

Rajinder Kumar Vs. Delhi Administration

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Court : Delhi

Decided On : Nov-05-1986

Reported in : 31(1987)DLT207; 1987(12)DRJ49

Judge : Jagdish Chandra, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 190(1)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1069 of 1986

Appellant : Rajinder Kumar

Respondent : Delhi Administration

Advocate for Pet/Ap. : K.K. Sud,; Rajiv Chauhan and; S.T. Singh, Advs

Judgement :

Jagdish Chandra, J.

(1) By means of this petition brought under Section 482 of the Code of Criminal Procedure (the Code) the petitioner Rajinder Kumar seeks the quashing of the complaint and the consequent prosecution pending against him in the court of Shri G. P. Mittal, Metropolitan Magistrate, Delhi.

(2) The only contention raised at the bar by Mr. Sud learned counsel for the petitioner is that the complaint does not set out the facts constituting the criminal force whereby the Food Inspectors were prevented by the petitioner from taking the samples of Suji, Bura & Til Oil food articles from the premises of M/s.Singhal Kiryana Stores, 10875-76, East Park Road, Karol Bagh, New Delhi, wherein business was conducted by the petitioner and in support of his contention he has relied upon Section 190(l)(a) of the Code which reads as follows :-

'190.Cognizance of offences by Magistrates-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence :-

(A)upon receiving a complaint of facts which constitute such offence ;

XXxx xx xx xx.'

(3) In para No. 3 of the complaint the following averments are made:-

'THAT as soon as the F.Is. tried to start their lawful duties for taking the sample of food articles referred above and proceeded to do the same, the accused prevented them by using the Criminal force and thus prevented them from taking the samples authorised by the Act and prevented the food inspectors from exercising the powers conferred on them by or under the Prevention of Food Adulteration Act & Rules.'

(4) The complaint was made under Section 16(l)(c) and (d) of the Prevention of Food Adulteration Act, 1954 (Act) which reads as follows :-

16.Penalties-(1) Subject to the provisions of Sub-section (1-A), if any person-

(A).....

(B).....

(C)prevents a food inspector from taking a sample as authorised by this Act ; or

(D)prevents a food inspector from exercising any other power conferred on him by or under this Act ; or

XXxx xx xx

HEshall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees.

XXxx xx xx xx

(5) So, for constituting the offence under the aforesaid provisions of law what is important is 'preventing' a food inspector from taking a sample or from exercising any other power conferred on him by or under the Act. The petitioner had even earlier filed a Criminal Misc. (Main) 788/86 in this court and the same was dismissed with the observation that these points could be urged before the Magistrate whereupon the petitioner made an application before the learned Magistrate under Section 245 of the Code wherein the point which is now being urged before this Court was also urged before the learned Magistrate but the learned Magistrate did not agree with the contention raised on behalf of the petitioner and dismissed that application vide order dated 10/6/1986 observing that the order of summoning of the accused persons to face the trial had been passed taking into consideration the F.I.R. dated 6/12/1985 lodged by the concerned Food inspectors at 9.15 P.M. wherein they had specifically stated that the vendor with the help of his associates abused and pushed them outside his premises and thus forced them to leave the same. The learned Magistrate appears to have taken the correct view of the matter and the order passed by him on 10/6/1986 dismissing the application of the petitioner under Section 245 of the Code does not suffer from any infirmity, firstly for the reason that in order to constitute the offence under Section 16(l)(c) & (d) of the Act what was of importance was 'preventing' a Food Inspector from taking sample or from exercising any other power conferred on him by or under the Act and these facts do find a mention in the complaint, and that was the end of the matter, and secondly even if the words 'criminal force' used in the complaint was not explained further by setting out the facts constituting the same as it is an offence punishable under Section 350 Indian Penal Code, the same was immaterial because the complaint was to give only those facts which constitute the offence in respect of which the complaint had been made and that was complied as already pointed out above by mentioning the ingredients of Section 16(l)(c) & (d) of the Act, and thirdly because even if any infirmity was still there which, in my opinion, is not there, the same stood explained in the F.I.R. as to how the Food Inspectors were dealt with by the petitioner so as to explain the criminal force which resulted in preventing the Food Inspectors from lifting the samples or from exercising other powers conferred upon them by or under the Act.

(6) In Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others, : 1983CriLJ159 it was held as follows :-

'Tis, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.'

(7) It would be noticed that the list of documents accompanying the complaint enclosed also the copy of the above mentioned F.I.R. dated 6/12/1985 lodged in the police and which explained the criminal force used and the preventing thereby of the Food Inspectors in the lifting of the samples or in the discharge of their duties under the Act. So, this F.I.R. was one of the documents accompanying the complaint and could be looked into by the learned Magistrate for meeting the objection raised by the learned counsel for the petitioner for the purpose of explaining the words 'criminal force' and the consequent 'preventing' which is an offence punishable under Section 350 Indian Penal Code

(8) No other point was urged at the bar and in view of the above discussion, the petition fails and is consequently dismissed. Lower court record be returned immediately.

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