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Court : Kolkata

Decided On : Oct-15-1982

Reported in : 1983CriLJ279

Judge : B.C. Chakrabarti and ;N.G. Chaudhury, JJ.

Appellant : Mangal Chouhan

Respondent : The State

Judgement :

N.G. Chaudhuri, J.

1. In this petition under Section 401 read with Section 482 Criminal P. C., the petitioner, who describes himself as a carrying contractor, prays for quashing the F.I.R. in N.P.P.S. Case No. 18 dated 24-4-82 and investigation started by the Police on the basis of the said F.I.R. Without issuing any Rule, treating the petition as a contested application, we ordered stay of investigation till disposal of the petition on 6-7-82.

2. N.P.P.S. Case No. 18 dated 24-4-82 mentioned above is epilogue to S.P.P.S. Case No. 89 dated 13-4-82. The subject matter of both the cases is huge quantity of R.B.D. palm oil which is sold exclusively through public distribution system, that is to say through Ration Shops. For proper appreciation of the contentions raised it is necessary to narrate the facts in some details.

3. Promode Gupta, a partner of M/s. Bulichand Oil Mills informed O.C. Budge Budge P.S. by a letter dated 7-4-82 that their firm worked as tinning agents of S.T.C. of India Ltd, and in that capacity through their transport contractors, named in the letter, they made arrangements for lifting from Budge Budge installation 10.840 M.T. R.B.D. Palm oil in lorry tanker No. 4070 on 2-4-82 and storing and tinning the said palm oil in their godown on Manicktolla Main Road so that after tinning the palm oil the same could be distributed by S.T.C. through public distribution system. But the palm oil lifted was not actually delivered at their godown till the date of the letter. The O.C. Budge Budge sent the letter to South Port Police Station as the place of occurrence fell within the local limits of the said Police Station and S.P.P.S. Case No. 89 dated 13-4-82 under Section 407 I.P.C. was started against 9 persons including Bramhadeo Singh and Atma Singh who figure as accused in N.P.P.S. Case No. 18 dated 24-4-82. The petitioner Shri Chouhan alleges before us that on 23-4-82 as carrying contractor he had engaged Lorry No. W.B.L. 3740 to carry 176 tins of R.B.D. palm oil, gross weight of each tin being 16.5 kg., on behalf of 3 A.R. Shops being Nos. 3550, 3437 and 3659, all located in Lake Gardens, area from the godown of the storing agent of the E.C. Corpn. Ltd. at 300, Roy' Bahadur Road Calcutta-53 on the basis of indents and delivery orders issued by the competent authority. He alleges that after the goods were brought to A.R. Shop 3659 a dispute arose with the Lorry Driver over payment of freight, overtime charges etc., and in course of the said dispute the Lorry Driver without delivering the goods went back to his master at Jagannathghat. Calcutta for advice. In connection with S.P.P.S. Case No. 89 Police seized the aforesaid 276 tins of R.B.D. palm oil and the lorry and its driver Bramhadeo Singh and Khalasi Atma Singh were arrested. On behalf of the A.R. Shop owners a petition was made before the S.D.J.M., Alipore on 24-4-82 for release of the seized goods; and documents in support of the prayer were produced. The learned Magistrate called for a report from the I. O. On the very same day the driver and khalashi were remanded to police custody till 28-4-82 on the prayer of the I. O. The I. O. had difficulties in connecting the palm oil in 276 tins seized from lorry No. W.B.L. 3740 with the palm oil lifted in bulk in a lorry tanker No. B.R.B, 4070 and in that context the I. O. of S.P.P.S. Case No. 89 dated 13-4-82 suo motu lodged an information with the North Port Police Station being

N.P.P.S. (E.B.) Case No. 18 dated 24-4-82 under Sections 120B/407/411/414 I.P.C. against lorry driver and khalasi earlier named and the present petitioner. In the said F.I.R. after making a reference to the S.P.P.S. Case the I. O. alleged that the investigation revealed that the petitioner had lifted 276 tins of R.B.D. Palm oil on behalf of 3 A.R. shops at 16.30 hrs. on 23-4-82 but instead of reaching the tins to the respective A. R, Shops conspired with the driver and khalasi of the lorry to commit criminal breach of trust and in furtherance of the conspiracy the driver brought the lorry with the said Mns to a place far away from the A.R. shops or the godown of M/s. G. S. Baxi but very close to Postabazar well known for wholesale trade in edible oils. In the F.I.R. it was emphasized that R.B.D. palm oil was to be marketed exclusively through public distribution system. It was suggested that the offenders were motivated by the desire to make huge profits by selling the palm oil in (black) market. The driver and khalasi were produced in the court of the C.M.M. on 25-4-82 in connection with the N.P.P.S. Case and were released on bail. The A.R. Shops owners filed a petition for return of the lorry but the learned Magistrate called for a report by 28-4-82. On a petition under Section 401 read with Section 482 Cr. P.C. filed by the A.R. shop-owners in the High Court, Mrs. Justice Nag on 28-4-82 ordered release of the seized tins of R.B.D. palm oil on furnishing a bond to the satisfaction of the C.M.M. and the tins were as a matter of fact released on 30-4-82. On 27-4-82 the I. O. prayed for discharge of the accused in S.P.P.S. Case No. 89 and they were discharged accordingly. On 16-6-82 a petition was filed before the learned Chief Metropolitan Magistrate for copy of seizure list under Section 165(5) Cr. P.C. and on 25-6-82 the police forwarded a copy of the seizure list. On 28-6-82 Joyanta Das alleged to be the manager of one of the A.R. shops earlier referred to was arrested and remanded to jail custody till 1-7-82. On 29-5-82 Joyanta Das was released on bail. On 2-7-82 the petitioner obtained an order of anticipatory bail from this Court. As A.R. Shops Nos. 3437 and 3550 were outside the local limits of the Port Police on 15-6-82 an order was obtained from Mr. Justice D. K. Sen permitting the police to investigate the N.P.P.S. case referred to. Before that Joyanta Das had expressed a desire to make a confession and at that stage an order was obtained from Mr, Justice B. C. Ray slaying further proceedings, An appeal against the said order, we are informed, is still pending. As a matter of fact because of the orders of Mr, Justice Ray and of this Bench the

investigation of the case is at a halt now. Against the background of sequence of facts noted above Mr. Dutt the learned Advocate for the petitioner contends that there is no reason to believe that the F.I.R. Dt. 24-4-82 has any factual basis and there is a case to investigate. He develops his arguments in the following fashion. Although the F.I.R. in its heading mentions offences under Sections 407 and 411 I.P.C. which are cognizable mere mention of the sections does not make a case worthy of investigation. To merit investigation, he argues, narration of facts given in the F.I.R. must disclose elements of a cognizable offence and they are conspicuously absent in the present case. He relies on the observations made particularly in paragraph 10 of the Supreme Court decision in the case of State of W. B. v. Kwapan Kumar reported in AIR 1982 SC 949 : (1982 Cri LJ 819). He points out that the F.I.R. herein was made suo motu by a Police Officer on suspicion without the precise knowledge of facts. He argues that A.R. shops-owners on whose behalf the tins of R.B.D. palm oil were lifted from the godown of M/s. B. S. Baxi on presentation of necessary documents and on payment of price for distribution amongst ration card holders became owners of the tins lifted. To fortify his contention he refers to the decisions of this High Court in case of Ghasiram v. State reported in AIR 1967 Cal 508 : (1967 Cri LJ 1599) and of the Supreme Court in the case of Stale of Gujarat v. Jaswant Lal reported in AIR 1968 SC 700 : (1968 Cri LJ 803). He emphasizes that none of the A.R. shop-owners made any complaint or grievance to the police or to any court that criminal breach of trust was commit led by anybody in respect of tins of oil lifted on their account and on their behalf. Mr. Dutt submits with force that elements of offences under Section 407 or 411 I.P.C. were by no stretch of imagination disclosed. In this connection he points out that on the prayer of the self same officer who made the F.I.R. dated 24-4-82 the driver and cleaner of the lorry were discharged by the S.D.J.M. Alipore, in connection with S.P.P.S. Case No. 89 Dt. 13-4-82. Having prayed for discharge of the said driver and cleaner in the earlier case. Mr. Dutt argues, the I. O. with any pretence to consistency could not assert that the case had a firm basis to merit investigation. On the basis of the case of King Emperor v. Nazir Ahmed reported in (1945) 49 Cal WN 191 : (1945-46 Cri LJ 413) R.R. Kapur v. State of Punjab reported in AIR 1960 SC 866 : (1960 Cri LJ 1239) Bal Gopal v. State of W. Bengal reported in (1982) 1 Cal HN 112 and State of West Bengal v.

Swapan Kumar reported in AIR 1982 SC 949 : (1982 Cri LJ 819) he contends that when the F.I.R. does not prima facie disclose elements of a cognizable offence the court will have every jurisdiction to quash the F.I.R. and also to quash investigation started on the basis of a worthless F.I.R. Finally on the basis of the contents of the F.I.R. Dt. 24-4-82 in N.P.P.S. Case No. 18, and placing reliance on the decision noted above, Mr. Dutt submits that this is a fit case where the Court will in the interest of justice quash the F.I.R. and investigation started pursuant to the same.

4. Mr. Chatterjee learned Standing Counsel, on behalf of the State does not dispute the proposition that in appropriate cases the Court in exercise of its inherent jurisdiction can stop investigation pursuant to an F.I.R. He only adds that in Khaja Nazir Ahmed's case cited earlier it has been observed that it is of utmost importance that judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them a duty of inquiry. It has been recognized that in India there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authority. In the said case, he points out, it has been observed that it would be an unfortunate result if it should be possible to interfere with those statutory rights by exercise of the inherent jurisdiction of the Court. He submits that this aspect of the right of the police to investigate a cognizable offence reported and the power of the court to stop investigation in appropriate cases has been explained again in R.P. Kapur's case. He submits that a careful reading of the decisions on the subject will indicate that the court will ordinarily allow the Police to carry on its statutory rights of investigation, only in a very limited category of cases, after careful scrutiny, the Court can and should exercise its inherent jurisdiction to quash investigation. He refers to the cases of Hazarilal v. Rameswar reported in AIR 1972 SC 484 : (1972 Cri LJ 298) and State of Bihar v. J. A. C. Saldhana reported in AIR 1980 SC 326 : (1980 Cri LJ 98).

5. Mr. Chatterjee continues to argue that according to decisions already cited in a category of cases where the allegations made in the F.I.R. even if taken at their face value and accepted in their entirety do not constitute the offence alleged, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow investigation to proceed. Although Mr. Dutt has argued that the case under

consideration comes within the above category, Mr. Chatterjee submits that it is not so.

6. Mr, Chatterjee before analysing the F.I.R. in question contends that it is possible for the police in course of investigation of a coenizable offence to submit charge-sheet against the accused for an offence not mentioned in the F.I.R. hut allied in nature to the offence mentioned actually. He also contends that it is again possible that narration of facts in the F.I.R. discloses elements of a cognizable offence but such offence with penal provision therefor has not been mentioned in the F.I.R. and in such cases the police will be within its statutory right to carry on the investigation.

7. Mr. Chatterjee then places before us the F.I.R. of N.P.P.S. Case No. 18 Dt. 24-4-82. In the opening position of F.I.R. he points out reference has been made to S.P.P.S. Case No. 89 Dt. 13-4-82 in connection with which the tins of R.B.D. Palm oil with the lorry No. W.B.L. 3740 were seized. He argues that although the accused in the S.P.P.S. case have been discharged from custody, police has not submitted any final report. In this connection he points out that in paragraph 2 in the affidavit in opposition by the State it has been stated that some tins seized had labels pasted on them in writing 'Dulichand Oil Mills' and it was thought that they were part of the stolen property in respect of which complaint giving rise to S.P.P.S. Case No. 89 Dt. 13-4-82 under Section 407 was made. He points out that the driver and cleaner of the lorry namely, Brahma' dev Singh and Atma Singh have been named as accused in both the F.I.R,

8. Mr. Chatterjee then places before us the second paragraph of the F.I.R. No. 18. It is true, he admits, the A.R. shop owners - have not made any complaint regarding theft or criminal breach of trust in respect of tins of oil lifted on their account. In paragraph 2 of the affidavit in reply, he points out, it has been stated that the statement of the driver and the documents seized made out a prima facie case of offences mentioned in the F.I.R. It is significant that the lorry with tins of oil was seized on Jagannath Ghat far away from the area wherein the A.R. shops in question are located or from the godown of M/s. Baxi on Rai Bahadur Road. Behala. At page 4 of the affidavit-in-reply, he points out, it has been stated that

A.R. shop owners did not represent to the S.D.J.M. Alipore in connection with the S.P.P.S. case that they had engaged Mangal Chouhan as carrying contractor to lift goods on their behalf from any godown. Again, if Mangal Chouhan was really the carrying Contractor, the driver had no occasion or reason to drive the lorry to Jagannath Ghat with goods from Lake Gardens area on the score of dispute relating to freight charges; the dispute was to be sorted out between Mangal Chouhan and owner of lorry, not between the A.R. shoo owners and the owner of the lorry. He points out that on 23-4-82 at 22-44 hours a letter was delivered to Lake P. S. purporting to bear signatures of two A.R. shop owners and also of the 3rd A.R. shop owner Jayanta Das. Signature of Jayanta Das transpired to be forged, he was arrested on 28-6-82 he made a statement that on 23-4-82 he was at his Diamond Harbour residence and letter dated 23-4-82 did not contain his signature; at page 5 of the affidavit-in-opposition it has been alleged that Jayanta Das was about to make a confession on 1-7-82. These features of the case Mr. Chatterjee argues afford reasonable cause to believe that the three accused in conspiracy with each other committed offences alleged in paragraph 2 of the F.I.R. He contends that if in course of investigations, the A.R. shop owners exculpate the accused, the police will have occasion to submit final report. But at the present stage it cannot be said that the F.I.R. does not disclose a cognizable case to merit investigation.

9. Regarding the discharge of the two accused in S.P.P.S. Case No. 18 by S.D.J.M. Alipur, it is pointed out that they were produced in custody according to prevalent practice before S.D.J.M. Alipur on 24-4-82 during early hours of the day. But after the accused were despatched and after recording the statement of accused Brahamdeo the I. O. had to leave for the oil godown of G. S. Baxi for investigation and seized some documents and examined a witness. The documents were seized around 12 midday and thereafter it appeared that case under sections mentioned in F.I.R. No. 18 were likely to be made out. It is emphasized that Mongal Chouhan was all the time evading arrest.

10. Mr. Chatterjee then places before us the third paragraph of the F.I.R. where it has been alleged that R.B.D. Palm oil is not an open market commodity and is marketed exclusively through public distribution system, that is, through ration

shops and the offenders in collusion with the receiver of the same attempted to sell the same in black market actuated by the motive of earning huge profits. He contends that in the heading of the F.I.R. no offence under the Essential Commodities Act, 1950 has been mentioned, although ingredients of such offence have apparently been disclosed. He refers us to paragraph 3(b) of the West Bengal Rationing Order 1964, the connected modification and Section 10A of the said Act making offences under the Act cognizable. Mr. Chatterjee submits finally that the different paras of the F.I.R. considered together against the background of facts and circumstances discussed by him lead unerringly to the conclusion that foundations of cognizable offences under different statutes have been disclosed in the F.I.R. to merit investigation by the police in exercise of their statutory duty and right.

11. On a consideration of the decisions of the Privy Council and the Supreme Court cited before us we reach the conclusion that ordinarily when a cognizable crime is reported to the Police, it will be their statutory duty and right to investigate into the offence reported, and Courts should be reluctant to interfere in the exercise of that duty, although the courts have the inherent jurisdiction or power to interfere. Such interference may be exercised with justification in a very limited variety of cases, and only with great care and circumspection, one variety of cases deserving interference by the courts in investigation undertaken by the police comprises those cases where the F.I.R. taken in its entirety and accepted at its face value does not disclose elements of a cognizable case. In the present case reading the F.I.R. dated 24-4-82 in N.P.P.S. Case No. 18 and considering the background and setting in which it was made we cannot hold that the F.I.R. docs not disclose prima facie commission of a cognizable offence by the accused named and that the allegations are so unsubstantial and flimsy that the case does not deserve to be investigated. Anxious as we are not to influence the course of investigation in any way, we refrain ourselves from making any comment on the nature of the case disclosed, but facts and features of the case discussed support a reasonable belief that the offences alleged have been disclosed. We are not unmindful of the possibility of police submitting a final report after proper investigation of the case. In any event we do not think that this is fit case where the F.I.R. and investigation undertaken pursuant thereto should be quashed. We

should exphasize that investigation will not handicap anybody during its continuance. The lorry has been released, seized tins of R.B.D. Palm oil have also been released. Some of the accused have been already released on bail and some have obtained orders of anticipatory bail. Still the case deserves to be investigated on account of the nature of articles forming the subject matter of the case, the mode and manner of their diversion from their normal destination, the possible motive for such diversion and for the details of the case as disclosed in the F.I.R.

12. We do not, therefore, feel persuaded, in consideration of the law on the subject and facts discussed, to grant the prayer of the petitioner that is to say to quash the F.I.R. and to slop further proceedings in investigation in connection with N.P.P.S. Case No. 18 dated 24-4-82. In the result the Revision Petition fails and is dismissed on contest. The order staying further proceedings is recalled and vacated. Similar petition filed by the co-accused Brahmadeo Singh the driver of the lorry No. W.B.L. 3740 is also dismissed, Inform.

B.C. Chakrabarti, J.

13. I agree.

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