

Jehan Singh

Vs

Delhi Administration

Criminal Appeal No. 201 of 1970

(M. H. Beg, R. S. Sarkaria JJ)

27.03.1974

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against an order of learned single Judge of the Delhi High Court, dismissing appellant's petition made under Section 561-A of the Code of Criminal Procedure. The material facts are these.

2. On June 15, 1969, a report was lodged in Police Station. Tilak Marg, New Delhi, by one Munshi Ram alleging that he was employed as a Driver of bus, DLP 3867, belonging to Indraj Singh and Sukh Lal of Chirag Delhi. On June 13, 1969 at 6 p.m., he stopped the bus at Mathura Road to talk to one Devi Singh son of Ganesh Lal. Devi Singh invited the informant and his companions, Mahinder Singh Conductor and Sher Singh helper, to soft-drinks at a nearby shop. Leaving the bus unattended they proceeded to that shop. In the meantime, Jehan Singh appellant, Sharma, R. K. Pathak and another man of 'stout-build' got into the vehicle. The stout man took the steering wheel, and all the four drove away in the bus despite the protests of the informant and his companions. Munshi Ram then went to Chirag Delhi to inform his employer Indraj Singh, but found the latter absent. It was also mentioned in the report that Pathak and Sharma were employed in Scindia House.

3. The police stated investigation and arrested Jehan Singh appellant, and R. K. Pathak, Assistant Manager of the Industrial Credit Co. Ltd., Scindia House (hereinafter called the Company). They were later released on bail. The bus was also seized by the police from the possession of the Company.

4. Pathak and the appellant filed two separate petitions under Section 561-A, Cr. Procedure Code challenging the police proceedings in pursuance of the First Information Report made by Munshi Ram.

5. The learned Judge by a common judgment allowed Pathak's petition and quashed the proceedings against him but dismissed the appellant's petition with this observation :

If Jehan Singh had transferred all his rights in the bus, though against the stipulations in the hire-purchase agreement, it would be a matter for consideration of the trial Court whether he could be regarded guilty of the offence of that if the version contained in the First Information Report is proved.

6. All the outset, we inquired from Shri Anand, learned Counsel for the appellant, whether the

proceedings sought to be quashed were pending in any Court or before the police. We are told that at the date of the filing of the petitions under Section 561-A, Cr. Procedure Code, no charge-sheet or complaint had been laid in Court. The matter was still at the stage of investigation by the police.

7. Shri Prasad, learned Counsel for the State contends that the petitions under Section 562-A to quash the proceedings which were being conducted in the course of police investigation, were not competent. He has referred to *King Emperor v. Khwaja Nazir Ahmad* (71 IA 203, 213 : AIR 1945 PC 18) and *State of West Bengal v. S. N. Basak*. ((1963) 2 SCR 52 : AIR 1963 SC 447) It is maintained that in these circumstances, the petitions of both Pathak and the appellant Jehan Singh ought to have been dismissed as premature.

8. On the order hand Shri Anand maintains that his case falls within one of the exceptions to the general rule enunciated in the cases cited by Shri Prasad. Reliance has been placed on *R. P. Kapur v. State of Punjab*. ((1960) 3 SCR 388 : AIR 1960 SC 866 : 1960 Cri LJ 1239)

9. It appears to us that the preliminary objection raised by Shri Prasad must prevail.

10. In *King Emperor v. Khwaja Nazir Ahmad* (supra), their Lordship of the Privy Council pointed out that "the functions of the judiciary and the police are complementary, not overlapping" and that the "court's functions begin which a charge is preferred before it, and not until then". It was added that "it has sometimes been thought that Section 561-A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so, the section gives no new powers, it only provides that those which the Court already inherently possesses shall be preserved".

11. The principle enunciated in *Khwaja Nazir Ahmad's case* (supra) was applied by this Court in *S. N. Basak's Case* (supra). Therein a First Information Report was registered at the Police Station to the effect, that S. N. Basak along with three others had committed offences under Section 420, 120-B read with Section 420, Penal Code. The police started investigations on the basis of that report. Basak accused surrendered before the Judicial Magistrate and was enlarged on bail. Subsequently, he moved the High Court by a petition under Section 439 and 561-A of the Code of Criminal Procedure praying that the proceedings pending against him be quashed. At the time he filed the petition, there was no case pending before any court. The High Court quashed the police investigation holding that "the statutory power of investigation given to the police under Chapter XIV is not available in respect of an offence triable under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and that being so, the investigation concerned is without jurisdiction". Against that order, the State came in appeal before this Court on a certificate granted by the High Court under Article 134(1)(c). Allowing the appeal, this Court speaking through J. L. Kapur, J. observed : (at p. 55)

The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure, Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances, of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the Court under Section 561A of the Criminal Procedure Code.

12. The basic facts in the instant case are similar, Here also, no police challan or charge-sheet against the accused had been laid in Court, when the petitions under Section 561-A were filed. The

impugned proceedings were those which were being conducted in the course of police investigation. Prima facie, therefore, the rule in Basak's case would be attracted.

13. In *Ri. P. Kapur v. The State of Punjab* (supra), it was clarified that the rule as to non-interference by the High Court, in the exercise of its inherent powers, with the proceedings at an interlocutory stage, was not an inflexible one, and there are some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. Gajendragadkar, J. as he then was, speaking for the Court indicated one of such categories thus : (at P. 393)

Cases may also arise, where the allegations in the First Information Report or the complaint, even if they are taken at their fact value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person.

14. It was held that since the allegations made in the First Information Report against the appellant therein did constitute the offences alleged, there was not legal bar to the institution or continuance of the proceedings against him. It was further laid down that in exercise of its jurisdiction under Section 561-A, the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not.

15. The question, therefore, to be considered is, whether in the instant case, the allegation made in the First Information Report, did not, if assumed to be correct, constitute the offence of theft or its abetment against the appellant.

16. A plain reading of the First Information Report would show that the answer to this question must be in the negative. It is alleged therein that the bus (DLP-3867) belonged to Indraj and Sukh Lal of Chirag Delhi and was at the material time in their possession through their servants, Munshi Ram Driver, Mohinder Singh Conductor and Sher Singh helper, and that it was removed in the teeth of opposition from them without their consent from their custody or possession by four persons including Jehan Singh and R. K. Pathak, who all entered into the vehicle which was then driven by one of them who was of strong build, medium height, dark complexion, etc., to Scindia House. In substance the allegation was that the wrongful removal of the bus was the concerted action of the appellant Jehan Singh and R. K. Pathak and their un-named companions. Prima facie, the allegations in the First Information Report, if taken as correct, did disclose the commission of a cognizable offence by the appellant and his companions. May be that further evidence to be collected by the police in the course of investigation including the hire-purchase agreement, partnership deed and the receipt, etc., could confirm or falsify the allegations made in the First Information Report but the High Court at this stage as was pointed out by this Court in *R. P. Kapur's* case (supra) could not, in the exercise of its inherent jurisdiction appraise that evidence of enquiry as to whether it was reliable or not.

17. Might be, after collecting all the evidence, the police would itself submit a cancellation report. If, however, a charge-sheet is laid before the Magistrate under Section 173, Criminal Procedure Code, then all these matters will have to be considered by the Magistrate after taking cognizance of the case. We cannot, at this stage, possibly indicate what should be done in purely hypothetical situations which may or may not arise in this case.

18. For the foregoing reasons, we would hold that the petitions under Section 561-A were liable to be dismissed as premature and incompetent. On this short ground, we would dismiss this appeal.

19. No observation unwittingly made with regard to the merits of the case, in the above judgment shall be taken into account to the prejudice of any of the parties.

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