KutbuddIn and ors. Vs. the State

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Court : Rajasthan

Decided On : Dec-20-1966

Reported in : AIR1967Raj224

Judge : B.P. Beri, J.

Acts : Official Secrets Act, 1923 - Sections 13(3); Code of Criminal Procedure (CrPC) , 1898 - Sections 156(2) and 561A

Appeal No. : Criminal Misc. Appln. No. 855 of 1966

Appellant : KutbuddIn and ors.

Respondent : The State

Advocate for Def. : Raj Narain, Dy. Govt. Adv.

Advocate for Pet/Ap. : M.Y. Nuri and; S.D. Kalla, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

B.P. Beri, J.

1. This is an application under Section 561-A of the Code of Criminal Procedure wherein it is prayed that the proceedings against the applicants under Sections 3

and 9 of the Official Secrets Act, 1923 (Act XIX of 1923) (hereinafter called 'the Act'), and Rules 39 and 41 of the Defence of India Rules and Section 120B of the Indian Penal Code be declared illegal and quashed.

2. The circumstances which it is necessary to notice for the disposal of this application are these:

3. On 18th September, 1965 Shri S.N. Bhargava, Superintendent of Police, Security, Rajasthan, Jaipur lodged a first information report with the Ramganj Police Station, Jaipur mat Kutbuddin, Abdul Aziz, Usman, and Razaullah of Jaipur had given and wore giving information to Pakistan which was prejudicial to the safety of India, and, therefore, a case under Sections 3 and 9 of the Act and Rules 39 and 41 of the Defence of India Rules came to be registered. Mr. Ojha, Deputy Superintendent of Police was appointed to investigate the offences. He searched the houses of these four persons. Nothing incriminating is said to have been found. All the four accused persons were arrested on 18th September, 1965.

The Magistrate remanded them to police custody until 4th October, 1965 under Section 167 of the Code of Criminal Procedure. They were presented before the City Magistrate, Jaipur on 4th October, 1965 and they were further remanded to custody. On 14th October, 1965 one Samsamul Haq Arshi of Jodhpur was also arrested. During the investigation Usman and Razaullah were released on bail. On 15th January, 1966 Mushriuddin of Jaipur was also arrested. It was in April 1966 that the police sent a report to the Government of India asking for authority to prosecute these accused persons and the Government by its order dated 19th April, 1966 authorised the prosecution of Kutbuddin, Abdul Aziz, Samsamul Haq Arshi and Mushriuddin.

4. On 27th April, 1966 a charge sheet against the aforesaid four persons was presented before the City Magistrate, Jaipur, who took cognizance of the case under Section 190(1)(b) of the Code of Criminal Procedure and proceeded to enquire into it under Sections 206 and 207-A of the Code of Criminal Procedure and framed charges against them under Sections 3 and 9 of the Act and Rules 39 and 41 of the Defence of India Rules, and Section 120B of the Indian Penal Code and committed them to face their trial before the Sessions, Judge, Jaipur on 4th

June, 1966. An objection was rai-sed before the Sessions Judge that the order of commitment was without jurisdiction. The objection was overruled.

5. The accused came up to this Court and by his judgment dated 1st September, 1966 Chhangani J. inter alia held that in the absence of a complaint the City Magistrate could not take cognizance of the offences under the Act, and, therefore, under the proviso to Section 13(3) of the Act he could not take action under Section 344 of the Code of Criminal Procedure and the detention thus became illegal. The learned Judge admitted the applicants before him to bail adding however that there could be no doubt that (hey could be rearrested after a proper complaint.

6. On 14th September, 1966 Mr. S.N. Bhargava presented a complaint against the aforesaid four accused persons before the District Magistrate, Jaipur as envisaged under Section 13 of the Act and also arrested the accused again.

7. On 10th October, 1966 the District Magistrate, Jaipur fixed the hearing of the case and it was urged before him that the authorisation granted by the Central Government was void and the complaint without an authority was invalid. The learned District Magistrate rejected these contentions. The accused then presented this application under Section 561-A of the Code of Criminal Procedure and Article 227 of the Constitution of India. At the time of admission the learned counsel for the applicants abandoned the aid under Article 227 of the Constitution and only invoked Section 561-A of the Code of Criminal Procedure.

8. Mr. Nuri appearing for the applicants urged that Section 5 of the Code of Criminal Procedure provided that the provisions of the Code of Criminal Procedure are subject to any special law wherein a procedure is laid down. The procedure under the Act was in conflict with certain provisions of the Code of Criminal Procedure, and, therefore, the latter must yield to the former. Since the procedure adopted by Shri Bhargava and Shri Ojha while investigating the alleged offences appeared to be under the Code of Criminal Procedure the evidence collected by them was void and the proceedings after 4th October, 1965 were clearly prohibited by the proviso to Section 13(3) of the Act.

9. Mr. Raj Narain, Deputy Government Advocate submitted that under Section 561-A of the Code of Criminal Procedure the present application is not maintainable because there is a specific remedy by way of a revision available to the accused. The proviso to Section 13(3) of the Act, submitted the learned counsel, is merely explanatory in character and does not prohibit the steps taken by the police or the Magistrate. The only irregularity was that the proceedings were initiated by the police without instituting a complaint before the City Magistrate, Jaipur who was not specially empowered in this behalf. Those proceedings having been set aside by this Court the present proceedings are perfectly competent. In any event, vehemently contended the learned Deputy Government Advocate, any irregularity in the investigation does not negative the offence or prevent its trial.

10. The first point which emerges for consideration is whether the present application is competent under Section 561-A of the Code of Criminal Procedure. The learned Deputy Government Advocate says, firstly that the present application is not an application for revision and secondly even if it were one, the proper course was to have made an application before the learned Sessions Judge, Jaipur. Mr. Nuri, on the other hand, submitted that his prayers include the declaration of the illegality of the proceedings taken by the police officers in investigation and for quashing the whole proceedings, and, therefore, Section 561-A of the Code of Criminal Procedure was the only appropriate section under which he could have come to this Court. In any event he said that this could be treated as a revision application.

In Khushi Ram v. Hashim, AIR 1959 SC 542, it has been laid down that the inherent powers of a High Court under Section 561-A of the Code of Criminal Procedure cannot be invoked in regard to matters directly covered by the specific provisions available in the Code of Criminal Procedure. The applicants before me have prayed that the proceedings against them before the District Magistrate, Jaipur on a complaint lodged by the Superintendent of Police, Security, Jaipur be quashed, or set aside on the ground of alleged irregularities and illegalities. In my opinion, therefore, this relief appears to be available in the revisional jurisdiction of this Court. In the revisional jurisdiction this Court is empowered to call for and examine the record of any proceeding before any inferior criminal Court situate

within its local limits for the purpose of satisfying itself 'as to the correctness, legality or order recorded or passed, as to the regularity of any proceedings of such inferior Court'.

The validity of the complaint and the proceedings taken by the District Magistrate are under challenge. The grounds are steps anterior to the cognizance of the complaint. In the ultimate analysis, therefore, it is the step by the learned District Magistrate that is under challenge and therefore the revisional jurisdiction of this Court is attracted. It is also correct that ordinarily a revision application in this case should have been preferred before the learned Sessions Judge. I am, however, not prepared to dismiss this application on this technical ground alone because according to the proceedings of this Court before Chhangani J. on 17th October, 1966 the learned counsel for the applicants were directed to produce a certified copy of the order of the District Magistrate, Jaipur and they submitted the same.

The application having been admitted by this Court, and the argument against its maintainability having been raised after the conclusion of the arguments by the learned counsel for the applicants and the grievance in the case being that the proceedings are being protracted I am inclined to decide this application in my revisional jurisdiction in the interest of justice on merits because its dismissal on a technical point might merely mean a multiplication of proceedings and consequent delay in justice. There is precedent for this in Babulal v. Bhuramal, 1950 Raj LW 326,

11. The learned counsel for the applicants elaborately contrasted the specific provisions of the Act and the Code of Criminal Procedure (hereinafter called the Code) and urged that in so far as the provisions are made in the Act they must prevail over those contained in the Code. Section 5 (2) of the Code clearly prescribes :--

'(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences'.

It is a legislative recognition of the well-known principle of construction that criminal Courts of law vested with general jurisdiction to try offence will ordinarily be governed by the Code unless the special law specifically regulates the same to the extent indicated in the special law. Neither in the petition nor at the Bar any specific action has been indicated being contrary to the procedure prescribed for the search in the Act. The concentrated attack of the learned counsel was that Section 13 of the Act was initially disobeyed and is still dis-obeyed by the prosecution. I would, therefore, without detailing the arguments of comparison and contrast would straightway deal with Section 13 the provisions whereof it is submitted have been violated. Section 13 of the Act reads :

'13. Restriction on trial of Offences:

(1) No Court other than that of a Magistrate of the first class specialty empowered inthis behalf by the appropriate Governmentwhich is inferior to that of a District or Presidency Magistrate shall try any offence underthis Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by mat Court.

8. No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf.

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be

found.

(5) In this section, the appropriate Government means :

(a) in relation to any offences under Section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence the Central Government'.

Sub-section (1) of this section restricts the trial of the offences under the Act by the Court of a District or Presidency Magistrate or any Magistrate of the First Class specially empowered in this behalf. Sub-section (2) gives an option to an accused to claim his trial before a Court of Session notwithstanding the fact that the case is not exclusively triable by that Court. This is indeed a departure from the usual rule. Sub-section (3) provides that no Court shall take cognizance of any offence under this Act excepting upon a complaint made by order of, or under authority from the appropriate Government. In the present case me appropriate Government is the Central Government. There is a proviso on which the fate of this application mainly hinges.

The argument advanced by the learned counsel is that the proviso authorises that even if no complaint has been filed the only orders that can be passed by a Magistrate are in regard to the arrest, remand and granting of bail to an accused 'but no further or other proceedings shall be taken, until such complaint has been made'. His contention is that after 4th October, 1965, upto which time the Magistrate had remanded the accused to police custody, all actions taken by the police and the Magistrate were in direct contravention of the mandate contained in the proviso aforesaid, and, therefore, clearly invalid and void. His further submission was that all material gathered by the police on the basis of which the authorisation for the prosecution of the applicants was obtained from the Central Government was also void because no further proceedings could be taken after 4th October, 1965, The cognizance taken on the basis of the materials so gathered and the authority so received from the Central Government and the consequent complaint before the District Magistrate was also void.

12. In my opinion while Section 13(3) lays down that no Court shall take cognizance without (a) a complaint and (b) an authority of the appropriate Government the proviso appended thereto saves the power in the Court to take proceedings in regard to arrest, remand and admittance to bail, but no further or other proceedings can be taken by a Court until a complaint is made. The purpose sought to be served by the proviso is that the appropriate Government is given an opportunity to consider and decide the propriety and expediency of instituting a complaint before a Magistrate and unless this is done and authority is accorded a Magistrate is not to proceed further. In the context where the proviso exists it can have no relation in proceedings by way of investigation but to proceedings before a Magistrate.

13. Mr. Nuri contended that the word 'proceedings' includes both investigation proceedings and proceedings before a Magistrate. I am unable to agree. An investigation proceeding according to H.N. Risbud v. State of Delhi, AIR 1955 SC 196, generally consists of the following steps :--

'(1) Proceeding to the spot,

(2) Ascertainment of the facts and circumstances of the case,

(3) Discovery and arrest of the suspected offender.

(4) Collection of evidence relating to the commission of the offence which may consist of

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the Officer thinks fit

(b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and

(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge sheet under Section 173'.

In my opinion the word 'proceedings' in the proviso to Section 13(3) of the Act does not cover any one of these steps.

14. There is another argument which negatives the contention of the learned counsel for the applicant. According to his submission the entire investigation must be completed--authority granted and complaint lodged--within 15 days and if that is not done the mandate of Section 13(3) proviso will not permit anything to be done thereafter. This in my opinion could not be the intention of the legislature. There can possibly be a case of deep roots and with wide and varied ramifications which cannot humanly be dug out and investigated within 15 days. The legislature could not be intended to have said that if the investigation is unable to find out the truth and collect evidence within 15 days it is forbidden from doing anything further. The word 'proceedings' therefore under the proviso to Section 13(3) does not include the proceedings by way of investigation. In this view of the matter any proceedings by way of investigation after 4th October, 1965 were not invalid, and the material collected on that account was also not irregularly collected and the authorisation by the appropriate Government for the prosecution of the accused above-named was also not invalid.

15. Mr. Nuri then argued that Chhangani J., had called the proceedings before the Magistrate under Section 344 of the Code of Criminal Procedure as illegal. But the learned Judge had also observed:

'There can be no doubt that it is open to the prosecution to file a fresh valid complaint still in accordance with the requirements of Sub Section (3) before a competent Magistrate and thereafter to bring about a situation to arrest and detain the applicants justifiably and In accordance with law.'

16. I also find considerable force in the contention of the learned Deputy Government Advocate that even assuming that there has been some irregularity in the matter of proceedings by way investigation that would not affect the trial of the offences. Reference in this connection may be made to, AIR 1955 SC 196, already cited above, wherein their Lordships observed that a defect or illegality in the investigation however serious has no direct bearing on the competence or the procedure relating to cognizance or trial of a ease. Where the cognizance of the

case has in fact been taken the invalidity of the precedent investigation does not vitiate the result unless miscarriage of justice has been caused thereby.

In the Supreme Court case non compliance with the mandatory provisions of Section 5A of the Prevention of Corruption Act was held not to have invalidated the trial. Before me excepting the proceedings taken by the Magistrate which have been quashed by Chhangani J., no other illegality has been specifically pointed out in the body of the application or by the learned counsel at the Bar. His argument confined itself to the language of the proviso to Section 13(3) of the Act which I have already considered above.

17. The result is that this application has no substance and is accordingly dismissed.