(1969) 06 CAL CK 0030

Calcutta High Court

Case No: Criminal Misc. Case No. 155 of 1969

Omprokash Niranwal		APPELLANT
	Vs	
A. Basu, O.C., Titagarh Police Station		RESPONDENT

Date of Decision: June 10, 1969

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 100, 156, 157, 54
- Penal Code, 1860 (IPC) - Section 342

Hon'ble Judges: R.N. Dutt, J; A.P. Das, J

Bench: Division Bench

Advocate: S.D. Banerji, Samir Kumar Mookerjee and Saurendra Prosad Talukdar, for the Appellant;S.K. Acharya, General and Dilip Kumar Dutt, for the Respondent

Judgement

R.N. Dutt, J.

The Petitioner is a sales officer under the Electric Construction and Equipment Company Ltd. It has its factory at Nilganj within Barrackpore Sub-division in the district of 24-Parganas. It is alleged that on May 2, 1969, at about 5 p.m. some workers of the factory wrongfully and illegally confined the factory manager Shri R.P. Malaviya and 13 other senior management staff of the company and they were not allowed to move out. The Petitioner moved the Sub-divisional Magistrate, Barrackpore, u/s 100 of the Code of Criminal Procedure and at 9-20 p.m. on May 2, 1969, the Sub-divisional Magistrate, Barrackpore, issued a search warrant directing the Police of the Titagarh Police Station to forthwith rescue the wrongfully confined persons. The wan ant was made over to Respondent No. 1, the Officer-in-charge of Titagarh Police Station, at 10-15 p.m. He endorsed the search warrant in favour of Respondent No. 2, Sub-Inspector of Police, for execution at 11-30 p.m. Respondent No. 2 with Respondent No. 3, one other Sub-Inspector of Police, went to the factory but did not execute the search warrant and did not rescue the confined persons but made some attempts at conciliation and thereafter left the factory. Subsequently, at

3 a.m. on May 3, 1969, Respondents 2 and 3 again went to the factory but again did not execute the search warrant and did not rescue the confined persons but made some further attempts at conciliation. Respondents Nos. 2 and 3, thereafter, again left the factory. Then at 7-30 a.m. on May 3, 1969, Respondent No. 1, who, as we have said, was the Officer-in-charge of the Police Station, accompanied by Respondents Nos. 2 and 3, went to the factory again, but even then the search warrant was not executed and the confined persons were not rescued. On the other hand, they all tried at some settlement or conciliation between the workers and the management. Subsequently, at 11-30 a.m. on May 3, 1969, one Assistant Labour Commissioner came there and after protracted talks with the workers and the management he drafted the terms of a certain settlement and the management was forced to agree to the terms and to sign the draft settlement. The wrongful confinement, which is now commonly known as gherao, was then lifted and thereafter the Respondents purported to execute the search warrant and to rescue the confined persons.

2. On these allegations this Rule was issued directing the Respondents to show cause why they should not be dealt with for contempt of the Court of the Sub-divisional Magistrate, Barrackpore, for having wilfully and deliberately disobeyed the order of the Sub-divisional Magistrate thereby interfering with the due course of justice. The Respondents have shown cause.

3. The fact are more or less not disputed. The workers of the factory did, in fact, confine the factory manager Shri R.P. Malaviya and some senior management staff inside the factory. This was after the factory hours on May 2, 1969. The Sub-divisional Magistrate was moved with an application for a search warrant u/s 100 of the Code of Criminal Procedure and that Sub-divisional Magistrate issued a search warrant at 9-20 p.m. on May 2, 1969. The search warrant was duly made over to Respondent No. 1 at 10-15 p.m. the same night. He took prompt action and endorsed the search warrant in favour of Respondent No. 2 for execution. Respondent No. 2, accompanied by Respondent No. 3, left the thana at 11-30 p.m. The search warrant was not executed till about 12-15 p.m. on May 3, 1969. These facts are not denied.

4. The Petitioner alleged that Respondents Nos. 2 and 3 after they first went to the factory did not execute the search warrant and did not rescue the confined persons but made some efforts at conciliation with the workers and then returned to the thana and again came to the factory at 3 a.m. and this time also they did not execute the search warrant and did not rescue the confined persons and again after some fruitless conciliation efforts went back to the thana. Respondents Nos. 2 and 3, accompanied by Respondent No. 1, came back to the factory at 7-30 a.m. and again took the role of conciliation officers and did not execute the search warrant and did not rescue the confined persons. We have said that it is not disputed that the search warrant was not executed and the confined persons were not rescued till 12-15 p.m.

on May 3, 1969. But the learned Advocate-General, who appears for the Respondents before us, submits that Respondents Nos. 2 and 3 were all along in the factory since they first went there and they never returned to the Police Station. It appears, however, that specific allegations were made in the petition alleging that, after they first went, they came back to the thana and again after they went at 3 a.m. they came back to the thana. But there is no denial to these allegations. The learned Advocate-General concedes this. Whatever that may be, there is no doubt that the search warrant was not executed and the confined persons were not rescued between 11-30 p.m. on May 2, 1969 and 12-15 p.m. on May 3, 1969, although Respondents Nos. 2 and 3 and subsequently Respondent No. 1 were all there in the factory with the Court''s order to rescue the confined persons. The learned Advocate-General submits that the Respondents were there to execute the search warrant and to obey the Court''s order; but the circumstances were such that they could not execute the search warrant. It is said that the workers took a menacing attitude and if Police tried to rescue the confined persons by force, violence would have broken out and the Police would have to open fire. No doubt Respondents Nos. 2 and 3 have in their affidavits said that the situation was such that the confined persons could not have been rescued except by recourse to firing. It appears that after the whole affair was over, Respondent No. 2 recorded a general diary at the thana at 1-55 p.m. on May 3, 1969. We find that nowhere in that general diary it was said that the situation was such that the confined persons could not have been rescued except by recourse to firing. The affidavits of the Respondents are not complete and remain vague to a degree. It is just possible that when they first went to the factory at 11-30 p.m., they found the situation such that they could not execute the search warrant all at once. But then we are not told what steps they took to see that the search warrant could be executed as soon as possible. The learned Advocate-General submits that they continued in the factory till the last. But this continuing in the factory, powerless to execute the search warrant for which they had gone there, meant nothing. The Respondents have said in their affidavits that their superior officers were kept informed of the developments. It is not clear what this means. If they had certain orders from their superior officers, we are not told of those orders or who gave those orders or directions. It is true that the Respondents do not take shelter saying that they acted, as they did, under the orders or directions of some other persons. But their affidavits themselves show that they were keeping in touch with their superior officers; but we are not told what direction the superior officers gave them in this matter. It may be, as we have said, that when Respondents Nos. 2 and 3 first went to the factory they found the situation such that they could not execute the search warrant immediately. But then it is difficult to think that the Police has become so powerless or that the Police could not gather sufficient force to execute the order of the Court even thereafter. The affidavits clearly indicate that the Respondents made no attempt of their own to execute the search warrant. They have said that they tried to persuade the workers and they reasoned with the workers and all that. But this was no part of their

business. Under orders of the Court they went there, but not for conciliation between the workers and the management. They were there to execute the search warrant and we are not satisfied from the materials, which have been placed before us, that the Respondents in fact did all that could be done to execute the search warrant, but even then it could not be executed. The learned Advocate-General, frankly concedes this but submits that the Respondents had no desire to disobey the orders of the Court and they were there to carry out the orders of the Court. But what they actually did might have been due to an honest error in their judgment. We have said that all, the relevant materials have not been placed before us. We would have been very glad if we could accept the view of the learned Advocate-General in this matter. But on the materials before us, we find that the Respondents willfully failed to carry out the orders of the Sub-divisional Magistrate causing thereby interference with due course of justice. Clearly, therefore, the Respondents have committed contempt of the Court of the Sub-divisional Magistrate, Barrackpore.

5. The learned Advocate-General submits that the Respondents have tendered unqualified apology in their affidavits and they do tender unqualified apology in the Court. Mr. Banerjee points out that the Respondents no doubt towards the end of their affidavits tendered what is said to be unqualified apology, but then in their affidavits they tried to justify their conduct. The learned Advocate-General submits that he is not justifying what has been done but he is tendering unqualified apology of the Respondents and what has been stated in the affidavits is only a statement of the facts which actually happened and a statement of the circumstances under which the order of the Sub-divisional Magistrate could not be executed immediately.

6. Let us pause here and see what is the effect of all these. Confinement of the senior management staff by the workers, which has now come to be commonly known as gherao, has been declared by this Court as illegal. Under certain circumstances, this becomes an offence u/s 342 of the Indian Penal Code. An offence punishable u/s 342 of the Indian Penal Code is a cognizable offence. Under the Code of Criminal Procedure the Police has certain duties and functions to discharge. u/s 54 of the Code any Police officer may, without an order from a Magistrate and without a warrant arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. Then again when the Police is informed of the commission of a cognizable offence, the Police has to make even without an order from a Magistrate, investigation u/s 156 of the Code and take measures u/s 157 of the Code for the arrest of the offender or offenders. So, even without the intervention of an order from a Magistrate u/s 100 of the Code, the Police has to take action if the Police is informed of the commission of such an offence. The law is clear on this point and it is unfortunate that the Police has to be reminded about it. But here in this case the Court intervened and made an order u/s 100 of the Code

and the Respondents were bound to execute the order of the Court without the least possible delay. The Respondents have not, as we have found, done what they should have done in this matter. Under the Code of Criminal Procedure the Police is the limb through which the Criminal Courts act and if the Police fails or neglects to do its duty, there will be an end of the rule of law which is the foundation of our democracy and Constitution. Clearly, therefore we are to take a serious view of this matter; but, as we have said, the learned Advocate-General tendered an unqualified apology on behalf of the Respondents.

7. We do not think that Respondent No. 3 should be held to have committed contempt because, as we have said, he was acting under Respondent No. 2 and the responsibility must be borne by Respondent No. 2. But Respondents Nos. 1 and 2 must be held guilty for having committed contempt of the Court of the Sub-divisional Magistrate, Barrackpore and each of them is sentenced to simple imprisonment for two months. Having said this, we also record that Respondents Nos. 1 and 2 have tendered unqualified apology and in the facts and circumstances of this case, we accept that apology and on acceptance of the apology, we remit the sentence of imprisonment which we impose on them.

8. Respondents Nos. 1 and 2 will, however, pay costs of this proceeding to the Petitioner which we assess at Rs. 200 (Rupees two hundred).

9. Lastly, we should record that, though we have accepted the apology in this case, let this be taken as a warning that if we again find such wilful disregard or disobedience of the orders of the Court, a more serious view would have to be taken. We only hope that all concerned in the administration of law will contribute their share to the maintenance of the rule of law.

10. In the result, the Rule is discharged as against Respondent No. 3, but the Rule is made absolute as against Respondents Nos. 1 and 2.

A.P. Das, J.

11. I agree.