S.K. Jani Vs. State

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SooperKanoon Citation : sooperkanoon.com/684692

Court : Delhi

Decided On : Feb-02-1971

Reported in : ILR1971Delhi243

Judge : Pritam Singh Safeer, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 159

Appeal No. : Criminal Revision Appeal No. 563 of 1969

Appellant : S.K. Jani

Respondent : State

Advocate for Pet/Ap. : R.L. Tandon and; D.C. Mathur, Advs

Judgement :

Pritam Singh Safeer, J.

(1) This petition is directed against the judgment of the Additional Sessions Judge, Delhi, dated the 12th December, 1969, whereby he confirmed the conviction of the petitioner under sections 379/511, 353 and 506 of the Indian Penal Code recorded by the trial court in terms of its judgment dated the 8th of July, , The trial court had sentenced the petitioner to one year's rigorous imprisonment in respect of the offence

(2) Mr. R. L. Tandon, the learned counsel for the petitioner, with his incisive ability has taken me through all parts of the case, i.e. the evidence recorded as well as the documents referred to therein. At my request the learned counsel has read the statement of Public Witness 1 twice over.

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(4) The witnesses in this case beginning with Public Witness 1 were subjected to lengthy cross-examination.

(5) The case set up by the defense was that on the same date i.e. 15th March, 1967, Bimla Bai Jain, who has appeared as a defense witness (D.W. 10) went to the District Courts and contacted two lawyers one after the other. She got the original of Exhibit D.W. 6/A drafted. The application is then stated to have been presented before the Deputy Commissioner. The evidence given by D.W. 6, who proved the document, is to the effect that the Deputy Commissioner marked the original application to Additional District Magistrate (South), who was Mr. S. C. Vaish. The said officer in turn marked the application to Sub Divisional Magistrate, Nizam Uddin. who happened to be Mr. N. K. Garg, who had not been examined either by the prosecution or the defense, but whose report Exhibit D.W. 6/C stands proved on the record. No order is pleaded by the defense to have been passed by the District Magistrate or the Additional District Magistrate (South) requiring any particular action to be performed by Mr. N. K. Garg.

(6) It is, however, stated that at about 5 p.m. when Mr. Garg was approached he admitted to have received the application but expressed that he was going on four days' leave and would not be able to take any action. The present petitioner allegedly joined his wife when she was with D.Ws. 2 and 9, the two lawyers whom she had allegedly engaged. and then it was on their joint consultation that they proceeded to the place of D.W. 1, who is another practicing lawyer. D.W. 1 is then alleged to have telephoned to Mr. Garg, the Sub-Divisional Magistrate concerned. I find from a perusal of the statement given on oath by D.W. I that he asserted that he had telephoned Mr, Garg and that Mr. Garg had told him to come to his place if he wanted him to go to Police Station Kalka Ji. The defense version is that while Mr. Garg and Mr. Soni proceeded to Kalka Ji Police Station from Mr. Garg's

residence in Mr. Soni's car they were accompanied by the other two Advocates D.W. 2 and D.W. 9 and the petitioner and his wife D.W. 10 followed in the car belonging to the petitioner. According to the defense version it had been stated by D.W. 10 in her application, the copy whereof has been produced as D.W. 6/A, that a false case had been set up against her under the excise Act and that her car was parked in the Police Station Kalka Ji, the dicky whereof still had a considerable quantity of 'Hayword Whisky' lying in it. The allegation was that four cases of whisky were lying in the dicky of the car and if the same were to be discovered it would show that the police had set up a false case, otherwise after the recovery of the liquor in connection with the excise case they would not leave four cases of whisky in the dicky of the car. It was also stated in the application that Rs. l,400.00 had been taken away from D.W. 10 by the police and had not been accounted for. It is nowhere clear on the record of this case as to what action D.W. 10 ever took in respect of the said amount,

(7) Investigation of a case is statutorily regulated by the provisions contained in the Code of Criminal Procedure. The investigating officers have their own powers. There is no power with a Magistrate to interfere with the investigation except in accordance with the provisions contained in section 159 of the Code of Criminal Procedure. Interference with the course of an investigation has been a matter of prime consideration with the Legislature. It received attention even when the Letters Patent were framed in 1919, by which the Punjab High Court was originally set up and a special power was conferred on the High Court restricting it to the phraseology and meaning of clause (22) of the Letters Patent. The courts are not ordinarily to interfere outside the provisions mentioned above with the course of an investigation. The judicial officers can be no substitutes for police officers investigating crimes. It would create confusion and conflict if the District Magistrates and the other Magistrates functioning under them were to throw to the winds the statutory provisions limiting them in their own spheres. Mr. R. L. Tandon has cited certain police rules giving certain powers to the District Magistrate and those powers, in my view. can be utilised when he becomes concerned with the maintenance of public peace and order. He can certainly pass orders and seek the assistance of the police for maintenance of peace and public order. Where the provisions of the Code contained in Chapter 14 thereof come into play every one

concerned has to function by honouring these provisions. There is no authority shown to me statutory or other wise which may have been exercised either by the District Magistrate or by Mr. S, C. Vaish and the fact remains that the said officers merely marked the application. The counsel for the petitioner has been unable to point out any provision from which Mr, N. K. Garg derived any authority for going to the police station to interfere with the investigation of an excise case in the course of which, as admitted by the defense, the car Pnl 11 had been seized by the police. Neither Mr. Garg nor anybody else had any justification for going to Police Station Kalkaji. Mr. Tandon at this stage interferes to urge that the court had inherent powers. The submission is misconceived.

(8) The juridical principle is well enshrined that when an action is statutorily required to be performed it must be performed in accordance with the statute and not otherwise. This is what has been always held by the courts. Section 157 of the Code of Criminal Procedure contemplates a possibility wherein a report is to be submitted to the Magistrate concerned. Section 158 of the Code then states :-

'REPORTS under section 157 how submitted.- (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf. (2) Such superior officer may give such instructions to the officer-in-charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.'

(9) What the Magistrate is to do on receiving the report is indicated in section 159 of the Code of Criminal Procedure, which is :-

'POWER to hold investigation or preliminary inquiry.- such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code. Before such a report is received there is no power inherent or otherwise which may be said to be there with a Magistrate under the garb of which he may go to a police station to interfere with and overawe an investigation being legitimately carried out

by the police. The provision mentioned above came in for consideration by th2 Supreme Court in S. N. Sharma v. Bipen Kumar Tiwari and others : 1970 CriLJ764 , where it was observed in paragraph 5 :- 'It may also be further noticed that, even in sub-section (3) of section 156, the only power given to the Magistrate. who can take cognizance of an offence under section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decides not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate.'

(10) The law laid down by the Supreme Court interprets the provisions mentioned therein. The provisions have been there and those provisions have been the law of the land. Supreme Court has interpreted those provisions. There is no inherent power which may be in derogation of the statute. The inherent power known to law, which resides with the courts, is a power which is exercised in furtherance of law and not to the negation thereof.

(11) There is no merit in the contention raised by Mr. Tandon that Mr. Garg had any inherent power to go to Police Station Kalkaji. It passes comprehension as to what was the state of affairs under which Mr. O.P. Soni, an Advocate, could order Mr. Garg on the telephone or persuade him against his first conceived reaction not to proceed to Kalkaji, and take him in his car to the police station. Why was such a party organized to go to Police Station Kalkaji That remains unexplained. D.W.s 1, 2 and 9, who are practicing lawyers, had made their statements on oath. It is the law that once a person chooses to depose on oath, his evidence is open to judicial scrutiny. None of the defense witnesses have disclosed under which authority they had taken Mr. Garg to Police Station Kalkaji. It was no part of their professional duty to go at about 5 p.m. from the courts along with a Magistrate and it is lamentable that two of them remained at the premises of the police station when the Magistrate had left the same at 9.30 p.m. What interest had D.Ws. 2 and 9 for

remaining at the Police Station till about 11.30 p.m.? Their statements, with which I am concerned, do not reveal that they were performing any professional duty there. Once the Magistrate had left the police station, at least at that time D.Ws. 2 and 9 should have gone away. Their colleague D.Ws. 1 admittedly left along with the Magistrate. There was no one left in the police station, who was a judicial officer before whom D.Ws. 2 and 9 could have appeared. Members of the Bar hold a very high status. They have contributed to the highest offices in this country. They are expected to uphold the traditions of the profession. I am most dissatisfied with the manner in which D.Ws. 2 and 9 have apparently conducted themselves.

(12) It was pleaded that after arriving at the police station Mr. Garg asked for the Station House Officer and was told that the keys of the car were with Ballu Ram A.S.I. The report of Mr. Garg is very revealing and I will have to comment upon it later on. It is :-

'NOTE of Shri N. K. Garg, dated 15th March, 1967, on the application of Smt. Bimla Bai Jain. I went to P. S. Kalkaji in the company of Shri O. P. Soni, Advocate and reached there at about 7.45 p.m. The S.H.O. was not present, A man was sent to call him. He was with the D.S.P. at Lajpat Nagar. He came at about 9 p.m. He stated that the keys of the dicey of the car were with Asi Ballu Ram. I waited for Asi Ballu Ram till about 9.30 p.m. but he did not turn up. He was said to be in the Ilaqa for patrolling. I advised Shri Anand, Sho Kalka Ji, to verify the dicey and let me have a report. sd/- N. K. Garg, Dt. 15-3-1967.'

(13) All that the aforementioned report says is that Mr. Garg was accompanied by Mr. O. P. Soni, Advocate. It nowhere states that D.Ws. 2 or 9 or the petitioner were also there. I reject the contention that Mr. Soni's statement as D.W. 1 should be accepted that the petitioner and D.Ws. 2, 9 and 10 were there. The report proved as Exhibit D.W.6/C, reproduced above, reveals that Mr. N. K. Garg and D.W. 1 left the police station at 9.30 p.m. The occurrence with which this case is concerned took place at about 10.40 p.m. Mr. Garg and D.W. 1 were not the witnesses to the occurrence. It is a strange case which the defense version then proceeds to reveal. A very lengthy statement has been made by the petitioner when examined under section 342 of the Code of Criminal Procedure. That

statement has a great significance. It has to be weighed in terms of sub-section (3) of the said section. In the course of that statement it is pleaded by the petitioner that after Mr. Soni and Mr. Garg had left, the rest of the members of the party including D.Ws, 2, 9 and 10 continued in the police station. The significant assertion is that after 11 p.m. the lights of the police station were suddenly switched off and 6 to 7 persons approached the dickey of the car, who it is indicated were constables, and they removed the crates containing the bottles of wine. They also, according to the petitioner, gave him a beating. The defense version denies in entirety the case set up by Public Witness 1 that the scuffle took place in the manner in which he described it. The defense version is that at no time the present petitioner attempted to remove the car Pnl 11 which was standing inside the police station. There is no admission of a scuffle with Public Witness 1.

(14) In this case Public Witness s. 2 and 3 are persons who, according to their depositions, had gone to see a picture. After seeing the cinema show they had come back to a restaurant where they sat down for taking tea. According to their joint version, it was discovered that a purse belonging to Public Witness 3 was misssing. According to their testimony the said prosecution witnesses proceeded to Police Station Kalkaji at about quarter to ten at night. While Inder Jit was making the report the petitioner is alleged to have walked into the office and then the version given by the said two witnesses completely supports Public Witness 1 in every detail to the effect that on being asked as to whether he had any order of any Magistrate with him to take away the car the present petitioner replied that he did not have it and that he would still take away the car and as soon as he went to open the door of the car the Head Moharrir Public Witness 1, stopped him and then a scuffle took place in the course of which the uniform, which Public Witness I was wearing was torn off and that the said two witnesses Public Witness s. 2 and 3 intervened to stop the scuffle. A careful scrutiny of their cross-examination discloses that it was never put to Public Witness s. 2 and 3 that at any time the lights of the police station were switched off and that any persons in that darkness approached the car Pnl 11, opened up its dicky and took out the wine bottles. It was never put to those three witnesses in the course of their cross-examination that 6 or 7 persons gave a beating in the course of lifting' those bottles from the dicky of the car belonging to the petitioner in consequence whereof the accused

sustained the injuries in respect of which he has examined D.W. 3. That witness was examined to depose that there was an abrasion found by him on 17th March, 1967, on the person of the petitioner and there was also a contusion mark. Apart from these two injuries a scar on the left leg was also noticed. I cannot take that these injuries could not be self-inflicted for the reason that D.W. 3 clearly deposed : 'The above injuries could be self-inflicted also.'

(15) It was never put to the first three prosecution witnesses that Public Witness 5 Ballu Ram had surreptitiously or forcibly taken away from the place where the others were the wife of the petitioner i.e. D.W. 10 and made any effort to molest her and that he raised any hue and cry. If the defense adopted in the statement under section 342 of the Code of Criminal Procedure and thereafter embellished in the course of the statement of D.W. 10 was correct then I fail to see that Public Witness s. 1 and 3 were not confronted with the allegations which appear in the statement made under section 342 of the Code of Criminal Procedure or in the deposition of D.W. 10. No tenable argument has been offered at the bar to explain these aspects of the case. It is lamentable that D.Ws. 2 and 9 have tried to lend support by their statements on oath to the defense version. They knew that. an excise case was under investigation. Their testimony scrutinised from every point of view goes to reveal that their statements are not at all dependable. I would not have gone through the evidence in such detail while exercising revisional jurisdiction under section 439 I have given opportunity to Mr. R, L. Tandon to urge the case from all possible points of view. I am satisfied that the testimony of Public Witness s. 1, 2 and 3 remains unshaken. There is no illegality or impropriety calling for interference except in one respect,

(16) I cannot understand how a case under section 379 read with section 511 of the Indian Penal Code was made out against the present petitioner. Section 378 of the Indian Penal Code defines theft. It is incompatible with the conduct of a their that he will first walk into the office where the Moharrir is working, tell him that he has come to take away the car parked outside and then would go challengingly to the place where the vehicle is. No charge of robbery was framed against the present petitioner. According to the prosecution evidence the petitioner asserted that he had come to take away the car and then tried to take it away. The counsel

for the State is unable to defend the conviction under section 379 read with section 511 of the Code. The same is unmerited and is hereby set aside.

(17) The petitioner's conviction under section 353 of the Indian Penal Code and the one under section 506 of the Indian Penal Code are both maintained. The petitioner will undergo rigorous imprisonment for six months for each of the offences. The sentences will run concurrently. The petition is dismissed.