

(2002) 06 MP CK 0025

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No. 819 of 2001

Prabhanshu Kamal and
Others

APPELLANT

Vs

Awadhesh Singh
Bhadoriya and Another

RESPONDENT

Date of Decision: June 25, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 482
- Madhya Pradesh Motor Vehicles Rules, 1994 - Rule 213
- Motor Vehicles Act, 1988 - Section 129
- Prevention of Corruption Act, 1988 - Section 13(1)

Citation: (2003) 1 ALT(Cri) 1 : (2002) CriLJ 4532 : (2002) 3 MPHT 496

Hon'ble Judges: Shravan Shanker Jha, J

Bench: Single Bench

Advocate: Vijay Sundaram, for the Appellant; S.B. Mishra and J.P. Mishra, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.S. Jha, J.

This petition is filed against the order dated 19-3-2001 passed by AC. Shukla, Special Judge and First Additional Sessions Judge, Gwalior.

2. A complaint u/s 200 of Code of Criminal Procedure was filed in the Court of Special Judge alleging an offence u/s 13(1) of Prevention of Corruption Act, 1988 (hereinafter referred to as an Act). On filing of complaint Special Judge without going through the contents of the complaint has directed that the complaint be investigated by Superintendent of Police, Lokayukt, Gwalior and directed that enquiry report be produced on 18-4-2001.

3. Record of Trial Court is requisitioned. In the complaint it is alleged that complainant No. 1 is an Advocate and is a member of Executive Committee of High Court Bar Association and complainant No. 2 is an Advocate. In para 3 of the complaint it is mentioned that accused Nos. 1 to 3 (petitioners) without any authority have issued orders directing that wearing of Headgear is compulsory while riding on a motor-cycle. In the complaint it is mentioned that petitioner Nos. 1 to 3, who are the public servants, have issued directions without any sanction of law with an intention to receive commission in lakhs of rupees. It is further alleged that on account of the orders passed by the petitioners police has unlawfully challenged the motor-cycle riders and imposed fine. It is further alleged in the complaint that the order directing wearing of Headgear is not provided under law and the order being contrary to law has been withdrawn. The petitioners are public servants and they have committed corrupt practices while directing compulsory wearing of the Headgear.

4. Counsel for petitioners submitted that without going through the complaint and without applying its mind Trial Court has mechanically issued directions for investigation. As and when complaint is filed, it is the duty of the Magistrate to look into the complaint and examine whether any prima facie case is made out for taking cognizance or for calling report of the investigating agency. In the present case, he ought to have seen whether the direction to wear Headgear is according to the provisions of the Motor Vehicles Act. Counsel for petitioners invited attention to the provisions of Section 129 of Motor Vehicles Act. Section 129 of Motor Vehicles Act is reproduced below:--

"129. Wearing of protective headgear.-- Every person driving or riding (otherwise than in a side car, on a motor-cycle of any class or description) shall, while in a public place, wear (protective headgear conforming to the standards of Bureau of Indian Standards):

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motorcycle, in a public place, wearing a turban :

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit."

5. Counsel for petitioners submitted that petitioner No. 1 was holding the post of District Magistrate and Collector of the District Gwalior and petitioner No. 2 was holding the post of Superintendent of Police, Gwalior. They are the public servants. The orders were issued for enforcing the law in performing their duties. As such no investigation was necessary. Even otherwise before entertaining the complaint it was the duty of the Trial Court to examine whether prior sanction to prosecute the petitioners is obtained. Counsel for petitioners then invited attention to Rule 213 of Madhya Pradesh Motor Vehicles Rules, 1994. Rule 213 is reproduced below :--

"213. Headgear.-- (1) The headgear to be worn by any person while driving or riding on a motor-cycle shall be of the ISI specification No. 181-4151-19776 as amended from time

to time.

(2) The provision of Section 129 of the Act, shall not apply to a woman or a child who is not more than 12 years of age."

6. Counsel for petitioners submitted that the rules have been framed and exemption is granted to a woman or a child, who is not more than 12 years of age.

7. Since Act has been passed and rules have been framed, it can not be said that petitioners have acted contrary to law. The orders were issued in performance of their duty in accordance with law. It is further contended by the petitioners that as the public servants petitioners were enforcing the law, which is being obstructed by the complainants by filing a complaint. Learned Magistrate without going through the contents of complaint has directed for investigation. Counsel for petitioners submitted that on bare perusal of complaint, complaint deserves to be quashed and directions issued by the Special Magistrate are also liable to be quashed.

8. On perusal of Section 200 it is apparent that complaint can be filed before Court. u/s 200 as and when complaint is filed it is duty of the Court to go through the complaint and should examine the witness if present in Court. The Court can not act as post office for forwarding the complaint to the police authority unless Court is satisfied that there is prima facie material against the alleged called accused. Complaint was filed in the Court of Special Judge/Additional Sessions Judge. It is expected that Additional Sessions Judge is well versed with legal provisions. From bare perusal of Section 129 of the Motor Vehicles Act, it is clear that legislative mandate is that every person driving or riding on a motor-cycle of any class or description shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards. The provision for making wearing the helmet compulsory, excepting person belonging to Sikh Community wearing a turban is according to law.

9. The legislature in public interest in order to protect the life of person driving the motor-cycle of any class or description has framed law. In the case of 1978 (37) FLR 280 (SC) , it is held in para 9 of the judgment that while passing a Special Act, Parliament devotes entire consideration to a particular subject.

10. In the said facts of case, the directions issued by the petitioners were in accordance with law and these directions have been issued, in the public interest and for enforcing the law. Therefore the complaint has no merit and it deserves to be dismissed. Vague allegation of recovering a commission from the helmet manufacturer is levied, but pleadings are vague. No instance is given in the complaint that the higher price of helmet was charged while helmets were sold in the city of Gwalior at the instance of petitioners. Therefore, this complaint had no merit and is dismissed. However, before parting, it is directed that the authority shall strictly enforce the provisions of Section 129 of Motor Vehicles Act and Rule 213 of Madhya Pradesh Motor Vehicles Rules and any person

obstructing the enforcement of law should be taken to task and suitable criminal action be initiated against the concerned. Even in the past as apparent in the complaint that some politicians have opposed the authorities in enforcing the law. If it is true as published in the newspapers, prosecution requires to be initiated against the concerned for obstructing the public authorities while they were performing their duty.

11. As and when complaint is filed against a public servant alleging commission of some offence, the Court must examine whether Act was done in performance of the duty or otherwise. It is apparent that the Special Magistrate without going into the complaint and looking to the provisions of law has issued directions for investigation by Lokayukt. The action is contrary to law. Even otherwise, law does not confer power upon the Magistrate for directing investigation by the authority, other than mentioned in the Code of Criminal Procedure. Such act is deprecated.

12. In the result, complaint is quashed. Petition succeeds and is allowed with costs quantified at Rs. 20,000/- (Rupees Twenty thousand) recoverable from the respondents.