(1995) 09 MP CK 0024

Madhya Pradesh High Court

Case No: Criminal Rev. No. 124 of 1993

State of M.P.		APPELLANT
	Vs	
Rajendra Singh Rathour		RESPONDENT

Date of Decision: Sept. 20, 1995

Acts Referred:

- Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 - Section 24, 26, 39

Citation: (1996) JLJ 217 : (1995) 2 MPJR 405 : (1997) 1 MPLJ 561

Hon'ble Judges: Ramesh Surajmal Garg, J

Bench: Single Bench

Advocate: A.P. Singh, for the Appellant; Imtiaz Hussain and Prashant Gupta, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Garg, J.

This is a revision by the State Government against the order dated 7-12-1992 passed in Sessions Trial No. 201 of 1992, by the learned Sessions Judge, Sehore, inter alia holding that the order dated 12-4-1991 does not meet the requirements of Section 39 of the M.P. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam (Act No. 35 of 1982), therefore, the prosecution is not entitled to continue against the non-applicant.

It is not in dispute that on 25-3-1991, D.O. letter No. 170/Reader/91 was sent by the Collector, Sehore, along with a copy of the earlier letter dated 3-12-1990, bearing No. 1240/1244/Steno/90, to the Commissioner. On receipt of the letter dated 25-3-1991, the Commissioner, Bhopal, asked for certain informations which were communicated to him telephonically. After considering these two letters and the telephonic instructions, the Commissioner, Bhopal, ordered that a case be

registered against the miscreants and the same be investigated in accordance with law. On the back of the letter dated 12-4-1991, there is an endorsement which reads that the Collector should supply copy of the Khasra and registered documents to the office of the Commissioner and should also send the said copies to the Superintendent of Police.

Under the cover of the letter dated 12-4-1991, the Collector, Sehore, by his letter dated 25-10-1991, bearing No. 1612/Steno/91, directed the District Registrar to lodge a complaint in Police. In pursuance to the Collector''s direction, the District Registrar sent a letter/complaint dated 2-11-1991 to the Station House Officer, Police Station, Sehore, informing him that Rajendra Rathore had committed breach of the provisions of Section 24(a) of the Act in relation to certain agricultural lands bearing survey Nos. 326, 332/1 and 326/7 of village Murli, which is adjoining the borders of the Municipal limits of Sehore Municipality. The said letter dated 2-11-1991 was registered as the first information report. A challan was filed before the trial Court and the non-applicant submitted before the Court that the order dated 12-4-1991 was illegal, it does not show application of mind, so also the Court cannot take cognizance of the matter. The trial Court discharged the accused person.

Shri A.P. Singh, learned Panel Lawyer submitted that the letter dated 12-4-1991 meets the norms and standard required u/s 39. He also submitted that at this stage, the Court should not have examined the said order so meticulously but should have proceeded with the trial. On the other hand, Shri Imtiaz Hussain contended that if the very foundation u/s 29 of the Act is vitiated, the Court is not competent to take cognizance of the matter.

It would be useful to quote the language of Section 39 of the Act as it stood in the year 1991 :

"39. Cognizance of offences. -- All offences under this Act shall be cognizable :

Provided that the Police Officer shall not investigate an offence under this Act except on a direction of the prescribed authority not below the rank of the Commissioner of Division on a report submitted by him to such authority."

For the purposes of investigation, a Police Officer is required to make a report to the authority which shall not be below the rank of the Commissioner of the Division. In the instant case, it is not in dispute that the Police Officer who investigated into the matter, before entering into the investigation, did not submit a report to such authority. In the absence of the report of this nature, even the Commissioner is not competent to take cognizance of the matter and direct investigation. The jurisdiction of the Commissioner to direct investigation comes in more only if the Police Officer competent to investigate makes a report to him regarding these matters. It is clear from the facts on the case that the Collector, Sehore, wrote the letter dated 25-3-1991 to the Commissioner and asked him to grant sanction for investigation.

The Collector clearly acted beyond his jurisdiction. If the Collector was of the opinion that offences of this nature are growing up, then too he cannot make a complaint directly to the Commissioner. He should have firstly informed the Police Officer to make an application before the Commissioner putting all the facts and then to seek permission for investigation.

Even otherwise, the order dated 12-4-1991 prima facie does not show application of mind. A perusal of the order shows that the material which was required for coming to a positive conclusion was never placed before the Commissioner. The khasra entries and the registered documents showing involvement of the present non-applicant in an offence under the Act were never placed before the Commissioner. It is important to note that the offences relating to illegal colonization fall under Chapter VIII of the Act. Section 24 relates to definitions. ''Colonizer'' according to the definition, means a person who, in a local area, after taking no objection certificate or prior permission in writing, as the case may be .... from the competent authority develops a colony. It further provides that no person shall undertake the establishment of colony unless he on payment of such fee as may be prescribed for registration of colonizers obtains a licence of colonization from the Collector of the revenue district in which the land is situated.

The word ''local area'' is defined u/s 24(b) of the Act, as an area comprised within the limits of a Municipal Corporation, a Municipality Class I, urban agglomeration or nazul area comprised in such limits and shall include a planning area notified u/s 13 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, within or appurtenant to such limits. It is also not disputed that the land situate in village Murli which is not a part of the Municipal Corporation does not fall within the Municipal limits of the Sehore Municipality. Even for the purposes of Section 13 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, there is no evidence on record to show that the area falls within the said zone. Prima facie the area cannot be regarded as Nazul area, nor does it fall within the urban agglomeration. This material fact that the lands in relation to which the offence is alleged, are situated in village Murli, was never placed before the Commissioner. The Act regarding illegal colonization is applicable to those areas which fall within the mischief of Section 24(b), i.e., local area. If this fact was brought to the notice of the Commissioner, the sanctioning authority, he might not have granted sanction for investigation. Be that as it may, the fact remains that the area in which the alleged colonization is going on does not fall within the definition of local area as given u/s 24(b).

Section 26 of the Act relates to offence of illegal colonization. It reads :-

"A colonizer who divides into plots his land or the land of any other person with the object of establishing a colony in breach of the requirements contemplated in clause (a) of Section 24, commits an offence of illegal colonization."

Punishment for offence is provided u/s 27 of the Act. A reading of Section 26 would show that if any person develops or establishes a colony in breach of the requirements contemplated in clause (a) of Section 24, only then he commits the offence. As stated above, Section 24(a) relates to a colonizer who in a local area is developing a colony. Now, if a person is developing a colony in an area which does not fall within a local area, in view of the definition in Section 24(a), he is not required to obtain a no-objection certificate. These material facts were not placed before the Commissioner and it appears that being impressed by the letters of the Collector, sanction for investigation was granted.

8A. In the matter of Md. Umar v. State of M.P., Criminal Revision No. 8 of 1988 (Indore Bench), decided on 22-9-1988, this Court has held that if an order is made by the Revenue Commissioner, which is based on the proposal made by the Collector, then the subjective satisfaction of the authority must be there. It is not that the Commissioner has to act as a stamping authority only. This Court further held that a sanction granted without applying mind to the facts of the case merely on the proposal made by the Collector, stands vitiated. Similar are the facts here. I can successfully rely on the judgment reported in State of M.P. v. Han Shankar 1984 MPLJ 234.

The learned Court below in the impugned order has observed that the sanction must be based on the subjective satisfaction of the officer granting it. The learned Court below also found, rightly in the opinion of this Court, that the order dated 12-4-1991 granting sanction for investigation does not show real application of mind. The Court below was also justified in holding that the Khasra entries and copies of the sale deeds were also not placed before the sanctioning authority. Under these circumstances, and in view of the above discussion, no fault can be found with the order passed by the Court below.

The revision is liable to and is accordingly dismissed.