

(1959) 11 AHC CK 0004

Allahabad High Court

Case No: Criminal Miscellaneous No. 1592 of 1959

Textile Traders Syndicate Ltd.,
Bulandshahr

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 9, 1959

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 550, 94, 95

Citation: AIR 1960 All 405

Hon'ble Judges: A.P. Srivastava, J

Bench: Single Bench

Advocate: K.L. Sharma, for the Appellant; Asst. Govt. Advocate, for the Respondent

Final Decision: Partly Allowed

Judgement

This Judgment has been overruled by : [State of Maharashtra Vs. Tapas D. Neogy](#), (1999) 98 CompCas 626 : (1999) CriLJ 4305 : (1999) 3 CTC 350 : (1999) 7 JT 92 : (1999) 5 SCALE 613 : (1999) 7 SCC 685 : (1999) 2 SCR 609 Supp : (2000) 1 UJ 431

@JUDGMENTTAG-ORDER

A.P. Srivastava, J.

This is an application u/s 561-A, Cr. P. C. The prayer is that two orders, one passed by the opposite party No. 4 on 24-10-1958 u/s 550 Cr. P. C. and the other passed by the opposite party No. 2 on 31-10-1958 u/s 95 Cr. P. C., be quashed.

2. The applicant is a limited company known as Textile Traders Syndicate Ltd. Bulandshahr and has filed the application through Sri K.L. Sharma, its Managing Director. The district authorities suspected that the applicant company was a bogus company and that certain offences punishable under Sections 420 and 406 I. P. C.

had been committed in connection with it by its Managing Director Sri K. L. Sharma. Sri Dwarka Singh opposite party No. 4, detective inspector of the C.I.D. Investigating Branch was therefore authorised to investigate the matter. He started investigation and found that an account had been opened in the name of the company with the Punjab National Bank of Bulandshahr.

He reported to the District Magistrate that certain parcels, letters and money-orders had been received and were being received by the post office at Bulandshahr in the name of the company which were required in connection with the investigation that he was carrying out. On 28-5-1958 the District Magistrate passed an order u/s 95 of the Cr. P. C., but that order was quashed in part by this Court on 16-10-1958. Soon after that on 31-10-1958 the opposite party No. 2 passed an order which reads thus:

"Whereas an investigation for offences under Sections 420/406 I. P. C. is being carried out by Sri Dwarka Singh, Detective Inspector, C. I. D., Investigation Branch, Agra, against the firms M/s Textile Traders Syndicate. Bulandshahr and New Saraswati Sugar Mills, Bulandshahr which are reported to be bogus firms and whereas letters and parcels etc. have been and are being received in your office (office of the Post Master, Bulandshahr) addressed to the aforesaid firms and offences have been and are being committed in respect of the same and whereas in my opinion such letters and parcels etc., are necessary and are wanted for the purposes of the aforesaid investigation.

I, S.N. Mehrotra, I. A. S. District Magistrate, Bulandshahr therefore, hereby order you (Post Master, Bulandshahr) u/s 95(i) Cr. P. C., to deliver such letters and parcels etc. to the aforesaid Sri Dwarka Singh for the purpose of the aforesaid investigation.

My order u/s 95 Cr. P. C. dated 28-3-58 on the subject is hereby cancelled."

3. On 24-10-1958 the opposite party No. 4 Sri Dwarka Singh addressed an order u/s 550 of the Cr. P. C. to the Manager Punjab National Bank, Bulandshahr, which reads thus:

"In connection with the investigation of Cr. Case No. 148 of 1958 under Sections 420/406 I. P. C. of P.S. Kotwali, Bulandshahr which is pending with me it has been found that a current account in the name of M/s Textile Traders Syndicate Ltd., Bulandshahr is lying in your bank. The investigation has revealed that the above mentioned firm is bogus and the amount to its credit in your bank has been earned by committing offences of cheating etc.

I would inform you that the amount to the credit of the above mentioned firm has been seized by me under S, 550 of the Cr. P. C. and it should not be paid to any person till further orders."

4. The applicant contends that the two impugned orders quoted above are not valid in law and should be quashed.

5. So far as the order passed by the District Magistrate opposite party No. 2, u/s 95 Cr. P. C. is concerned two objections are taken. It is urged in the first place that the order is vague as besides the words "letters and parcels" the District Magistrate has used the word "etc." also and on account of the use of that word the Post Master has withheld certain money orders which had been received for payment to the applicant. The argument is that the District Magistrate had no right to pass any order in respect of money orders u/s 95 of the Code.

The second contention is that the order of the District Magistrate covers: not only the letters and parcels which had been received before order was passed and which alone could be needed in connection with the investigation but also covers letters and parcels which were received subsequently. It is argued that u/s 95 Cr. P. C. the District Magistrate had no authority to pass any orders for withholding letters or parcels which had not been received up to and may not even have been in existence on the date on which the charge-sheet was Submitted.

6. So far as the second objection is concerned, the learned counsel who appears for the State concedes its force. Section 94 authorises the court or investigating officer to require a "person" who has in his possession or power a document or thing necessary or desirable for the purposes of investigation to produce that document or thing. That section does not apply to a document, parcel or thing in the custody of the Postal or Telegraph authorities. Section 95 was, therefore, enacted to provide the same powers in respect of documents, parcels or things in the custody of the Postal or Telegraph authority.

Those authorities cannot be directed to produce the document or thing in court or before the investigating officer. They can only be directed to deliver this to a person nominated by the Magistrate, or court or to detain them pending order. The two sections must be read and interpreted together as they form one group. It is, therefore, obvious that the documents and things contemplated by Section 95 are those which are necessary for the purpose of investigation, inquiry, trial or other proceeding and are in the custody of the postal or telegraph authorities. They can be in such custody only if they are in existence. Document or things not in existence which are to come into the custody of the authorities in future cannot, therefore, be the subject-matter of an order u/s 95.

7. As regards the first objection there can be no doubt that the use of the word "etc." is extremely vague and the word is liable to be misinterpreted. The District Magistrate should have clearly specified what things besides letters and parcels he wanted the postal authorities to deliver to Sri Dwarka Singh. While passing the order he should not have left the matter vague to be decided by the postal authorities according to their own lights. The result of the vague order passed has been that the Post Master has refused to deliver to the applicant money orders received for him also. From the order of the District Magistrate himself one cannot be certain whether it was his intention to include money orders also in the order which he

passed.

The question whether an order in respect of money orders could be passed u/s 95 Cr. P. C. was raised when this case was before this Court on the earlier occasion i.e., on 16-10-1958 but was left open at that time as even, now as the District Magistrate has not passed any specific order relating to money orders but has left the matter vague it does not appear to be necessary to go into that question. But the portion of the order which is vague and is on that account liable to be misinterpreted must, in my opinion, be quashed on account of its vagueness.

8. So far as the order of the District Magistrate dated 31-10-1958 passed u/s 95 Cr. P. C. is concerned, therefore, the order is liable to be quashed so far as it relates to future letters and parcels and also in respect of the other things which the order was intended to cover but which were not specifically mentioned in it. It can, therefore, operate only in respect of letters and parcels which had been received by the post office for delivery to the applicant before the order in question was passed.

9. As to the order of the investigating officer Sri Dwarka Singh passed u/s 550 Cr. P. C. the main objection appears to be that it was not covered by the provisions of Section 550 of the Code at all and could not have been passed under that provision. Section 550 of the Code reads thus:

"Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer."

10. The words emphasised and relied upon on behalf of the applicant are "seize" and "property". The argument is that the use of these words shows that what was contemplated by the section was movable property of the nature mentioned in the section which could actually be seized by the police officer. Here the police officer has not actually seized any property. What he has done is that he has directed the bank with, which the applicant had an account not to pay any amount out of that account to the applicant till further orders. The question is whether such an order could be passed u/s 550 of the Code already quoted and can amount to seizure of property.

11. According to its dictionary meaning the word "seize" means "to lay hold of suddenly or forcibly; to take hold of; to reach and grasp; to clutch". It was meant "to take possession of, or appropriate, in order to subject to the force or operation of a warrant, order of court, or other legal process."

12. A reference to some of the other provisions of the Cr. P. C. also shows that the word "seizure" has been used in the Code in connection with the taking of actual physical possession of movable property. For instance, in Section 88 where attachment is provided for Clause (8) relates to a debt or other movable property.

The attachment of such property can, be made (a) by seizure, or (b) by the appointment of a receiver, or (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf, or (d) by all or any two of such methods, its the Court thinks fit. Here it appears to be obvious that the first method has been used with reference to moveable property. The second and third methods have been used with reference to debt or other moveable properties which are not capable of actual seizure. Clause (4) of the section applies to Immovable property. There also several methods have been, mentioned which are to be followed in connection with the attachment of such property.

But in Sub-clause (e) the words used are not "seizure" but "of taking possession". So that where the property concerned was movable property of which actual physical possession could be taken, the word used was "seizure" but where the property concerned was Immovable property the words used were "taking possession".

13. In Section 103, Clause (2) there is a provision for preparing a list of property found at the time of a search. There too it will be found that the word "seized" had been used for moveable properties found at the time. These uses of the word "seize" appear to be in consonance with the dictionary meaning of the word i.e. taking in actual physical custody. There appears to be no reason why in Section 550 the word should be interpreted in any different sense.

14. If, therefore, the word "seize" was used in Section 550 in the sense above mentioned it is obvious that it could only mean the act of taking actual physical possession of the property capable of being so possessed.

15. Here what the opposite party No. 4 has done appears to be that he has issued a prohibition directing the bank not to pay any amount to the applicant. He has not in fact seized any amount. In fact there appears to have been no amount or money which could have been seized. When the applicant opened an account with the bank he gave some money to the bank. The money could not be claimed by him in specie. The money could be utilized by the bank in any manner it likes. The only liability which the bank undertook was that it agreed that whenever the applicant demanded it would pay him an equivalent sum either in full or in part.

The bank really became a debtor of the applicant to that extent. It was not necessary for it to keep any money always in hand in anticipation of any demand to be made by the applicant, When the applicant actually made a demand it could procure the necessary amount from anywhere and pay it to the applicant. In the circumstances it cannot be said that there was any "property" with the bank of which actual physical possession could be taken. Section 550 does not appear to contemplate a police officer prohibiting the payment or a debt by a debtor to the accused person.

If that can be done it may create unnecessary complications. For instance, if after stealing Rs. 1,000/- an accused person lends it on a mortgage or a bond to some one who borrows it for saving his property from being sold in execution, of a

decree. Can the police officer who is investigating the case of theft direct the debtor that he should not pay the money for the satisfaction of his decree and allow his property to be sold in execution of the decree?

AS long as the money is in the possession of the thief and capable of seizure it may be open to the police officer to seize it on the ground that it was or was suspected to be stolen property but once it passes into the hands of the debtor and the money becomes unidentifiable there can be no question of its being seized by the police officer.

16. Learned counsel for the State relied on *Nizam of Hyderabad v. A. M. Jacob*. ILR Cal 52. In that case some bank notes had been stolen. Some of them had been converted into currency notes of another kind. An order was passed u/s 94 of the Code requiring the bank notes and the currency notes received by conversion to be produced in Court. The order was questioned in the High Court and it was held that there, was nothing invalid about it.

The case is distinguishable from the one in hand on two grounds. In the first place, the order was passed by a Magistrate u/s 94 and not by a police officer u/s 550. Section 94 appears to be wider than Section 550 because it applies to "anything". Secondly, in that case the property in question was capable of physical possession. The bank notes were the same in respect of which an offence was alleged to have been committed.

The money which had been received by converting some of those bank notes was also available in specie and could be produced in Court. It was not a case of a debt which was sought to be seized. That case is, therefore, not of much help to the State.

On the contrary in *Emperor v. Bithal Nath* 15 Cri LJ 177: (AIR 1914 Oudh 230), a police officer suspecting that an offence had been committed in respect of certain logs which had been consigned by rail instead of seizing the logs directed the station master not to deliver it to any one and to forward the consignment to some other place.

It was held that no such directions could be issued u/s 550. The directions issued by the opposite party No. 4 in the present case appears to be of the same nature as the directions which had been issued by the police officer in that case.

17. It, therefore, appears to me that the applicant is correct in his contentions that the orders passed u/s 550 of the Code by the police officer could not be passed under that provision and must be quashed on that account.

18. It is prayed that action be taken against the opposite parties for circumventing and violating the order already passed on 16-10-1958. I am, however, not satisfied that any such violation of the order of that date has been made by the opposite parties as calls for any action. The orders now being questioned are independent

orders-passed after the earlier application had been decided. In the earlier application some portions of the order questioned had been quashed but no directions had been issued which could be disobeyed. Therefore, there can be no question of violating or disobeying those orders. This prayer cannot, therefore, be granted.

19. In the result the applicant succeeds in part. The order of the opposite party No. 4 passed on 24-10-1958, a copy of which is annexure "C" of the application, is quashed. The order passed by the District Magistrate opposite party No. 2 on 31-10-1958 is quashed to this extent that it cannot apply to letters or parcels received after the date of the order and will also not apply to anything other than letters and parcels. It is. ordered accordingly.