

Shri Bhoop Singh Tyagi Vs. State

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Court : Delhi

Decided On : Mar-13-2002

Reported in : 2002IVAD(Delhi)419; 2002CriLJ2872; 97(2002)DLT374; 2002(62)DRJ870

Judge : B.A. Khan and; V.S. Aggarwal, JJ.

Acts : India Penal Code (IPC), 1860 - Sections 34, 144, 188, 380, 406, 420 and 454

Appeal No. : Criminal Writ Petition No. 592/2001

Appellant : Shri Bhoop Singh Tyagi

Respondent : State

Advocate for Def. : Mukta Gupta, Adv.

Advocate for Pet/Ap. : S.N. Kumar, Senior Adv. and; S.K. Gupta, Adv

Disposition : Petition allowed

Judgement :

Khan, J.

1. Petitioner had let out its premises at U-38-A, Shakarpur, Delhi to one company called M/s. Shrestha Priya Finance & Investment Limited. The company wound up

and a case of cheating (FIR No. 101/2000) was registered against it under Sections 406/420/34 IPC at P.S. Shakarpur on the complaint of some investors. Its office at the premises was said to have been sealed and then again re-opened and its office record was transferred to Malkhana of Police Station. It also transpires that when investigation of FIR No. 101/2000 was transferred to Crime Branch, petitioner was found in possession of the premises.

2. Be that as it may, it was in this background that petitioner was booked in two FIRs - FIR No. 428/2000 under Sections 454/380 IPC and FIR No. 433/2000 under Section 188 IPC. He challenged both FIRs in this petition. The first one was quashed by court order dated 4.9.2001 but the second one survived and now it is to be seen whether this would also go.

3. This FIR under Section 188 IPC charges petitioner of disobeying Police Commissioner's orders contained in notification dated 22.6.2000 requiring house owners to inform the concerned police stations about the particulars of the tenants to whom the premises was let out or sublet by them.

4. Petitioner's case is that Police Commissioner's order was not to his knowledge and, therefore, no offence could be said to have been made out against him under Section 188 IPC. The stand of respondents, however, is that the Commissioner's notification dated 22.6.2000 was duly publicised before the relevant date and its knowledge must be attributed to petitioner to attract Section 188 IPC.

5. By court order dated 13.2.2002, respondent was asked to indicate and specify all modes of publication resorted to in this regard. DCP/HQ Sh. T.N. Mohan has filed an affidavit in compliance along with some news clippings and photocopies of some handbills, etc. in a bid to show that Police Commissioner's notification in question was widely publicised and brought to the knowledge of public and impliedly to petitioners also. It remains to be seen whether such knowledge could be attributed to petitioners in the facts and circumstances of the case.

6. Section 188 IPC, which has a crucial bearing in the matter, reads thus:-

'188. Disobedience to order duly promulgated by public servant - Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

7. The provision provides for two types of punishments for knowingly disobeying a validly promulgated order by a public servant. Its ingredients are:-

(1) there must be an order promulgated by a public servant.

(2) such public servant must be lawfully empowered to promulgate such order.

(3) A person must have a knowledge of such order directing him to abstain from an act or (b) to take certain order with certain property in his possession or under his management.

(4) He must disobey the order having its knowledge.

(5) Such obedience must cause or tend to cause (a) obstruction, annoyance or injury or risk of it to any person lawfully employ or (b) danger to human life, health and safety.

8. We are not at this stage concerned with police commissioner's competence to pass an order requiring house owners to give particulars of their tenants under Section 144 under challenge before us. But it would have to be examined whether his order was to the knowledge of the petitioner and he had knowingly disobeyed

it.

9. As already seen, a person booked under Section 188 IPC must have actual knowledge of public servant's order requiring him to do or abstain from doing some act. Acquiring or gaining of such knowledge is a pre-requisite. Any proof of general notification promulgated by a public servant would not satisfy the requirement.

10. It is true that the knowledge of accused could be presumed in certain circumstances but all the same a complaint/FIR must indicate, even though not in very express terms, that he had the knowledge of the order and had knowingly disobeyed it. Where the terms of complaint/FIR did not provides even as inkling in this regard, it cannot be said to make out or constitute an offence under Section 188 and in such a situation, it would warrant to be quashed.

11. A perusal of the FIR does not indicate that petitioner had actual knowledge of police commissioner's order. It is not the case of respondents also that this order was served on him by whatever means/modes or was either affixed on his premises or was gazetted on the relevant date. Their stand, on the contrary, is that the requisite knowledge must be attributed to him because police commissioner's order was punished in some newspapers and handbills, etc. This, in our view, would not meet the requirement, because a number of events may be reported in newspapers. But that would not attribute or convey knowledge of such events to all readers. Moreover, a person may not be a reader of a particular newspaper. He can't, thereforee, be attributed knowledge of the contents of the newspaper. It may have been understandable if a general public notice of police commissioner's order was shown to have published in media in general to raise a presumption of knowledge to the house owners living in a particular area. But even that is not the case here.

12. The affidavit filed by DCP/HQ leaves much to be desired in this regard. It does not specify the mode adopted whereby commissioner's order was brought home to petitioner. It only resorts to generalities in the belief that petitioner should be presumed to have gained knowledge of the order whether or not it was brought to his knowledge. Even the concerned SHO's version has not been pressed in service nor any material placed on record to show the manner and method in

which the order was circulated or communicated to the residents of the area in which petitioner lived.

13. We accordingly hold that petitioner could not be attributed knowledge of police commissioner's order contained in notification dated 22.6.2000 and, therefore, the impugned FIR could not be said to make out any offence against him under Section 188 IPC.

14. This petition accordingly succeeds and FIR No. 433/2000 registered in PS Shakarpur under Section 188 IPC is quashed.

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