(1985) 01 DEL CK 0066

Delhi High Court

Case No: Criminal Miscellaneous (Main) Appeal No. 639 of 1980

Delhi Administration		APPELLANT
	Vs	
Standard Restaurant and Others		RESPONDENT

Date of Decision: Jan. 30, 1985

Citation: (1985) 27 DLT 435 : (1985) 8 DRJ 292 : (1985) 2 RCR(Criminal) 195

Hon'ble Judges: H.C. Goel, J

Bench: Single Bench

Advocate: Y.K. Sabharwal, M.M. Sudan, O.N. Vohra, R.S. Butalia and S.K. Dhingra, for the Appellant;

Judgement

H.C. Goel, J.

(1) A sample of ice-cream softy was lifted from the Standard Restaurant situated in Connaught Place, New Delhi on August 26, 1976 by the Food Inspector of the New Delhi Municipal Committee. This sample was got analysed from Shri Jagdish Parshad Sharma, a public analyst of the Union Territory of Delhi. According to his report the sample was adulterated. This ice-cream was manufactured by Caryhom Ice-cream (Regd.) Five persons namely, the Standard Restaurant. Shri Bhagat Ram, the Manager of the Standard Restaurant, Caryhom Ice-cream (Regd.), the manufacturers of the said ice-cream, and Sudhir Chona and Raman Chona, the two partners of Caryhom Ice-cream (Regd.) were prosecuted. A complaint was filed by the Delhi Administration against all these five persons u/s 7/16 of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). Regarding the question as to whether any charge should be framed against the accused persons it was contended on behalf of the accused persons before Shri B.N. Chaturvedi. learned Metropolitan Magistrate, Delhi, that Shri Jagdish Parshad Sharma who analysed the sample of the ice-cream was not legally appointed as a public analyst and as such he was not empowered to analyze the sample and to give a report regarding the same and no prosecution could be based on the report as submitted by him.

(2) "LOCAL Area" is defined u/s 2(vii) of the Act as meaning an area, whether urban or rural, declared by the Central Government or the State Government by notification in the Official Gazette, to be a local area for the purpose of this Act. As per the notification published on June 13, 1958 three areas of the Union Territory of Delhi, namely, the areas comprising Delhi Municipal Corporation, the New Delhi Municipal Committee and the Delhi Cantonment were declared as local areas under the Act. Thereafter by the notification dated May 17, 1976 Shri Jagdish Parshad Sharma was. appointed a public analyst for the Union Territory of Delhi with regard to the articles namely milk and milk products. Another gentleman Shri P.P. Bhatnagar was appointed a public analyst for the Union Territory of Delhi with regard to the articles other than milk and milk products. In that notification it was not stated that the Union Territory of Delhi was constituted as a local area as envisaged by the Act. Thereafter by a notification published on December 29, 1976 the Administrator, Delhi declared the whole of the Union Territory of Delhi as the local area for the purposes of the Act. It was contended on behalf of the accused persons before the learned trial Magistrate that Shri Jagdish Parshad Sharma was not appointed a public analyst for the area comprising New Delhi Municipal Committee and the notification published on May 17, 1976 appointing him a public analyst for the Union Territory of Delhi as a local area did not constitute him a public analyst for the area comprising New Delhi Municipal Committee. It was submitted that in the notification appointing him as public analyst it should have been specifically provided that he was appointed a public analyst for particular areas and unless those particular areas were specified the general notification in the terms in which it was issued and published on May 17, 1976 did not comply with the requirements of law and was of no avail. Another argument that has been raised in support of this contention js that there was a lacuna in the notification published on May 17, 1976 inasmuch as the Union Territory of Delhi was not stated to have been constituted as a local area. To do away with this lacuna or to remove any doubt in that regard another notification was subsequently published on December 29, 1976 in which the whole of the Union Territory of Delhi was declared to be a local area for the purposes of the Act. The contention has been that this notification of December 29, 1976 could not operate retrospectively and the appointment of Shri Jagdish Parshad Sharma, as a public analyst by earlier notification published on May 17, 1976 was not a valid appointment. This contention prevailed with the learned trial Magistrate and all the five accused were consequently discharged by him vide his order dated October 16, 1978.

(3) A revision was taken by the Delhi Administration against this order of the learned Magistrate to the court of Shri R.K. Sain, learned Additional Sessions Judge. Delhi under the provisions of Section 397/399 Cr. P.C. The learned Additional Sessions Judge held that it could not be said that the view taken by the Magistrate was either illegal or improper or incorrect and holding that there was no merit in the revision, the same was dismissed by him by his order dated October 13, 1979. It is against this order dated October 12, 1979 of Shri R.K. Sain that the present petition was filed by the Delhi Administration u/s 482 Cr. P.C. read with Article 227 of the Constitution. It is alleged that the impugned order of the learned Additional Sessions Judge is illegal and the same be

set aside. The petition has been opposed by the respondents.

(4) I have heard Mr. Y K. Sabharwal, learned Standing Counsel for the Delhi Administration and Mr. O.N. Vohra, learned counsel for the respondents. Sub-section (3) of Section 397 Cr. P.C. states that if any application under this Section i.e. Section 397 has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. This provision came up for consideration by the Supreme Court in the case Jagir Singh Vs. Ranbir Singh and Another, . The Supreme Court held as below :

"(I)The object of Section 397(3) is clear. It is to prevent a multiple; exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of the other authority. The language of Section 397(1) is clear and peremptory and it does not admit of any other interpretation. (ii) It is not permissible to regard the revision application before the High Court as one directed against the order of the Sessions Judge instead of that of the Magistrate. What cannot be done directly cannot be done indirectly. - (iii) The revision application cannot also be sustained under Article 227. When the High Court did not in terms, purport to exercise its discretionary power under Article 227, it is difficult to attribute to the order of the High Court such a power. Nor did the exercise of such power fall within the scope of Article 227, more so on the date of the exercise when the 42nd Amendment had come into force. (iv) The power of judicial superintendence under Article 227 is a discretionary power to be exercised sparingly to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Where the statute banned the exercise of revisional powers by the High Court, it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution, since the power of superintendence was not meant to circumvent statutory law."

Mr. Sabharwal very fairly conceded that in view of this judgment of the Supreme Court no petition lies against the impugned order of the learned Additional Sessions Judge or that of the learned Metropolitan Magistrate which was upheld in revision by the learned Additional Sessions Judge under the provisions of Section 482 Cr.P.C. He, however, submitted that the High Court can still exercise its power of judicial superintendence under Article 227 of the Constitution and in the exercise of that power by it the impugned order deserves to be set aside. It was submitted that the powers of High Courts under Article 227 are very wide and they are not restricted to errors of jurisdiction alone. It was contended that the impugned order of the learned Additional Sessions Judge is a wholly perverse order and deserves to be quashed by the High Court in exercise of its powers under Article 227 of the Constitution. I may say at the very outset that in my opinion it is not a fit case in whish the exceptional jurisdiction of this Court under Article 227 deserves to be at all invoked. The Courts have laid down guidelines for the exercise of jurisdiction by High Courts under Article 227 of the Constitution. The case of Jagir Singh (supra) it self is a leading authority, which in my opinion, covers the case of the petitioner. I have already reproduced above the observations of the Supreme Court in that case. It was observed that the power of judicial superintendence under Article 227 is a discretionary power to be exercised sparingly to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. The further observations that where a statute banned the exercise of certain powers by the High Court, it would require very exceptional circumstances lo warrant interference under Article 227 of the Constitution since the power of superintendence was not meant to circumvent statutory law. In the present case the Delhi Administration/petitioner has already invoked the revisional jurisdiction of the Court of Session which exercises concurrent jurisdiction with High Court in that regard. It is also worth-noting that the form, the tenor and the sum and substance of the present petition shows that: this is a petition in fact only u/s 482 Cr.P.C. and in fact is not a writ petition under Article 227 of the Constitution although in the heading of the petition the words "read with Article 227 of the Constitution" have been inserted by pen. This is a normal and a usual kind of petition u/s 482 Cr.P.C. with the prayer of setting aside the impugned order of the learned Additional Sessions Judge. In the case Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others, , the view was taken that the High Court''s power of superintendence is confined to seeing that the trial court has not transgressed the limits imposed by the Act. In the case Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, , it was held that the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. In the case Union of India Vs. Lakhpat, , a Division Bench of this Court while interpreting Article 227 of the Constitution held as below:

" HELD, that the extent of jurisdiction of High Court under Article 227 of the Constitution is only to see that Subordinate Courts and Tribunals function within the bounds of their authority and Article 227 cannot be invoked for correcting mere errors. Even under Article 226 or the Constitution High Court will not interfere with the orders or findings of a Subordinate Court or Tribunal, unless it has acted in excess of its jurisdiction or there is an error apparent on the face of the record."

The principle has been more explicitly stated in another judgment of this Court in the case Electrical Manufacturing Co. Ltd., Calcutta Vs. D.D. Bhargava, . The following observations from that judgment are quite instructive on the point :

"In my opinion the Supreme Court decision in Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, must be confined to its own facts and the ratio of that decision cannot help the present petitioner. Of course, the petitioner''s learned counsel has tried to seek assistance from the reported case by submitting that just as that case dealt with an application under Article 226 of the Constitution, the present case too arises out of an application under Article 227 of the Constitution presented in this court for setting aside the order of the Court below. In this respect it is argued, the two cases bear a very close resemblance. I, however, regret my inability to sustain this submission. The present is, in substance, a case in which this court''s revisional jurisdiction under Sections 439 and 561-A of the Code of Criminal Procedure has been invoked. The addition of Article 227 of the Constitution in the heading of the application does not seem to me to change the essential nature of the application and may not appropriately be considered to convert it into a writ petition so as to attract the ratio of the decision in Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, . The relief sought in this Court was that the order of the Court below be set aside and the criminal proceedings held to be incompetent for want of the condition precedent. This plea was rejected The present case appears to me to be more akin to the case. of AIR 1949 1 (Federal Court) , the ratio of which decision does not seem to me to have been disapproved or dissented from by the Supreme Court in Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, ."

(5) As against these judgments Mr. Sabharwal,-cited the cases State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., ; The Cantonment Board, Ambala Vs. Pyarelal, and Walaiti Ram Seth v. Siri Krishan Kapoor and others. Air 1976 Sc 50 in support of his contention that the jurisdiction of High Courts under Article 227 is very wide and is not restricted to errors of jurisdiction of courts only. There is no quarrel with the principle that the jurisdiction of a High Court under Article 227 is very wide. However, it is equally well settled that it is a special kind of jurisdiction. Article 227 of the Constitution only confers powers of superintendence. That is a special jurisdiction conferred on High Courts. These powers are not analogous to appellate or revisional jurisdiction of High Courts, nor are a substitute for. those powers. This power has to be exercised sparingly and in very exceptional cases. Now the question for consideration is as to whether this is a fit case in which this exceptional jurisdiction of the High Court deserves to be exercised in favor of the present petitioner. Apart from the fact that normal revisional remedy was available to the petitioner against the impugned order of the learned Metropolitan Magistrate and it was duly availed of by the petitioner. The petitioner then came up before this Court by way of this petition which in fact is a petition u/s 482 Cr.P.C. It may also not be out of place to state'' that all that has been contended by Mr. Sabharwal regarding the merits of the impugned orders is that they are wholly illegal. It was also pointed out that this Court in at least three cases took a different view. The first case in which such a view was taken by a Single Judge of this Court is Crl. R 71/78, Municipal Corporation of Delhi v. Harbans Lal, decided on September 18, 1979 by Prithvi Raj J. The second case is the case Municipal Corporation of Delhi v. M/s Lhasa Restaurant and others, 1980 (2) Fac 90 The third case in which the same view was taken is the case Jagdish Popli v. The State & N.D.M.C. New Delhi, 1981 (1) Fac 93 It was stated by Mr. Vohra, learned counsel for the respondents, that a SLP against the judgment of the Division Bench of this Court in Mis. Lhasa Restaurant''s case (supra) was taken to the Supreme Court and which has been admitted by the Supreme Court. This statement of Mr. Vohra at the bar was not disputed by Mr. Sabharwal. That being the position it cannot be said that the view as taken by the courts below could never be reasonably taken at all and was wholly perverse or untenable Thus all that may be said is that the orders of the courts below are erroneous

and illegal, in view of the said three judgments of this court. Turning again to the question as to whether in the circumstances as mentioned by me already above it is a fit case in which the exceptional jurisdiction of this Court under Article 227 should be invoked, I am of the clear view that from the facts as narrated above the case does not call for invoking "the exceptional jurisdiction of this Court under Article 227 of the Constitution: It is not a case in which the courts below have failed to exercise jurisdiction vested in them or have travelled beyond the scope of the statute under which they purported to act. There is no parallel between any of the three cases as cited by Mr. Sabharwal and the present case and the facts and circumstance, of those cases differ entirely from the facts of the present case and none of those cases is of any help to the case of the petitioner. In none of those cases revisional jurisdiction either of the Sessions Court under the provisions of Section 397 Cr.P.C. was invoked or could be invoked prior to the invoking of the writ jurisdiction of the High Court under Article 227 of the Constitution. In conclusion in view of what has been said above the petition is dismissed.