

(2002) 10 CAL CK 0024

Calcutta High Court

Case No: C.R.R. No. 1030 and 1031 of 2001

Montek Singh

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Oct. 8, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 131, 157, 2, 402, 45
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 323, 324
- Railway Protection Force Act, 1957 - Section 10, 20(3)

Citation: (2003) 2 CALLT 85 : (2002) CriLJ 4617

Hon'ble Judges: Pradip Kumar Biswas, J

Bench: Single Bench

Advocate: R.N. Das, Uttam Mazumdar and Sandipan Ganguly, for the Appellant; Balai Chandra Ray, General and Ashim Kumar Roy in C.R.R. No. 1031 of 2001, Balai Chandra Ray, General and Samir Chatterjee in C.R.R. No. 1030 of 2001 and Sudipto Moitra and Subhasis Pachal for the Opposite Party No. 2, for the Respondent

Judgement

P.K. Biswas, J.

In revisional application No. 1030 of 2001 applicant petitioner Montek Singh has come up before this Court u/s 482 of the Code of Criminal Procedure seeking to quash the proceeding of Howrah G.R.P. Case No. 118 dated 25.04.01 under Sections 143/347/323/324/ 354/506 of the Indian Penal Code (GRPGR No. 139/2001) pending before the Court of the learned Sub-Divisional Judicial Magistrate, Howrah.

2. The aforesaid petitioner/applicant Montek Singh by filing another application in C.R.R. No. 1031 of 2001 u/s 482 of the Code of Criminal Procedure has also come up seeking to quash the proceedings of Howrah G.R.P. Case No. 119 dated 25.04.2001 under Sections 147/148/ 149/323/324/506 of the Indian Penal Code pending before the Court of the learned Sub-Divisional Judicial Magistrate, Howrah.

3. Since common question of law and fact are involved in these two applications those are taken up for disposal analogously by this single order.

4. The facts leading to the filing of these two applications may be summarised as follows:

5. The petitioner Montek Singh is a member of the Railway Protection Force now holding the post of Assistant Security Commissioner and is attached to the Howrah Railway Protection Force.

6. On the basis of the complaint lodged by O.P. No. 2 with the Officer-in-Charge of Howrah GRPS, the impugned proceedings being G.R.P. Case No. 118 dated 25.4.2001 and G.R.P. Case No. 119 dated 25.4.2001 were registered for investigation of an offence committed by the petitioner and others punishable under different sections of Indian Penal Code alleging, inter alia, that the de facto complainant is a hawker at the Howrah Station. At around 4.30 p.m. on 25.4.2001 a lady hawker namely Mira Roy belonging to CITU Union was hawking in the Platform No. 3 of Howrah Station and at that time one Mr. Chawla, S.I. of R.P.F. caught hold of Mira Roy and thereafter arrested her.

7. The de facto complainant upon witnessing such incident informed the other hawkers and they thereafter protested against the treatment meted out to Mira Roy and on the face of such protest, the RPF Officer and Personnel became agitated and started abusing the de facto complainant and other hawkers. The incident was thereafter informed to the local leader who came with the other hawkers and started protesting against such behaviour of the RPF Personnel. About 10 minutes thereafter, the RPF Officer and Personnel of the said post being armed with lathis, charged the slogan-carrying hawkers and the de facto complainant suffered injuries on his head and also in different parts of the body and other co-hawkers of the de facto complainant were also injured.

8. It has been alleged by the petitioner that the allegations levelled against him are all false and motivated and the instant proceedings are two of such proceedings out of the series of proceedings which have been instituted against RPF Personnel by the unauthorised hawkers at Howrah Station against whom the RPF had taken steps to prevent them from hawking their goods in an illegal and unauthorised manner.

9. It has further been alleged that pursuant to the aforesaid agitation, by a group of hawkers affiliated to CITU and in view of the threats, given by their leader, that if any further arrest was made in the Howrah Station, the RPF Personnel will be bodily harmed, the RPF Personnel thereafter logged a complaint with the Howrah GRPS and the same was received by the Howrah Railway Police and even after receipt of that No. G.D. Entry was recorded or a case was started against the hawkers, it has also been alleged by the petitioner that the instant proceedings had been initiated against the RPF personnel with the sole intention of preventing any action against the hawkers for their attack upon the RPF Personnel and the same was initiated in

violation of the mandatory provisions of Section 20(3) of the Railway Protection Force Act, 1957 and as per provisions of the Section 3 of the Railway Protection Force Act, 1957 (hereinafter referred to as the Act of 1957), the members of the RPF are considered to be an Armed Force of the Union and by virtue of express provision of Section 45 of the Code of Criminal Procedure the members of the Armed Force cannot be arrested except upon previous sanction of the Central Government.

10. So, being aggrieved by and dissatisfied with the continuance of the aforesaid proceedings of Howrah GRP Case No. 118 dated 25.4.2001 (GRPGR 139/2001) Howrah G.R.P. Case No. 119 dated 25.4.2001 pending before the Court of the learned Sub-Divisional Judicial Magistrate, Howrah, the petitioner has come up seeking for the aforesaid reliefs.

11. This application is, however, opposed by the State of West Bengal represented by learned advocate General Sri Balai Roy alleging, inter alia, that as per the authority of the Railway Protection Force Act, the RPF Personnel have the powers of arrests, but they have no power for investigation into the offence complained of as per provisions of Section 14 of the RPF Act any member of the Force making an arrest under this Act, shall, without unnecessary delay, make over the person so arrested to a Police Officer, or, in the absence of a Police Officer, take such person or cause him to be taken to the nearest Police Station. Here in this case, as per the allegation in the petition of complaint, the RPF authority after detaining the person in custody for more than the required period committed violation of the mandatory provisions of law and they have also caused assault upon the demonstrators and the same cannot be said to be an official duty. It has further been contended on behalf of the State that the complaint being initiated before the concerned authority of the police, the Court has no power to interfere into the investigation, as power of investigation is a statutory power being enjoined by the police.

12. It has further been contended on behalf of the State that Section 157 of the Criminal Procedure Code casts a duty on the Police Officer to initiate action as enjoined under the aforesaid section and it has to be done by the police as required under the law and that may be a proceeding simplicitor, but until and unless cognizance is taken by the Court that cannot be termed to be a legal proceeding and to cover the ambit of the Section 20(3) of the RPF Act, two things are necessary: firstly, "Legal Proceeding" and secondly, act/action, pursuant to the provisions of the RPF Act.

13. From the side of the de facto complainant/opposite party No. 2 represented by Sri Sudipto Moitra it has been contended that on information regarding commission of cognizable offence having received, it should be the duty of the police officer to start a case and proceed with the investigation and it has also been contended on their behalf that by the words "legal proceeding" it would certainly mean that until and unless the cognizance is taken on submission of the report of the police, it cannot be stated to be a "legal proceeding" so as to invoke the provisions of Section

20(3) of the RPF Act.

14. I have heard the learned counsel appearing for both the sides at length. The petitioners have challenged the continuation of the proceeding alleging that the aforesaid proceedings is patently bad in law as it violates the statutory provisions contained under Sub-section (3) of Section 20 of the Railway Protection Force Act, 1957 inasmuch as the aforesaid legal proceeding was commenced upon the FIR without giving to the accused or to the superior officer at least one month's notice as mandatory required by the said sub-section.

15. It has also been contended on their behalf that as per allegation in the FIR it will be clear that the acts complained of were committed by RPF Personnel at Howrah Platform in course of discharge of their official duties and the provisions of sections of the aforesaid Act of 1957, *inter alia*, provides that there shall be constituted and maintained by the Central Government an Armed Force of the Union to be called the Railway Protection Force for the better protection and security of the Railway Property.

16. Section 10 of the aforesaid Act declares that every member of the RPF shall be regarded as Railway servants within the meaning of the Indian Railway Act and shall be entitled to exercise the powers conferred on Railway servants by the said Act.

17. The RPF Personnel are, therefore, clearly authorised under the aforesaid Act and by the provision of the Indian Railways Act and also u/s 131 of the Code of Criminal Procedure to arrest without warrant, any person who has not only committed an offence against Railway Property but also against whom a reasonable suspicion exists that he has either committed or may commit or may assist in the commission of any offence against the Railway Property.

18. It has further been contended on their behalf that pursuant to the direction issued by the Division Bench of this Court in the case of *Chandrima Das v. Railway Board and Ors.* In W.P. No. 494 of 1998 certain directives have been given to the Railway Authorities to prevent unauthorised hawkers and vendors to move around in the Howrah Railway Platform. The Railway Authority was under compulsion to take action to prevent unauthorised hawkers and vendors to be present in the Railway Platform and these works were to be carried out by the Railway Administration with the help of the Railway Protection Force and accordingly it because a part of RPF Personnel's duty to drive out or arrest unauthorised hawkers and vendors found in the Railway Platform and in connection with the present matter, the RPF Personnel were carrying out their duties to remove unauthorised hawkers and FIR being lodged on behalf of the hawkers' Union through their leaders, the impugned criminal proceeding was forthwith initiated and purported action was taken without giving one month's notice as mandatorily required u/s 20(3) of the RPF Act 1957 and in this connection placing their reliance on a number of decisions as reported in 1996 SCC 489 (*Costao Fernandes v. State*), another

reported in 1970 CLJ. 642, in D.S. Bhoria and Anr. v. N. Singh and 2000 CLJ 424 in Naresh Mohan Prosad and Ors. v. State of Bihar and Anr., it has been contended further that if the requirements of Section 20(3) of RPF Act has not been complied with, the prosecution initiated should be regarded as invalid and ought to be quashed and certainly on the basis of the FIR, the proceeding has been instituted, the same could be treated to be a legal proceeding, as such continuation of the same will be treated as mere abuse of the process of law. It has further been contended on their behalf that in view of the ratio of the decisions as reported in the case of AIR 1936 253 (Privy Council) , it was held by the Court that when a statute requires a thing to be done in a particular manner, it must be done in the said manner or else not and in connection with the present case as required u/s 20(3) of the RPF Act, the initiation of any legal proceedings, if any, against the RPF Personnel acting under the RPF Act must be done after giving one month's notice to the RPF Personnel and that having not done in the present case, the proceeding is absolutely bad and untenable in law and must be quashed as such.

19. Opposite parties, in opposing the claim of the petitioners have contended, inter alia, that since there were illegal detention by the RPF Personnel in violation of the mandatory provisions of law and since they assaulted the demonstrators illegally, those, therefore, cannot be regarded as the "official duty" of the RPF Personnel under the Act. And since on the basis of the FIR of this case, no cognizance has been taken by the Court, itself, the proceeding pending against these petitioners cannot be regarded as "legal proceedings" and as such provisions u/s 20 Sub-clause 3 of the Act has no manner of application in connection with the present case.

20. I have given my anxious considerations with regard to the submissions made by the parties and upon the rival contentions, made by the parties in connection with the present matter, the question that would be very much necessary to answer is that whether the present proceeding against the accused petitioners should be regarded as "legal proceeding" and/or whether the act/action complained of taken by the RPF Personnel against the opposite party/complainant was done in course of "official duty" or not.

21. Here, the word/legal proceeding" has not been defined in the any of the Railways Act. In that we are to fall back on the plain dictionary meaning and as per the Law Lexicon (Vol. II, 5th revised and enlarged edition) by Justice T.P. Mukherjee at page 23 "legal proceeding" has been defined "according to Stroud's Judicial Dictionary of Words and Phrases, third edition, the words legal proceedings" mean any civil or criminal proceeding or inquiry in which evidence is, or may be given; and includes an arbitration. In the Lexicon of British India by P. Ramanatha Aiyer, the words "legal proceeding" are defined to mean, proceeding regulated or prescribed by law in which judicial decision may or must be given. "Legal Proceeding", is any proceeding in Court of justice by which a party pursues a remedy which the law affords him. The term embraces any of the formal steps or measures employed in

the prosecution or defence of a suit".

22. In a decision reported in the [Abdul Aziz Ansari Vs. The State of Bombay](#), it was held by their Lordships that "there is no justification for limiting the expression "legal proceeding" in Section 48(2)(ii) in a Court of law. The expression in its normal connection can only mean a proceeding in accordance with law and there can be no doubt that assessment proceedings under the Sales Tax Act of 1946, are such proceedings". Again it was held in the said decision that "the expression "legal proceeding" is not synonymous with judicial proceedings". Proceedings may be legal even if they are not judicial proceedings, if they are authorised by law".

23. Moreover, the word "investigation" has been defined u/s 2(h) of the Criminal Procedure Code "to include all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

24. So, as per the dictionary meaning of the word "legal proceeding" as stated above and applying the ratio of the case in the case reported in [Abdul Aziz Ansari Vs. The State of Bombay](#), and looking into the definition of the word "investigation" as per the Section 2(h) of the Code of Criminal Procedure it is quite clear that when FIR has been lodged against the RPF Personnel, certainly police has the authority to proceed for collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf to proceed with the investigation of this case. And that being the position, the present proceeding, as it stands, should be held to be a "legal proceeding" and the same therefore, clearly violates the provisions of Section 20(3) of the RPF Act, which in clear terms have laid down that there cannot be initiation of any legal proceeding, whether civil or criminal against any superior officer or member of force for anything done or intended to be done under the powers conferred by or in pursuance of any provision of the Act or rules thereunder, unless one month's notice has been given to the accused or his superior officer and in such matter, it cannot be restricted to the taking of cognizance by the Court itself.

25. True it is that Section 157 of the Code of Criminal Procedure casts a duty on the police officer to initiate action as enjoined under the aforesaid section, but here in this particular case, in view of the special provisions created in the special Act by enacting Section 20(3) of Act, 1957, the RPF personnel has a distinct privilege against the initiation of any legal proceeding whether civil or criminal without service of notice against them as required under the law.

26. Furthermore, on plain perusal of the FIR itself, it appears that the initiation of the action of the RPF personnel was started with the work of preventing the unauthorised hawkers from hawking in the platform or in the surrounding areas. It may be that some excess have been made by them in doing that, but that does not plainly take away the matter from within the ambit "discharge of official duties". So,

plainly on such allegation, *prima facie*, it appears that it comes within the ambit of their official duties.

27. That being the position in the instant case, upon available materials, I am rather inclined to accept that there has been clear violation of the provisions of Section 20(3) of the Railway Protection Force Act, 1957 in initiating a legal proceeding against the present accused persons. Admittedly, in this case no such notice was given before instituting a case in hand in the case of present petitioners. That being the position, I hold that since the present prosecution is instituted against the present petitioners without compliance of the provisions of Section 20(3) of the Railway Protection Force Act, 1957 the same cannot be regarded as valid prosecution and as such it should not be allowed to be continued.

28. So, in view of the above and being fortified to hold so in view of the decisions reported in 1970 CLJ 642 Pat as also in the case reported in Naresh Mohan Prasad and Others Vs. State of Bihar and Another, and having considered the rival contentions of the parties and in view of my discussions in the preceding paragraphs, I hold with certainty the present prosecution as instituted against the petitioner without due compliance of Section 20(3) of the Railway Protection Force Act, 1957 cannot be allowed to be continued and the same should therefore be quashed.

In the result, the application succeeds. The proceedings being No. C.R.R. 1030 of 2001 and C.R.R. 1031 of 2001 be therefore quashed. This order shall govern both the cases.

Let a copy of this order be sent down to the concerned Court for information and necessary compliance.