

Bhappa Singh

Vs

Ram Pal Singh and Others

Criminal Appeal No. 199 of 1977

(A.D. Koshal, V.B. Eradi, R.B. Misra JJ)

06.02.1981

JUDGMENT

KOSHAL, J. –

1. This appeal by special leave is directed against a judgment of a learned single Judge of the High Court of Punjab & Haryana quashing a complaint dated July 16, 1975 made by Bhappa Singh appellant with a prayer that respondents 1 to 9, who are admittedly officials of the Excise and Customs Department, be convicted of offences under Sections 307, 452, 504, 342 and 148 read with Section 149 of the Indian Penal Code.

2. Briefly the charge made in the complaint was that the accused-respondents had raided a jewellery shop of the complainant on June 12, 1975 and had simultaneously trespassed into the chaubara of an adjoining shop in which Gurdev Singh, son of the appellant, was carrying on cloth business, that the respondents came in two groups and that the group which had entered the shop had hurled abuses at the appellant and his people and had demanded a bribe, while the other group entered the cloth shop and rushed into the chaubara upstairs, where they fired shots in order to commit dacoity.

3. In quashing the complaint the learned single Judge gave the respondents the benefit of Section 108 of the Gold (Control) Act, 1968, which runs thus :

No suit, prosecution or other legal proceedings shall lie against the Central Government, Administrator, any Gold Control Officer or any person authorised by the Central Government or the Administrator for performing any functions under this Act, for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

And in doing so remarked :

When a raiding party consisting of officers of the Central Excise and Customs Department enters any shop or building for performing duties under the Act and uses force for removing obstructions against the performance of their duties, the protection of Section 108 of the Act would be available to them.

4. Learned counsel for the appellant had vehemently contended that while the incident which took place in the shop may not be of any consequence, the occurrence in the chaubara cannot be brushed away as of minor importance and that what the Customs party did there amounted to nothing short of an attempt to murder for which there was no valid excuse. The argument at first sight appears to

be attractive, but after being taken through material documents forming part of the record and hearing learned counsel for both parties we find that this is not a case which calls for our interference under Article 136 of the Constitution of India.

5. Certain facts which are not in dispute may here be stated. The appellant was issued a license to work as a certified gold-smith in the year 1963 and so was his son Gurdev Singh. The appellant's brother Om Prakash carries on his business as a gold-dealer in the jewellery shop above mentioned under another license. At the time when violence is said to have been used by the Customs party, Bhappa Singh and Gurdev Singh were admittedly inside the chaubara. During the occurrence, three men of the Customs party received injuries caused by blunt weapons and at least three of those injuries were in the head region. Gurdev Singh son of the appellant received a gunshot wound on the dorsal aspect of right forearm which was ascribed to indiscriminate shooting on the part of respondent 2.

6. In view of the circumstances mentioned in the last paragraph, there is little room for doubt that the Customs party was not out to commit dacoity either in the jewellery shop or the chaubara, that they also committed no trespass into either of those places, but that the purpose of the raid was to find out if any illegal activity was carried on therein. The presence of two licensed Gold-smiths in the chaubara speaks volumes in that behalf. It may further be taken for granted that the Customs party was manhandled before they themselves resorted to violence, because there was no reason for them to open fire unless they were resisted in the carrying out of the raid peacefully.

7. Even though what we have just stated is a general prima facie impression that we have formed at this stage on the materials available to us at present, it may not be possible to come to a conclusive finding about the falsity or otherwise of the complaint. But then we think that it would amount to giving a go-by to Section 108 of the Gold (Control) Act, if cases of this type are allowed to be pursued to their logical conclusion, i.e., to that of conviction or acquittal. In this view of the matter we do not feel inclined to upset the impugned order, even though perhaps the matter may have required further evidence before quashing of the complaint could be held to be fully justified. The appeal is accordingly dismissed.

8. Before parting with the judgment we deem it only fair to indicate that no expression of opinion herein shall be taken into consideration in the cross-case which is pending against the appellant at the instance of the Customs authorities.

</html