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Court : Delhi

Decided On : Jul-04-1996

Reported in : 1997CriLJ1210; 1996(38)DRJ219

Judge : Usha Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197

Appeal No. : Criminal Appeal No. 2973 of 1990

Appellant : Satish Chandra

Respondent : Union of India

Advocate for Pet/Ap. : R.K. Anand,; Sashi Kiran and; Anil Soni, Advs

Judgement :

Usha Mehra, J.

(1) Railway gave a contract for running the book stall at New Delhi Railway Station to M/s Gulab Singh & Sons (hereinafter called the Firm). The said contract was renewed from 1st January,1976 up to 31st Dccember,1984. Since its services were not found satisfactory hence the license was not renewed thereafter. Firm filed a Writ Petition and sought stay. The same was dismissed by this Court on 11th March,1987. Against that order, the Firm filed Special Leave Petition , the same was also dismissed on 6th May,1987. The Supreme Court, however, while

dismissing the Special Leave Petition granted time till 31st May,1988 to the Firm to wind up the business on an undertaking to be given by the Firm that thereafter it will surrender the possession of the book stall to the Railway Authorities. One Mr.Vijay Kumar Malhotra was an employee of the Firm. He filed a Writ Petition in Supreme Court challenging the order of Railway Administration and asserting his right on the Book Stall. The same was dismissed with the observation that respondent Railway Administration may consider the feasibility of granting the petitioners any appropriate stall where there were vacancies and to absorb as many of them as possible taking into consideration their experience and other relevant factors. Railway Administration informed the petitioner the places where the vacancies were available. As the period of 31st May,1988 expired hence Railway Administration served the Firm with a notice to handover vacant possession of the Book Stall. The said notice was issued on 1st June,1988. the Firm did not handover the possession, therefore, the Railway Administration took possession and put its lock on the Book Stall at New Delhi Railway Station. The complainant Vijay Kumar Malhotra, in the meantime. Filed a suit for injunction in the Court of Sub Judge, Delhi. Sub Judge granted interim injunction in his favor on 4th June,1988. On 6th June, 1988 the Station Supdt. lodged report with D.R.M., New Delhi that the complainant Vijay Kumar Malhotra broke open the locks. The D.R.M, in turn instructed the Station Supdt., New Delhi on 7th June,1988 to lodge Fir with the G.R.P., New Delhi. On 8th June,1988 the Station Supdt. wrote to the S.H.O./G.R.P., New Delhi to register a case against Vijay Kumar Malhotra. Mr.Vijay Kumar Malhotra on receipt of the information that Station Supdt. had written a letter to S.F.O./ G.R.P. for registering a case against him, wrote to the Station Supdt. that case may not be lodged against him because he was not a representative of the Firm. The Railway Administration feeling aggrieved with the injunction granted by the Sub Judge filed a revision before the District Judge who after hearing the parties vacated the stay vide his order dated 20th June,1988. But in the evening of the same day, the said Additional District Judge stayed the operation of his own order till 23rd June,1988. The complainant Vijay Kumar Malhotra filed a revision in the High Court against the order of Additional District Judge dated 20th June,1988. The said petition was dismissed by the High Court on 23rd June,1988. After dismissal of the revision and there being no stay

operating, the Railway Administration took possession of the book stall. On account of possession having been taken by the Railway Administration, the complainant Vijay Kumar Malhotra filed a suit before the Senior Sub Judge. This suit was dismissed on 20th August, 1988 being infructuous because by then possession had already been taken over by the Railway Administration. After having lost battle in the Civil Court, the complainant Vijay Kumar Malhotra filed a criminal complaint against the petitioner on 24th November, 1989. The Metropolitan Magistrate issued summons to the petitioner and the Station Supdt., New Delhi for appearance vide his order dated 28th September, 1990.

(2) It is against this order of summoning dated 28th September, 1990 that the petitioner has felt aggrieved. He wants to challenge the same, inter alia, on the grounds that the petitioner being public servant no complaint could be instituted against him without the prior sanction of the competent authority as stipulated under Section 197 of the Code of Criminal Procedure (hereinafter in short called 'Code'). Secondly, under Section 186 of the Indian Railway Act, 1989, no prosecution or other legal proceedings could be initiated against a railway servant for anything done by him in good faith or intended to be done pursuant to the said Act or any rules or order made thereunder. The petitioner's contention is that the book stall was got vacated and possession taken pursuant to the order of competent authority of the Railway Administration hence the petitioner only discharged his official function. The competent authority of the Railways passed the order after the stipulated period fixed by the Supreme Court for the Firm to vacate the premises i.e. 31st May, 1988. That the complainant was unauthorisedly occupying the Book Stall belonging to the Railway Administration and the stay sought against the Railway Administration had already been vacated. At the time of dismissing his petition the Court had observed that Mr. Vijay Kumar Malhotra had no prima facie right over the book stall, hence the petitioner under order of his superior was within his right to take possession of the stall. Moreover, he discharged his duties in good faith. Since he took possession in discharge of his official duty hence without the sanction of the competent authority, he could not have been prosecuted. No criminal case could be initiated nor could summons be issued. The criminal proceedings had been initiated by the complainant with an ulterior motive to avenge his defeat as he had lost his battle in the Civil Court.

(3) MR.ANIL Soni appearing for the State strenuously argued that petition is not maintainable because petitioner is neither a public servant nor his act of taking forcible possession of the stall was in discharge of his official duties. In the absence of any nexus between the act done and the offence committed State was justified in filing a criminal complaint against him and finally the order of summoning being interlocutory order, no petition to the High Court can lie. The proper course for the petitioner is to take all these objections before Metropolitan Magistrate who issued the summons. If satisfied the Metropolitan Magistrate would discharge the petitioner. Moreover, documents which the petitioner wants to rely are voluminous in nature these having not been filed nor relied by the State before the Trial Court, hence cannot be looked into by this Court in this petition.

(4) Heard Mr.R.K.Anand, Senior Advocate with Ms.Shashi Kiran for the petitioner and Mr.Anil Soni for the State. At the outset, Mr.Anil Soni contended that the petitioner is not a public servant. I am afraid this contention is without substance. This argument is belied from the reading of provisions of Section 186 of the Railway Act which stipulates that :-

'NO suit, prosecution or other legal proceedings shall lie against the Central Government, any railway administration, a railway servant or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder'.

(5) Reading of Section 186 makes it clear that a Railway employee is at par with Central Government employee and hence a public servant. Anything done in good faith is protected under the provisions of this Section. Hence an employee of the railway who did anything in discharge of his official duty cannot be prosecuted without the necessary sanction. Section 186 is an express bar to the prosecution of a railway servant without the sanction of the competent authority. Railway teachers were declared to be the public servants by the Apex Court in the case of State of Ajmer v. Shivji Lal 1959 Scr 739. The Supreme Court held that :

'THE respondent Shivji Lal who was a Teacher in a railway school was a public servant within the meaning of 9th Clause of Section 21 of Indian Penal Code and he was in the service of Government, was being paid by it and was entrusted with

the performance of a public duty inasmuch as he was a teacher in a school maintained by Government'.

(6) If a teacher of a railway school can be declared to be a public servant, I see no reason why the present petitioner who, at the relevant time was working as Traffic Service Officer cannot be called a public servant. As per para 2 of the petition the petitioner in no uncertain words stated that he was appointed by the President of India in Class-I service of the Central Government on the recommendation of the Union Public Service Commission. He was allotted Railway Ministry and joined service as Indian Railway Traffic Service Officer. This fact is not in dispute, therefore, in view of the decision of the Supreme Court in the case of Shivji Lal (supra) I find no merits in this contention of Mr. Anil Soni and hold that the petitioner is a public servant.

(7) Turning to the next question raised was whether petitioner discharged official duty by forcibly taking possession and causing damage to the complainant's property. Since there was no nexus in this illegal act and official duty hence protection under Section 197 of the Code cannot be sought by the petitioner. The facts which have come on record and reproduced above clearly show that the petitioner did not take possession of the stall forcibly. Notice was issued to the firm to handover possession after the stipulated date and the firm failed to do so. The complainant Mr. Vijay Kumar Malhotra failed to obtain injunction against dispossession by the Railway Administration hence when inspired by losing the case he did not handover the possession, Administration was justified in taking possession of its property. Petitioner only complied the order of his superior. therefore, it cannot be said that what he did had no nexus with the discharge of his official duty. Petitioner while taking possession of the Book Stall discharged official duty This finds support from the Certificate of Possession issued by the authority in this regard and the same is reproduced as under :

'CERTIFIED that the Book Stall of M/s Gulab Singh and Sons on platform NOs. I, 2/3 and 4/5, were got vacated on 24-6-88 and all the books and other belongings were kept in Addl.S.S.'s Room duly locked and sealed. The lock and seal has been affixed in presence of the following : Rep. R.P.F. A.S. Hd. Tcr

(8) The reading of this Certificate nowhere indicate that the lock was broken or the possession was taken forcibly or any property was damaged. Even otherwise, if the petitioner being an employee of the Railways being directed to take possession complied the order of the competent authority, to my mind, the petitioner discharged his public duty. Senior Commercial Officer for and on behalf of the General Manager directed vide his order dated 20th June, 1988 to the Area Manager, DRM's Office to take over the book stalls at New Delhi Railway Station from Shri Vijay Kumar Malhotra. The Senior Commercial Officer at the relevant time was Mr. Sanjay Dass. It is the case of the petitioner that pursuant to the order of the Commercial Manager, possession was taken. It is so apparent from the certificate reproduced above. From these facts it is clear that what the petitioner did was in discharge of his official duties. The possession of the stall was taken at New Delhi pursuant to the order of the competent authority hence the material lying in the book stall was kept in the safe custody of Additional Station Supdt. duly locked and sealed. It now does not lie in the mouth of the State to contend that action taken by the petitioner had no nexus with the discharge of his official duty. This Court in the case of *Satyavrat, Shri Niwas v. State* 1992 Rlr 460 while disposing a complaint lodged by a prosecutrix against the police officials alleging therein that police officer committed excesses and further act of police in committing excesses was not in discharge of official duty, this Court repelled these submissions and ordered for the quashing of the complaint. The Court after analysing the provisions of law held that :-

'EVEN if there are excesses committed by the police at the time of questioning even then police officer could not be prosecuted without the sanction required under Section 197 Criminal Procedure Code . and therefore, the Magistrate could not proceed under Section 200 Criminal Procedure Code .'

(9) In this case also even if while taking possession it is presumed that some excesses were committed which resulted in damage to the material lying there that by itself is no ground to ignore the requirement of law as stipulated under Section 197 of the Code and the provisions of Section 186 of the Railway Act which expressly bar prosecution of a railway servant without the sanction of the competent authority.

(10) Turning to the last limb of Mr. Anil Soni's arguments that the petition as such is not maintainable and the appropriate remedy for the petitioner is to approach the same Metropolitan Magistrate. I am afraid this argument is also without force. The order of summoning cannot be termed as interlocutory as held by the Supreme Court in the following cases: *Madhu Limaye Vs . State*, : 1978 CriLJ165 , *Amar Nath vs. State*, *State of Karnataka Vs . Munni Swamy* : 1977 CriLJ1125 , *Raj Kapoor Vs . SMC* : 1980 CriLJ202 , *V.C. Shukla Vs . State*, : 1980 CriLJ690 , *Lalit Mohan Mondal Vs . B. Nath*, : 1982 CriLJ625 , *Delhi Municipality Vs . Ram Kishan Rohtagi*, : 1983 CriLJ159 , *Parmeshwari Devi Vs . State*, : [1977]2SCR160 , *Smt. Nagwa Vs . Veeranna*, : 1976 CriLJ1533 , *Madhorao Scindia Vs . Sambhaji Rao*, : 1988 CriLJ853 , *Punjab National Bank Vs . Surinder Prasad Sinha*, : 1992 CriLJ2916 , *K.M. Mathew Vs . State of Kerala & am.*, : 1992 CriLJ3779 and *A.K. Subbaiah & ors. Vs . State of Karnataka & ors.* : [1987]3SCR1128 .

(11) In the case of *Amar Nath* (supra) followed by the judgment of *Madhu Limaye* (supra) the Supreme Court in no uncertain words held that summoning order is not an interlocutory order. In summon cases where provisions of Section 251 Cr.P.C. were subject of interpretation, the Supreme Court however, in *K.M. Mathew's* case (supra) held that summoning order is an interim order and the Magistrate can revoke the same. He needs no power for that. Even in *K.M. Mathew's* case (supra) the Court did not bar the inherent power of the High Court. In fact in umpteen number of other cases as quoted above, Supreme Court while dealing with the subject of interference of a summoning order upheld the power of the High Court and its inherent jurisdiction. Following the observation of its decision in *Mohan Lal Thakkar v. State* 1968 Sc 733, Supreme Court in the case of *Parmeshwari* (supra) observed that

'INTERLOCUTORY order though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals - conclusive to the state it is made or the person against whom it is made.

(12) In the case of *Delhi Municipality* (supra), the Supreme Court held that :-

'...It is true that Section 397(2) clearly bars the jurisdiction of the Court in respect of interlocutory orders passed in Appeal, Enquiry or other proceedings. The matter is

however, no longer rest Integra as the entire controversy has been set at rest by a decision of this Court in *Madhu Limaye Vs . State of Maharashtra : 1978 CriLJ165* where this Court pointed out that Section 482 of the present Code had a different parameter and was a provision independent of Section 397(2).,.'

(13) To the same effect are the observations of the Supreme Court in the case of *Lalit Mohan Mohdal (supra)* wherein it has been observed that :

'WE agree with the High Court that against an order passed in Appeal under Section 341 Criminal Procedure Code ., the order would not be revisable by the High Court under Section 397 of Criminal Procedure Code . but there can be no doubt that the Court is entitled to examine the matter under Section 482 Criminal Procedure Code . which expressly over rules the bar contained in Section 341 of the Code'.

(14) In the case of *Mr.V.C.Shukla (supra)*, the Apex Court observed per the majority judgment that:-

PARA6 :- (Section 397(3) does not limit the inherent powers of the High Court contained in Section 482. It merely curbs the Revisional power given to the High Court and the Sessions Court under Section 397(1).) Para 7 :- (the term interlocutory order has to be given a very liberal construction in favor of the accused to ensure complete fairness at the Trial in view of the bar contained in Section 397(3).)

(15) In the case of *Raj Kapoor (supra)* the Apex Court observed in para 1 and 10 of the judgment that :-

'THE1st question is as to whether the inherent power of the High Court under Section 482 stands repelled when the Revisional Power under Section 397 overlaps. The opening words of Section 482 contradicts this contention because nothing in this Code, nor even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482... In short there is no total ban on the exercise of inherent powers where abuse of the process of the Court or other extraordinary situations excites the Court's jurisdiction. The

limitation is self restraint, nothing more.'

(16) In the case of Munniswamy (supra) the Apex Court observed that :-

'In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to a conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Courts inherent powers, both in Civil and Criminal matters is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution...'

(17) In the case of Madhu Limaye (supra, their Lordships of the Hon'ble Supreme Court modified the proposition laid down in Amar Nath v. State that 'where a Revision against an order is expressly barred under Section 397(2) of the Code, Section 482 would not be available to defeat the bar contained therein. However, it reaffirmed the decision of Amar Nath that 'the order of summoning passed by a Magistrate was not an interlocutory order'. In para 10 of the said judgment it was observed that :

'On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include 397(2) also shall be deemed to limit or affect the inherent powers of the High Court. In our opinion a happy solution of this problem to say that the bar provided in 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in respect of an interlocutory order... but in case the impugned order clearly brings about a solution which is an abuse of the process of the Court, or, for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court.'

(18) Even in the Amar Nath's case (supra) while defining the words 'Interlocutory Order', the Supreme Court observed that 'the summoning order is not an interlocutory order and a Revision under Section 397 would lie.' To the same effect are the judgment of this Court in the case of Chaman Lal Vs . State, :

22(1982)DLT321 , Smt. Trishla Jain & anr. v. State, 1983 (1) Chandigarh Law Reporter 34, Kuldeep Kumar v. Chander Kanta 1984 Cri. L.J. 550, G.K.Ralhan v. State 1984 Cri. L.J. 1538, Ashs Rawal Vs . Basant Lal & anr., : 27(1985)DLT428 , Paramjit Singh Sawhney v. Dinesh Verma & anr. 1988 (1) Cri 153 and Lt.Col.K.C.Sood v. S.C.Gudiamani 29 (1981) Dlt 302.

(19) In all these cases the Court took the view that there is no statutory bar in exercise of the inherent power of the High Court if the conditions for the exercise for such powers are otherwise satisfied. In that eventuality the petition would be maintainable notwithstanding that a second revision under Section 397 cannot be entertained. It has been observed that :-

'THERE has never been any doubt that the inherent powers were not in conflict with specific powers conferred on the Court by Criminal Procedure Code . but were nevertheless to be sparingly used in exceptional cases to give effect to any order under the Code or to prevent the abuse of the process of the Court.'

(20) The Division Bench of Rajasthan High Court in the case of Banwari Lal v. Madan Lal 1978 Cr.L.J. 697 held that 'in the case of interlocutory orders, in the inherent powers of the High Court under Section 482, are not controlled by Section 397(2). The Full Bench of Andhra Pradesh High Court in the case of Puritipati Jagga Reddy Air 1979 Ap 147 held that :

'A Second Revision Petition is maintainable and the High Court is competent to exercise its inherent jurisdiction if such exercise is warranted in the facts and circumstances of the case.'

(21) To the same effect are the observations of the Allahabad High Court in the case of Bhola v. State 1979 Cri. L.J. 718 when it observed that :-

'SUB section 2 of Section 397 of the Code was enacted to put a bar on the power of revision of the High Court and a Sessions Judge, in order to bring about disposal of cases expeditiously... this bar should not cause any frustration in the mind of an aggrieved party as the High Court has the inherent power to remedy an abuse of the process of any Court or otherwise to secure the ends of justice as

laid down under Section 482 of the Code, in a proper case where no alternate remedy is available to the aggrieved party.'

(22) In the case of *Madhorao Scindia* (supra) the Supreme Court observed that :-

'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 utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction oblique and, therefore, no useful purpose is likely to be served by allowing the criminal prosecution to continue. The court may while taking into consideration the special facts of the case also quashed the proceeding even though it may be at a preliminary state.'

(23) Similarly in the case of *K.M. Mathew* ('supra) where the Court was dealing with the summon case procedure provided in the Criminal Procedure Code ., held that :-

(B)'THE accused and the Chief Editor of Malayalam Manorama was summoned by the Magistrate on the basis of a private complaint under Sections 504/34 Indian Penal Code. The complaint did not prima facie disclose any offence against him. After hearing the parties, the Magistrate accepted the plea of the Chief Editor and dropped proceedings against him. The complainant went in revision to the High Court against this order of the Magistrate. The High Court ruled that after issuing process the Magistrate had no jurisdiction to drop proceedings against the accused and he was bound to proceed under Chapter XX of the Criminal Procedure Code . when the accused enters appearance.'

(24) It was in this context that the Supreme court observed that the need to try the accused under Chapter XX would arise only when there is an allegation in the complaint that the accused has committed the crime. In para 8 of the judgment the Supreme Court went on to elaborate that it was open to the accused to plead

before the Magistrate that the process against him ought not to have been issued. The Supreme Court observed 'the order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the face of it does not disclose any offence against the accused.

(25) The Supreme Court in that case nowhere ousted the jurisdiction of the High Court to interfere in such like matters. It merely set the records straight by holding that an accused appearing before a Magistrate after being summoned, was well within his rights to plead that the process had been wrongly issued and if satisfied the Magistrate could review his earlier decision.

(26) The Supreme Court categorized the order issuing process as an 'interim Order', but was careful not to use the words 'interlocutory'.

(27) The catena of judgments discussed above leaves us in no manner of doubt that even an order of summoning can be questioned by the aggrieved party through the inherent power of the High Court under Section 482 if the facts so warrants. The reliance by Mr. Anil Soni on the judgment in the case of M/s J.K.Synthetics Ltd. & ors. v. N. C.Sharma 1993 (2) Scc 140 is of no help to him.

(28) Where the facts depict that a prosecution degenerates into persecution, this Court cannot sit as a helpless spectator. It is the bounded duty of this Court to interfere if there is palpable and grave injustice and it finds the process of the Court is being abused, then even if the order is an order of summoning, this Court would use its inherent power and interfere in such an order. I am afraid the single Bench of this Court while delivering the judgment in M/s J.K.Synthetics Ltd. (supra) did not take note of the judgments of Apex Court as well as observations made earlier by this Court as reproduced above. In M/s J.K.Synthetics Ltd. (supra) heavy reliance was placed on the decision of K.M.Mathew to arrive at a conclusion that against the order of summoning no petition would lie in the High Court. With respect I do not agree with the observation of the Single Judge because M/s J.K.Synthetics Ltd. ignored the earlier decisions given by this Court as well as of the law laid down by the Supreme Court and even the decision of K.M.Mathew has not been applied properly. The Apex Court in K.M.Mathew's case (supra) had

nowhere ousted the jurisdiction of the High Court to interfere in such like matters. In M/s J.K.Synthetics Ltd. reliance was placed on the decision of the Supreme Court in Amar Nath's case but while arriving at the conclusion ignored the observation of the Supreme Court in Amar Nath's case which clearly held that interlocutory order can be interfered by High Court in its inherent powers. Neither in the case of Amar Nath nor in K.M.Mathew Apex Court ousted the inherent jurisdiction of this Court under Section 482 to correct the error and to prevent the abuse of the process of the Court. Where the order of summoning effects the valuable rights of a petitioner and infringes his right this Court cannot sit and watch the same. If, prima facie, there is no case against him and process of the Court as in this case has been abused by the complainant, this Court cannot shirk its duty in setting right the same by invoking its inherent jurisdiction. In view of the overwhelming decisions of the Supreme Court holding that there is no specific statutory bar in the exercise of inherent power of the High Court if such power is required to be exercised and the facts so warrant, hence, the objection of Mr.Anil Soni that this Court has no jurisdiction to entertain this petition against the order of summoning, is without substance.

(29) The facts as reproduced above, clearly show that when the complainant failed to get relief from the Civil Court he retaliated by dragging the petitioner a public servant in criminal litigation without even obtaining the necessary permission. This is nothing but an abuse of the process of the Court. The learned Metropolitan Magistrate, to my mind, without application of mind issued the summon particularly when there was non-compliance of the provision of Section Criminal Procedure Code .

(30) For the reasons stated above, I consider it a fit case where the process of summoning should be set aside and proceedings ordered to be dropped. Order accordingly.

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