

(1958) 10 AHC CK 0016

Allahabad High Court

Case No: Criminal Miscellaneous No. 1637 of 1958

Textile Traders Syndicate Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Oct. 16, 1958

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 155, 156, 51, 523, 551

Citation: AIR 1959 All 337 : (1960) 30 AWR 158 : (1958) 28 AWR 837 : (1959) CriLJ 668

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

Bench: Single Bench

Advocate: S.N. Misra and D. Sanyal, for the Appellant; Govt. Advocate, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

A.P. Srivastava, J.

This is an application u/s 561 A of the Code of Criminal Procedure, The allegations with which it has been made are that the applicant is a public limited company which carries on the business of sugar factory in the name of New Saraswati Sugar Mills in Saraswati-nagar, thana Jahangirabad, district Bulandshahr. Certain disputes arose between the applicant and Sri Dwarka Singh, a Police Inspector of the Criminal Investigation Department, on account of which, it is the case of the applicant, Sri Dwarka Singh got offended.

He therefore submitted a report to the District Magistrate of Bulandshahr and the latter authorised him to investigate into certain offences including the offences of cheating and forgery which were alleged to have been committed by certain directors of that applicant company. In connection with that investigation an order has been passed by the District Magistrate of Bulandshahr, a copy of which is annexure "E" to the petition.

By that order, which purports to have been passed u/s 95 of the Criminal Procedure Code, the District Magistrate has directed the Post-master of Bulandshahr to "withhold" delivery of all letters, money orders, parcels or any other postal communication addressed to any of the two bogus firms (M/s Textile Traders Syndicate Ltd., Bulandshahr_ mentioned above till the decision of the case against these firms. These letters, money orders & parcels etc. may be shown to Sri Dwarka Singh, D.I, C.I.D., I.B., Agra, who is investigating the case". Another order, it is alleged, was passed by the Sub-Divisional Magistrate of Bulandshahr at the instance on Sri Dwarka Singh on 28-5-1958. That order purports to have been passed u/s 523, Cr. P. C. and by it the Sub-Divisional Magistrate directed the Manager of the Punjab National Bank of India, Bulandshahr "to keep the balance of the date to the credit of these firms in your custody and not to pay it to any person till the decision of the case against these firms. The firms referred to were the same firms in respect of which the order u/s 95 of the Code had been passed.

2. It is contended on behalf of the applicant that Sri Dwarka Singh was not authorised in law to conduct any investigation and everything which he is doing is really without jurisdiction. It is also contended that the orders which have been passed by the District Magistrate and the Sub-Divisional Magistrate under Sections 95 and 523 of the Criminal Procedure Code are not justified by the terms of those Sections. The applicant therefore wants the entire proceedings as well as the two particular orders above referred to be quashed.

3. A counter-affidavit has been filed by Sri Dwarka Singh in which the various allegations made against him by the applicants have been denied and it has been said that there were justifiable reasons for the action which Sri Dwarka Singh had taken and that the impugned orders were correct.

4. The first question that therefore arises is whether Sri Dwarka Singh is entitled to investigate into the allegations that the directors of the applicant company had committed the offences of forgery, cheating and misappropriation. It is contended on behalf of the applicant that the only provisions under which Sri Dwarka Singh could conduct an investigation are to be found in Sections 155 and 156 of the Code. Section 155 could not apply because it applied only to an investigation relating to non-cognizable cases.

Section 156, it is urged, could also not apply because it empowers only an officer-in-charge of a police station to do certain things. Sri Dwarka Singh, it is pointed out, was not such an officer. On the other hand, it is pointed out on behalf of the State that some of the offences in respect of which Sri Dwarka Singh is investigating are non-cognizable, e.g. the offence of forgery. In respect of such, offences he could be authorised by a Magistrate under Clause (2) of Section 155 of the Code to investigate.

In respect of the other offences which are of a cognizable nature Sri Dwarka Singh could exercise the powers of an officer-in-charge of a police station u/s 156 read with Section 551 of the Code because being an Inspector of police he is an officer superior in rank to an officer-in-charge of a police station and under the Manual of Criminal Investigation Department and G. O. No. 5081-24(1)/1938-Police, dated 27-12-1938, his jurisdiction extends throughout the State.

5. After hearing learned counsel for the parties it appears to me that the contention of the learned counsel for the State on this point is well founded. It is not disputed that Sri Dwarka Singh holds the rank of an Inspector of police and belongs to the Criminal Investigation Department. It must also be conceded that in view of the G.O. relied upon on behalf of the State, Jurisdiction extends throughout the State.

As he holds the rank of an Inspector it is obvious that his rank is superior to that of an officer-in-charge of a police station who is generally speaking a Sub-Inspector in rank. u/s 551 of the Criminal Procedure Code therefore Sri Dwarka Singh could exercise the powers of an officer-in-charge of a police station throughout the State of Uttar Pradesh.

As such he must be held to have been authorised to investigate in respect of cognizable offences, like cheating and misappropriation which the directors of the applicant company were alleged to have committed. So far as the non-cognizable offences, like forgery, were concerned, Sri Dwarka Singh was undoubtedly a police officer and if he had been directed by a Magistrate, to investigate in respect of non-cognizable offences he could do so under Clause (2) of Section 155 of the Code.

6. Learned counsel for the applicant relied in this connection on certain observations made in the case of Emperor Vs. Jehangir Ardeshir Cama, He also expressed a doubt as to whether Sri Dwarka Singh could be held to have been appointed in respect of a particular area within the meaning of Section 551 of the Code.

7. The case of Emperor Vs. Jehangir Ardeshir Cama, does not appear to be of any help to the learned counsel for the applicant. In that case the District Magistrate of Surat had certain suspicions against a Deputy Collector and Sub-Divisional Officer who had been working under him. He communicated with the Criminal Investigation Department and the Deputy Inspector General of Police placed the services of one Mr. Kothavalla at the disposal of the District Magistrate for making a confidential enquiry and submitting a report.

Mr. Kothavalla made the confidential enquiries and submitted a report. He also filed a complaint before the Acting District Magistrate Mr. Jayakar who directed Mr. Kothavalla to hold an investigation u/s 155(2) of the Criminal Procedure Code. Mr. Kothavalla again recorded the statements which he had already recorded while making the confidential enquiry and after examining some more witnesses submitted a charge-sheet on the basis of which the Deputy Collector was at first suspended and then tried for the offence punishable u/s 161 of the Indian Penal

Code.

A question that arose at the trial was whether the statements recorded by Mr. Kothavalla in the course of his confidential enquiry before he had been authorised to investigate into the offence u/s 155 of the Code could be considered statements recorded during the investigation for the purpose of Section 162 of the Code. It was held that they could not. It is not clear from the report as to what rank Sri Kothavalla held as a police officer.

The application of Section 551 of the Code was not considered and it was observed that so far as the statements recorded by him in the confidential enquiry were concerned they could not be held to have been recorded during any investigation and stood at par only with statements recorded during the course of a departmental enquiry.

The case cannot therefore be considered to be an authority for the proposition that an Inspector of police belonging to the Criminal Investigation Department cannot exercise the powers of an officer-in-charge of a police station so far as cognizable offences are concerned or that he cannot investigate into a non-cognizable offence even though he is authorised by a Magistrate for that purpose.

8. The contention that before Section 551 of the Code could come into play Sri Dwarka Singh should have been expressly appointed and the local area over which he was to exercise jurisdiction should have been specified also appears to be unacceptable. As soon as Sri Dwarka Singh was granted the rank of a police inspector in the Criminal Investigation Department he must be held to have been appointed to a post superior in rank to the post of an officer-in-charge of a police station for the purposes of Section 551.

His specific appointment for a particular purpose does not appear to have been necessary. The G.O. already referred to which has been relied upon on behalf of the State specified in a sufficient manner the area over which Sri Dwarka Singh could exercise jurisdiction as a police inspector. The area included the entire Uttar Pradesh, That the entire State can be considered to be a local area admits of no serious doubt. In the case of Lalta Prasad Saxena Vs. State, the expression "local area" used in Section 14 of the Code was held to be wide enough to include the entire State.

9. Learned counsel for the State drew my attention to certain observations made in the case of *Muthukumaraswami Pillai v. King Emperor*. ILR 35 Mad 397. In that case an inspector of the Criminal Investigation Department had been entrusted with the investigation of the murder of one Mr. Ashe. The murder was not alleged to have been committed in pursuance of a conspiracy but during the investigation the inspector of the criminal investigation recorded certain statements of witnesses which disclosed the offence of criminal conspiracy also.

At a subsequent trial of the offence of criminal conspiracy one of the questions that arose was whether the statements relating to criminal conspiracy could be considered to be statements recorded by a person legally competent to investigate the fact within the meaning of Section 157 of the Indian Evidence Act. That question along with several others name up before a Full Bench of five Judges and three of them held that an inspector of the Criminal Investigation Department was an authority legally competent to investigate the fact within the meaning of Section 157 of the Indian Evidence Act.

A notification of the Madras Government was referred to in that case also and according to that notification the Inspector of the Criminal Investigation Department had been authorised to exercise jurisdiction throughout the Presidency of Madras. The contention that the entire Presidency could not be a local area within the meaning of Section 551 of the Criminal Procedure Code was not accepted by the majority of the Judges constituting the Full Bench. It must therefore be conceded that the view taken by the majority on this point does support the contention put forward on behalf of the State before me.

10. The proceedings which are pending against the applicant cannot therefore be quashed on the ground that the investigation is being done by Sri Dwarka Singh without jurisdiction.

11. The second question that arises related to the order passed by the Sub-Divisional Magistrate on the 28th of May 1958 freezing the account of the applicant with the Punjab National Bank of India, Bulandshahr Branch. As has already been mentioned the Sub-Divisional Magistrate has passed the order u/s 523 of the Code of Criminal Procedure.

A reference to that Section will, however, show that the power of the Magistrate under that Section could be exercised only after the property had been seized by the police. In this case it is conceded that the amount which was lying to the credit of the applicant in its account with the Punjab National Bank had never been seized before the order of freezing dated the 28th of May 1958 was passed. Till the money had been seized, Section 523, Cr. P. C. did not come into play at all.

A direction u/s 523, Cr. P. C. could be issued only in respect of property which had been seized either u/s 51 of the Code or because it was stolen property. Even if it be assumed that the amount which has been frozen is stolen property within the meaning of the term as defined u/s 410 of the Indian Penal Code, till it was seized no order u/s 523 of the Code be passed in respect of it. This order of the 28th of May 1958 passed by the Sub-Divisional Magistrate u/s 523 of the Code therefore appears to be clearly invalid.

12. The third question which arises is about the order which has been passed u/s 95 of the Code directing the Post-master to withhold letters, money orders, parcels etc. addressed to the applicant company. Section 95 has to be read along with the

previous Section 94- Section 94, Clause (1) provides:

"Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

Clause (1) of Section 95 of the Code then provides:

"If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs."

Clause (2) of the Section then lays down:

"If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court."

It is this second Clause of Section 95 of the Code which is relied upon to support the order which has been passed in this case by the District Magistrate of Bulandshahr. An analysis of this Clause will show that before it can be utilised it is necessary,

(1) That the document, parcel or thing should in the opinion of a Magistrate be such that its production is necessary or desirable. This follows from the use of the word "such" before the word "document," which refers back to the first Clause of Section 94.

(2) The document, parcel or thing must be required for the purpose of investigation, inquiry, trial or some other proceeding. This follows from the use of the word "such" before the word "purpose" in the Clause.

(3) The decision that the document, parcel or thing is of that nature and is required for one of those purposes must be the decision of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session.

(4) The order under Clause (2) of Section 95 can be passed not by the District Magistrate, Chief Presidency Magistrate, High Court or Court of Session making the

decision above mentioned but by some other Magistrate. That other Magistrate can pass an order under that Section only so that the document, parcel or thing should be available pending the orders of the District Magistrate, Chief Presidency Magistrate or Court who is of opinion that the document, parcel or thing will be required for purposes already mentioned.

In the present case it will be noticed that the District Magistrate of Bulandshahr has nowhere stated that he was of opinion that the production of letters, parcels or money orders etc. in respect of which he was passing the order u/s 95 Cr. P. C. were necessary to be produced in connection with any investigation, inquiry, trial or other proceeding. The only thing which he said in the order is that he had received information that certain offences had been committed and were to be committed.

Obviously he had not applied his mind to the question whether the letters, parcels or money orders etc. in respect of which he was issuing the order were necessary to be produced for any of the purposes mentioned in Section 94 of the Code or not. Simply because he had received some information in respect of the commission of some offences it does not follow necessarily that the production of such documents or things was necessary for all or any of those purposes.

13. It will also be noted that in this case it is the District Magistrate himself who has passed the order in question and not any other Magistrate.

14. It is also questionable whether "money orders" can fall under expression ""Document, parcel or things." If by money order is meant the money order form, that always remains with the Post Office and is never delivered to the payee or to the remitter. That is the property of the Post Office. If by money order is meant the amount which is mentioned in the money order form it is difficult to see how it can be called a document, parcel or thing. The money is obviously not a document or parcel. It is also not easy to see how it can be considered to be a "thing" because the money in species handed over to the Post Office by the remitter is never meant to be delivered to the payee. However, that is a point on which it is not necessary at present to express any final opinion.

15. In any case therefore the order passed u/s 95 Cr. P.C. is not a strictly correct order and could not have been passed under the provisions under which the District Magistrate purported to have passed it.

16. The result is that the application can succeed only in part. It is not possible as requested by the applicant to quash the investigation proceedings that are going on against it. That part of the application must fail. The orders passed under Sections 95 and 523 of the Code i.e. the order of the District Magistrate dated the 28th of May 1958 and the order of the Sub-Divisional Magistrate dated the 28th of May 1958, are, however invalid in law and are liable to be quashed. They are accordingly quashed.