if for a moment it is conceded that the facts stated in the F.I.R. did not disclose any offence, even then the High Court would not be competent to exercise its inherent jurisdiction to Quash the F.I.R, and for his submission above-said, he drew sustenance from a Division Bench decision of this Court reported in Saral Beopar Association Ltd., Jagadhri v. State of Haryana, ILR 1971 (2) punj & Har 513.

3. Before dealing with the scope of the inherent jurisdiction of this Court under Section 482 of the Criminal Procedure Code, it is in the first instance necessary to

see as to whether the applicant has made out a case to the effect that the facts stated in the F.I.R. do not disclose any offence.

4. In order to find out the truth of the said allegation, a reference to the Division Bench decision relied on by him becomes immediately necessary. That was a case in which the Brick-kiln Owners in a body challenged an executive order of the Director, Food and Supplies issued under Clause (11) of the Punjab Control of Bricks Supplies Order, 1972, whereby the brick-kiln owners had been directed to supply bricks to the Government against the permits issued by the Director, Food and Supplies, or the District Magistrate at a fixed price. That Order was struck down by this Court with the following observations:

However, the order of the Government that the petitioners and others should sell bricks to the Government/ Semi-Government Departments on payment of fixed price of Rs. 51.50 per thousand bricks tantamounts to monopoly procurement without any authority of law as no such right has been conferred on the Government by the Punjab Control Order, 1972, or East Punjab Act No. 1 of 1949. Therefore, this order of the Government requiring the petitioners of all these writ petitions to sell bricks manufactured out of sponsored coal to Government Departments and Semi-Government Organisations against permits at fixed price is illegal. In *Ramrichpal Agarwalla v. State of West Bengal* : AIR1958 Cal257 , it was held that Government has no power under the law as it stands to order a stockholder under Section 3(2)(i) of the Essential Commodities Act, 1955, to sell to Government or its officers acting as agents of Government. The section gives power to the Central Government or its delegate to require a stockholder to sell its stock 'to such person or class of persons' specified by them in that Order and that the State or the Government carrying on its ordinary governmental functions cannot be a 'person' and, therefore, unless the section is amended so as to give power to order sale to person or persons including the Government itself a sale to the Government cannot be ordered. This Order, which is beyond the powers conferred on the Government is illegal.

For the above reasons we hold that the Order issued by the Government that bricks manufactured by the petitioners out of the sponsored coal to Government

Departments and Semi-Government Departments and Organisations against permits at fixed price is illegal and invalid and the same is struck down....

5. A perusal of the contents of the F.I.R. reveals that it is the refusal of the petitioner brick-kiln owner to supply bricks to the Executive Engineer against permit No. 374/386 dated 15-3-1974 that is said to have resulted in violation of Clauses (9)(10) and (11) of the Punjab Control of Bricks Supplies Order, 1972. In the light of the Division Bench decision noticed above (M/s. Chhaju Ram Babu Ram's case-supra), the brick-kiln owner was well within his right to refuse to supply bricks to a Government Department against the permit so issued. That being so and that being the law, his refusal to supply bricks in the case in question does not violate the three relevant clauses of the Punjab Control of Bricks Supplies Order, 1972, and thus even if all the facts stated in the said F.I.R. are taken to be correct, these do not disclose any offence, cognizable or non-cognizable.

6. Now the question arises as to whether the High Court would be competent to quash the F.I.R. in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure.

7. Before proceeding with the consideration of the above question, provisions of Section 482, Code of Criminal Procedure, may be noticed. These are:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

8. In Saral Beopar Association Ltd., Jagadhri's case (supra), a Division Bench of this Court had an occasion to consider the scope of the above provision when the petitioner before it sought an injunction against the police to investigate a criminal case against him on the ground that the contents of the F.I.R. did not disclose any cognizable offence and hence the police authorities had no power to investigate the case. Gurdev Singh, J., speaking for the Court after an exhaustive review of decided cases of the High Courts, Privy Council and the Supreme Court

concluded thus :

There can, however, be no doubt that, as ruled by their Lordships of the Supreme Court and earlier by the Privy Council in Khawaja Nazir Ahmad's case {Emperor v. Nazir Ahmad AIR 1945 PC 18 : (46 Cri LJ 413)} the power of investigation so far as it vests exclusively in the police or investigating agency is not to be interfered with by the Courts, and the investigating agency should be left to carry on investigation without any interference. This, however, clearly postulates that the investigation so long as it is in accordance with the provisions of law cannot be interfered with and it does not give immunity to investigation which is not in consonance with the relevant provisions of law governing the particular case or is in breach of them.

9. The ratio of the abovesaid decision of this Court, I am afraid, cannot be stretched to cover cases where the contents of the F.I.R. do not disclose any offence whatsoever. The inherent power of the Court no doubt has to be exercised very sparingly, but no decision has been cited in which it has been expressly held that even where the F.I.R. does not disclose any offence whatsoever, this Court would have no jurisdiction to quash it being patently in the interest of justice despite the said course. Their Lordships of the Privy Council in Khawaja Nazir Ahmad's case AIR 1945 PC 18 : (46 Cri LJ 413)(supra), in fact, had clearly observed to the following effect-

No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason New-sam, J. may well have decided rightly in Chidambaram Chettiar v. Shanmugham Pillai AIR 1938 Mad 129 - (39 Cri LJ 261),

These observations had been quoted with approval by their Lordships of the Supreme Court in the State of West Bengal v S. N. Basak : [1963]2SCR52 .

10. The Division Bench decision relied on by the learned counsel for the State, in my opinion, is an authority only for the limited proposition as to whether it is open to the Court in exercise of its inherent powers to stop the police from investigating a case registered with, it if the investigation had been carried on in accordance with law, although on the face of it the F.I.R. did not seem to disclose a cognizable

offence. It was mooted, and rightly so, that sometimes for the investigation it was not necessary that there even be a formal F.I.R. In this regard the following observations of their Lordships of the Supreme Court in S. N. Basak's case : [1963]2SCR52 (supra) noticed by Gurdev Singh, J., in Saral Beopar Association Ltd., Jagadhri's case, ILR (1971) 2 Punj 513 (supra) are very apt and, if I may say so, bring out clearly the distinction between the proposition, i.e., one dealing with the powers of the High Court to thwart the investigation of a case simpli-citer and the other with the power of the High Court to quash the F.I.R, which discloses no offence whatsoever:

But in any case the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases criminal prosecution are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through thier own knowledge or by means of credible through informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157, Criminal Procedure Code, when directing that a police officer, who has reason to suspect from information or otherwise that an offence which he is empowered to investigate under Section 156 has been committed shall proceed to investigate the facts and circumstances, supports this view. In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to be remembered that the report can be put in evidence when the informant is examined if it is desired to do so.

11. The expression 'in the interest of justice' used in Section 482, Code of Criminal Procedure, would call for the interference of the High Court in the interest of justice even at the stage where only an F.I.R. is lodged with the police, if the F.I.R. does not disclose any offence whatsoever. For in a matter where the F.I.R. does not disclose any offence, cognizable or non-cognizable, then allowing the investigating agency to continue with the investigation and harass a citizen would certainly not

be in the interest of justice. Against this kind of harassment of a citizen, the Court must exercise its inherent power whenever its assistance is sought by a citizen.

12. For the reasons stated, I accept this petition and quash the F.I.R. in question.

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