Biswabahan Das

Vs

Gopen Chandra Hazarika & Ors.

Civil Appeal No. 94 of 1966

(K. N. Wanchoo, G. K. Mitter, J. M. Shelat JJ)

21.09.1966

JUDGMENT

MITTER, J.

This is an appeal by special leave from a judgment and order of the High Court of Assam and Nagaland dated January 24, 1964 passed in Civil Rule No. 208 of 1964 under Art. 226 of the Constitution of India.

The sole question involved in this appeal is whether the High Court was right in quashing the order of the Board of Revenue on the ground that the very basis on which the appellate order of the Board was founded did not exist and that the Board had gone wrong in taking into consideration the compounding of an offence under the Forest Regulation by the petitioner before the High Court as affecting his suitability in getting settlement of an excise shop in Dibrugarh area.

The facts necessary for the disposal of this appeal are as follows. One Biswabahan Das, the appellant before us, was the lessee of the said shop from 1956 to 1962. The shop was settled with him again for the term 1962-64 by the Deputy Commissioner. On appeal to the Board of Revenue, this was set aside on the basis of a report submitted by the Inspector of Excise and the shop was settled with the present respondent. Biswabahan went to the Assam High Court with a writ petition and succeeded there on the ground that the evidence of the Inspector had been taken behind his back and as such should not have been taken into consideration, but the High Court also held in that matter that no useful purpose would be served by granting any relief to Biswabahan at that late stage when the period of the licence was about to expire. This had the result that Hazarika remained the lessee of the shop when a fresh settlement became due. The Deputy Commissioner settled the shop with Hazarika again for the years 1964 to 1967. This settlement was challenged in appeal before the Board of Revenue. The Board went into the question as to whether Hazarika was a suitable person because as the holder of a firewood mahal licence he had compounded an offence of illegally felling green trees by paying Rs. 50 when he was acting as a forest contractor. From the appellate order of the Board of Revenue which was quashed by the High Court, it appears that a Forest Beat Officer of Dibru Reserve had detected that Hazarika had illegally felled some green trees and converted them into firewood although under the agreement between him and the authorities he was only entitled to cut and collect firewood from dead and fallen trees. There was no dispute that Hazarika had paid compensation of Rs. 50 in respect thereof and had filed an affidavit before the Board of Revenue that a mistake had been committed by his labourers in collecting some broken and fallen green trees in his absence. The Board was not satisfied with this explanation and took the view that the fact of Hazarika having compounded the offence did not clear his conduct although he had succeeded in getting a subsequent settlement of a forest mahal. It was observed by the Board, "forest mahals and

excise shops are settled under different sets of rules and the fact that the respondent (Hazarika) was considered suitable for one would not automatically entitle him to the other. In the matter of settlement of excise shops, the settling authority is entitled under Executive Instruction III to take other factors under consideration including the moral character of the tenderer in determining his suitability. This Board has consistently held that conduct of a tenderer is a valid consideration in this context. In view of his conduct as discussed above we do not consider respondent (Hazarika) to be a suitable candidate and are unable to uphold the settlement made with him."

The High Court relied on s. 345(6) of the Criminal Procedure Code to reach the conclusion that the compounding of the offence had the effect of an acquittal with the result that once the offence was compounded the Board was not entitled to take into account the propriety or otherwise of the conduct of Hazarika in respect of the offence with which he had been charged.

Before us Mr. Sarjoo Prasad appearing in support of the appeal contended that s. 345(6) of the Criminal Procedure Code had no application to an offence under the Assam Forest Regulation VII of 1891.

Sub-section (5) of s. 3 of the said Regulation defines a "forest offence" as an offence punishable under the Regulation or any rule thereunder. Section 62 sub-s. (1) of the said Regulation which has the marginal note "power to compound offences" provides -

> "The State Government may, by notification in the official Gazette, empower a Forest Officer by name, or as holding an office, -
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> (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 58 or section 59, a sum of money by way of compensation for the offence which such person is suspected to have committed; and
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> (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer."
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> Sub-section (2) provides :-
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> "On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released and no further proceedings shall be taken against such person or property."

We may now note the relevant provisions of the Code of Criminal Procedure. Section 345(1) of the Code prescribes that the offences thereunder specified may be compounded by the persons mentioned in the third column of the appended Table. By subs. (2) provision is made for the compounding of the offences specified in the first column of the Table appended to this sub-section by certain persons with the permission of the court before which any prosecution for the offence is pending. Sub-s (6) lays down that -

> "The composition of an offence under this section shall have the effect of the acquittal of the accused with whom the offence has been compounded."

It is, therefore, clear that to have the effect of an acquittal the offence compounded must be one

specified either under sub-s. (1) or sub-s. (2). The principle behind the scheme seems to be that wrongs of certain classes which affect mainly a person in his individual capacity or character may be sufficiently redressed by composition with or without the leave of the court as the case may be but any such composition would have the effect of an acquittal. It was urged by Mr. Sarjoo Prasad that assuming the effect of an acquittal to be the wiping out or negation of the wrongful conduct on the part of the accused, the scope of sub-s. (6) was only limited to the offences specified in sub-ss. (1) and (2) of s. 345 and the principle thereof could not be extended to offences under other Acts unless there was a provision similar to sub-s. (6) in those Acts. It must be borne in mind that although the marginal note to s. 62 of the Assam Regulation is "power to compound offences" the word "compounding" is not used in sub-s. (1) cl. (a) of that section. That provision only empowers a forest officer to accept compensation for a forest offence from a person suspected of having committed it. The person so suspected can avoid being proceeded with for the offence by rendering compensation. He may think that he was being unjustly suspected of an offence and he ought to defend himself or he may consider it prudent on his part to pay such compensation in order to avoid the harassment of a prosecution even when he is of the view that he had not committed the offence. By adopting the latter course he does not remove the suspicion of having committed the offence unless he is to have such benefit conferred on him by some provision of law. In effect the payment of compensation amounts to his acceptance of the truth of the charge against him. Sub-s. (2) of s. 62 only protects him with regard to further proceedings, but has not the effect of clearing his character or vindicating his conduct.

Our attention was drawn by the learned Advocate for the respondent to ss. 58 and 59 of the Assam Regulation which provides for certain offences being visited with imprisonment for a term or with fine or with both and on a comparison of those sections with s. 62 it was argued that the latter related only to very minor offences which the Legislature in its wisdom had thought compoundable by the rendering of compensation. It was urged that the suspicion of having committed a forest offence under s. 62(1)(a) should not amount to the imputation of any stigma on the character of the suspected person when by the rendering of compensation for such an offence he was to be protected from further proceedings and the principle behind sub-s. (2) of s. 62 was the same as that contained in s. 345(6) of the Code of Criminal Procedure. It was said that other statutes contained provisions for compounding of certain offences and the object of the Legislature in all such cases was that trivial offences once compounded were not to be raked up again or taken any notice of afterwards.

Reference was made to the observations of the Madras High Court in Chandanmal v. Rupakula Ramkrishnayya and another (A.I.R. 1942 Mad. 173 at 176.) that an agreement to compound an offence under s. 345(1) of the Criminal Procedure Code was not in violation of any law of public policy.

We were also referred to certain general observations in the case of Reg. v. Rahimat (I.L.R. 1 Bom. 147 at p. 151.) that there was a class of cases which might be the subject either of criminal or civil cognizance and if the person injured desired to obtain compensation the law did not forbid him whereas if he invoked the penal interposition of the Magistrate, that interposition was not refused.

From the above it was sought to be argued that if the wrong done was of a very trivial nature the rendering of compensation was in the eye of the law sufficient to redress it and to put an end to the matter without any reflection on the character of the person charged with having done the wrong.

We are unable to accept the above reasoning. If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired

into resulting either in conviction or acquittal. If composition of an offence was permissible under the law, the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence.

The High Court, therefore, was not right in coming to the conclusion that the effect of s. 62 of the Assam Regulation was the same as that of s. 345(6) of the Criminal Procedure Code and that no moral turpitude of any description could be said to be involved in the case. It follows that the High Court was not right in quashing the order of the Board of Revenue by the issue of a writ of certiorari. In Nagendra Nath Bora and another v. The Commissioner of Hills Division and Appeals, Assam and others ([1958] S.C.R. 1240.) the Assam High Court had quashed certain orders of settlement of a number of country spirit shops made by the Commissioner of the Hills Division and Appeals setting aside the orders of the Deputy Commissioner and the Excise Commissioner. It was there pointed out that the powers of the Appellate Authorities in the matter of settlement would be co-extensive with the powers of the primary authority, namely, the District Collector of the Sub-Divisional Officer. The same can be said of the powers of the Board of Revenue in this case. This Court observed (p. 1259) that -

> "There is no doubt that if the Appellate Authority whose duty it is to determine questions affecting the right to settlement of a liquor shop, in a judicial or quasi-judicial manner, acts in excess of its authority vested by law, that is to say, the Act and the rules thereunder, its order is subject to the controlling authority of the High Court. The question, therefore, is whether the High Court was right in holding that the Appellate Authority had exceeded its legal power."

The Court examined at length the extent of jurisdiction of superior courts to issue writs of certiorari. "On an examination of the authorities of this Court as also of the courts in England" it was pointed out that "one of the grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior court, in exercise of its statutory powers as a court of appeal or revision". It was also remarked that an order of certiorari was not meant to take the place of an appeal and that its purpose was only to determine whether the inferior tribunal had exceeded its jurisdiction or had not proceeded in accordance with the essential requirements of the law which it was meant to administer.

In this case the Board of Revenue had not gone wrong in law in taking into consideration Hazarika's conduct in rendering compensation for a forest offence. The Board was quite competent to take the view that Hazarika was not vigilant in observing the law even if it had found - when it did not - that Hazarika's explanation was not unconvincing. The Board cannot be said to have exceeded its jurisdiction under the law or committed an error apparent on the face of the record. It follows that the High Court was not justified in quashing the appellate order of the Board under Art. 226 of the Constitution.

In the result, the appeal is allowed, the order of the High Court is set aside and that of the Board of Revenue is restored. The respondent will pay the costs of the appellant.

Y.P.

Appeal allowed.

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