

Eastern Spinning Mills and Virendra Kumar Sharda and Another

Vs

Rajiv Poddar and Others

Special Leave Petition (Civil) Nos. 4126 and 5540 of 1984

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

03.05.1984

ORDER

1. We heard Mr. R. K. Jain, learned counsel for the petitioner in SLP No. 4126 of 1984 and Mr. V. D. Mishra, learned counsel for the petitioners in SLP No. 5540 of 1984 and Mr. K. K. Venugopal, learned counsel for the contesting respondents in both the petitions and Mr. A. P. Chatterjee, learned counsel for the State of West Bengal.

2. List of dates filed by Ms. Indra Bansal, learned counsel is taken on record.

3. Very interesting point of law was sought to be canvassed by Mr, K. K. Venugopal, learned counsel for the respondents but as the petitions are directed against interim orders by the Calcutta High Court and therefore at this stage we consider it unnecessary to undertake the exercise to examine it. We give the following directions and dispose of these petitions.

4. There were two informations of cognizable offences lodged against respondents 1 and 2, one at Barasat Police Station bearing No. 63 of 1984 and another at Sarampore Police Station bearing No. 14 of 1984 on March 12, 1984 and March 15, 1984 respectively. On an oral petition followed by a written petition by respondents 1 and 2, a learned Single Judge of the Calcutta High Court on March 15, 1984 made an order granting interim injunction in terms of prayers (g) and (i), which would imply that respondent 3, State of West Bengal and respondents 4 to 14, the various police officers and their servants and subordinate officers were restrained from taking any step or further step or any action or carrying on the investigation on the basis of or in pursuance of or in furtherance of two aforementioned FIRs lodged against respondents 1 and 2. The order had the effect of interfering and staying investigation of offences by investigating officer performing statutory duty under the Code of Criminal Procedure. We consider it absolutely unnecessary to make reference to the decisions of this Court and they are legion which have laid down that save in exceptional case where non-interference would result in miscarriage of justice, the court and the judicial process should not interfere at the stage of investigation of offences. And frankly such is not the case. This is a routine case where information of an offence or offences has been lodged investigation commenced, search and seizure followed and the suspects arrested. Prompt came the unusual procedure of oral applications and oral appeals and interim order interfering with investigations. And these oral applications and oral appeals followed by such orders as interim relief prayed for granted in terms of prayer which leave us guessing about prayers made, the case for granting the prayer, appreciation by a judicially trained mind and what appealed to the court. We have serious reservations about the procedure of oral applications and oral appeals. We do not propose to finally pronounce on these vital points. On an oral appeal, the appellate bench modified the order made by the learned Single Judge and the injunction restraining investigation was vacated. However, the Investigating Officer

was directed not to detain the writ petitioners, i.e. respondents 1 and 2 more than one hour each on any day for the purpose of investigation. We are of the opinion that investigation must proceed unhampered by court orders. Investigation shall proceed unhindered and uninterrupted by any order made by the High Court of Calcutta subject to the following conditions.

5. Respondents 1 and 2 shall appear before the Sub-Divisional Magistrate (Judicial) having jurisdiction over the police station where the information of offence was lodged and surrender to him on any date within a fortnight from today and the learned magistrate shall take them into judicial custody and release them on appropriate bail subject to his discretion to fix the amount of bonds.

6. In the course of investigation, the Investigating Officer has seized and taken into his possession various books, documents and papers. It appears that the petitioners have obtained directions for convening a meeting of the unsecured creditors of the company. As the meeting is once postponed it is likely that it may be directed to be convened in near future. To facilitate holding of the meeting of the company if any documents seized in the course of investigation are necessary, an appropriate application shall be made to the learned Company Judge and upon his direction, the Investigating Officer in whose possession or custody the documents are retained shall produce them before the Chairman, presiding over the meeting who after taking necessary inspection and permitting taking of the photostat copies shall return them to the Investigating Officer and he is entitled to retain the same and shall retain them. Respondent 1 and 2 are at liberty to approach the Investigating Officer and he will grant necessary facility for taking inspection of the documents seized.

7. By our order dated March 28, 1984 we had directed that neither interim nor final report by the Investigating Officer shall be made before obtaining the orders of this Court. This order is modified to mean that final report at the end of the investigation when ready, order and directions of this Court may be obtained before presenting the same to the court having jurisdiction to try the case. This direction does not cover interim report which if necessary may be filed in accordance with law.

8. With these directions, special leave petitions are disposed of.

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