

Parasmal and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-12-1969

Reported in : 1969WLN479

Judge : V.P. Tyagi, J.

Appeal No. : S.B. Criminal Misc. Application No. 769/68

Appellant : Parasmal and ors.

Respondent : The State of Rajasthan

Disposition : Application allowed

Judgement :

V.P. Tyagi, J.

1. This is an application under Section 561-A Criminal. Procedure Code filed by accused persons Parasmal and three others to quash the order of this Court dated 24th August, 1968, passed in the revision application filed by the State against the applicants.

2. The facts leading to this application are as follows.

3. One Prahlad Ram went to purchase diesel oil, from the diesel, pump owned by Pukhraj. father of accused Shantilal, at Bilara. When he, made an approach to

Shantilal to deliver diesel, Prahlad Ram was told by Shantilal to come next day to take the delivery of diesel as his tank was empty on that particular day. Prahlad Ram suspected a foul play at the hands of the accused and, therefore, he chose to sleep at the diesel pump. According to Prahlad Ram the applicants poured in the night, some kerosene oil from the tins in the tank in order to sell the mixture to Prahlad Ram next morning. A report was made to the police immediately of the action taken by the accused persons and thereupon a case was registered against Shantilal and three others under Section 420 read with Section 511 Indian Penal Code and Section 23(c) of the Petroleum Act, 1934. All the accused persons were then challaned in the court of the Munsiff-Magistrate under the said offences but they were discharged by the learned Magistrate on the ground that the action of the accused persons did not go beyond making preparation which is not culpable and therefore they were all discharged of the offences under Sections 420, 511 Indian Penal Code and Section 23(c) of the Petroleum Act.

4. The State of Rajasthan preferred a revision application to challenge the order of discharge passed by the Magistrate in this Court in which the discharge order was challenged only in respect of Section 420 read with Section 511 Indian Penal Code, This Court after hearing the parties accepted the revision application and ordered the retrial of the accused persons.

5. The applicants have filed this application mainly on the ground that this Court has set aside the discharge order on the premises that it was not the case of the accused persons that they were expecting a fresh supply, of diesel to their pump next day and therefore they issued invitation to Prahlad Ram to get the diesel from their pump on the next day. According to the learned Counsel for the applicants, the premises on the basis of which this Court announced its judgment is erroneous because from the very first information report it is clear that Shantilal had informed Prahlad Ram that he had obtained a permit. No. 112 dated 22nd of July, 1965 to get a fresh supply of 200 litres of diesel and therefore he would be in a position to supply the diesel next morning after a fresh supply was received by him. In the presence of this statement made by Prahlad Ram in the first information report, learned Counsel for the applicants submits that the entire case of the prosecution is demolished and the mixing of the kerosene oil with diesel in

the pump does not go beyond the act of making preparation for committing a crime which is not punishable under the law.

6. It may be mentioned that while holding that the act of the accused persons fell within the ambit of the term 'attempt to commit the offence as used in Section 511 Indian Penal Code, I was of opinion that if without inviting Prahlad Ram to take the delivery of the diesel from the pump, kerosene oil was mixed with the diesel in the tank, then this act of the accused would not have gone beyond making a preparation for the commission of an offence which was not punishable under the Indian Penal Code but since the invitation had been extended by Shantilal to Prahlad Ram with an alleged criminal intention to, deliver the admixture it changed the complexion of the case and in those circumstances I found it difficult to accept the contention of Mr. Jindal that the act of Shantilal inviting Prahlad Ram to take the delivery of the diesel from the pump which did not contain sufficient quantity of diesel, was one in the series of the acts which went to complete the preparation and therefore the act of extending invitation in these circumstances, definitely fell within the term 'preparation' for commission of an offence. While rejecting the aforementioned plea of Mr. Jindal it was also, observed by me that it was not the case of the accused persons that they were expecting any fresh delivery of diesel to their pump next day when they wanted to deliver the diesel to Prahlad Ram. and, therefore, the invitation that was extended by Shantilal was done with a criminal intention to defraud Prahlad Ram. The 'contention of Mr. Bhansali is that the premises that the invitation was extended with criminal intention totally disappears when the statement of Prahlad Ram under Section 161 Criminal Procedure Code is read with his statement recorded in the first information report, and therefore the finding of this Court that the act of Shantilal and other co-accused fell within the ambit of the term 'attempt to commit offence' becomes obviously erroneous. In order to dispose of this objection, I have only to see whether the premises on the basis of which this Court had held that the invitation had been issued by Shantilal to Prahlad Ram with a criminal intention virtually goes away in view of what had Prahlad Ram stated before the police authorities while lodging the first information report and subsequently when he was examined under Section 161 Criminal Procedure Code. If the element of criminal intention goes away, then in that event the mixing of kerosene oil with diesel in the pump as

held above does not bring the action of the accused persons within the ambit of the term, 'attempt' to commit the offence.

7. From the first information report, as pointed out by learned Counsel for the applicants, it is clear that while inviting Prahlad Ram, Shantilal had shown a permit No. 112 dated 22nd of July, 1965 whereby he was authorised to purchase 200 litres of diesel for making a sale thereof at his pump. The informant further added in the first information report that Shantilal had specifically told him that he could take the delivery of the diesel from his pump when a fresh supply of diesel was received by him next morning. This statement under Section 161 Cr. Procedure Code Prahlad Ram also deposed before the investigating officer that Shantilal had informed him that diesel was not in the stock and that he would be able to deliver the required amount of diesel to Prahlad Ram only on receipt of further supply next day.

8. These facts were not brought to my notice at the time when the revision application was argued before me and it is why I had observed in my order dated 24th of August, 1968 that it was not the case of the accused persons that they were expecting any supply of diesel while inviting Prahlad Ram to take the delivery of the diesel oil from his pump next day.

9. I am, therefore, of opinion that the premises on the basis of which this Court decided that the circumstances of this case bring the matter within the mischief of the word 'attempt' as used in Section 511 Indian Penal Code goes away From what has been mentioned by Prahlad Ram in the first information report and in the statement under Section 161 Indian Penal Code, I am of opinion that at the time when Shantilal had asked him to take the delivery of diesel next day, he had no such criminal intention to deceive Prahlad Ram and perhaps this idea occurred to the accused persons later on to deliver the admixture of kerosene and diesel. If that is the case, then the action of the accused persons of mixing kerosene with diesel does not go beyond making preparation which is not punishable under the law.

10. Learned Counsel for applicants further urged that the error is patent on the face the record and for the ends of justice this Court should rectify the error while

exercising its extraordinary power under Section 561A of the Code of Criminal Procedure, in support of this contention,. reliance has been placed on the authority of this Court in Gineshram v. State of Rajasthan 1968 RLW 496. In Ganeshram's case 1968 RLW 496 certain observations of the learned Judges of the Allahabad High Court in Raj Narain and Ors. v. the State AIR 1954 All. 315 and Chagla C.J. in State of Bombay v. Nilkanth Shripad Bhave : AIR1954 Bom65 were considered by this Court and it was held that Section 561A Criminal Procedure Code was enacted by the legislature to emphasise the fact that the High Court has the widest jurisdiction to pass orders to secure the ends of justice and for doing so if an application filed by the person who wants to secure the ends of justice is not covered by any specific provision of the Code, then this Court has sufficient power to, entertain such an application and rectify the error, if any in order to secure the ends of justice for the applicants.

11. In my opinion, it is a fit case in which this Court should not hesitate to exercise jurisdiction under Section 561A Criminal Procedure Code as the entire premises on the basis of which the revision was accepted by this Court is demolished when certain facts were brought to the notice of the Court which were mentioned by the prosecutor him self before the investigating officer. In such circumstances, I am constrained to hold that even the prosecution suggested at the very beginning that Shantilal had invited Prahlad Ram to take the delivery of diesel from the pump not with a motive to commit any offence under the Petroleum Act but at that time he was expecting a fresh supply of diesel and, therefore, that invitation cannot be invoked to make the subsequent act culpable by bringing the mere act of preparation under the mischief of 'attempt'. I am therefore of the view that the order passed by this Court on 24th of August 1968 should be quashed.

12. Learned Deputy Government Advocate could not point out any provision of the law which may go to controvert the submissions made by learned counsel for the applicants.

13. For the reasons mentioned above, the application under Section 561-A Criminal Procedure Code is allowed and the order of this Court in Criminal Revision No. 186 of 1967 dated 24th August,1968 is hereby set aside.

