

State of U.P.

Vs

Man Mohan and Others

Criminal Appeals Nos. 253-256 of 1975

(M. P. Thakkar, G. L. Oza JJ)

23.04.1986

JUDGMENT

THAKKAR, J. -

1. The respondents were prosecuted for contravention of Section 4(1) of the Sugar (Packing and Marking) Order, 1970, punishable under Section 3 read with Section 7 of the Essential Commodities Act, 1955, pursuant to a complaint instituted by the District Magistrate in the court of the Sub-Divisional Magistrate. The learned Magistrate recorded the evidence produced by the complainant and having taken into consideration that evidence produced by the complainant as also the documents produced in the court the learned Magistrate formed the opinion that there was ground for presuming that the accused had committed an offence triable by him, which, in his opinion, could be adequately punished by him. In this view of the matter, the learned Magistrate in exercise of powers under Section 254 of the Code of Criminal Procedure, 1898 ("Code") framed a charge in writing against the concerned accused in each of four matters.

2. The accused invoked the revisional jurisdiction of learned Civil and Sessions Judge under Section 435 of the Code in order to challenge the order passed by the learned Magistrate framing the charge against them. In each of the three revisional applications the learned Sessions Judge formed the opinion that the learned Magistrate was perfectly justified in framing the charge against the accused and rejected the concerned revisional application. The accused whose revisional applications were so rejected invoked the revisional jurisdiction of the High Court under Section 439 of the Code. (Revisional Applications 1809 of 1973, 1487 of 1972 and 1708 of 1973). However, in one of the revisional applications the learned Sessions Judge formed the opinion that the order passed by the learned Magistrate was not legal or proper and made a report to the High Court, under Section 438 of the Code which was registered as a criminal reference. (Criminal Reference 426 of 1973).

3. All these four matters were disposed of by the High Court by a common judgment. The High Court examined the matter at great length and by a twenty-seven page judgment, allowed all the three revisional applications, accepted the recommendations made by the Sessions Judge by his report under Section 438 of the Code, and quashed the charge framed against the accused. Thereupon, the State has approached this Court by way of the present group of appeals by special leave.

4. We have heard learned counsel for the appellant State as also the learned counsel for the respondents accused fully. Having given our most anxious consideration to the matter, we are of the firm opinion that the High Court should not have quashed the charge framed by the learned Magistrate in exercise of its revisional and reference jurisdiction. Since the learned Magistrate had

formed the opinion that there were grounds to presume that the accused had committed the offence and since it cannot be said that the prosecution was false, frivolous or vexatious or one which was by way of abuse of the process of law, the High Court should not have quashed the charge in exercise of the revisional and reference powers. We do not however, consider it appropriate to express our opinion on the questions arising in the matter and the points raised by the learned counsel on merits, lest any observation made by us may occasion prejudice to one side or the other. We, therefore, do not express our opinion on any of the questions dealt with by the High Court. All the questions are accordingly left open.

5. In the facts and circumstances of the cases the appeals must be allowed and the order passed by the High Court must be set aside. The matters will now go back to the court of the concerned Magistrate which had framed the charge against the respondents-accused for proceeding further in accordance with law. The concerned Magistrate will decide each matter uninfluenced and uninhibited by what had transpired subsequent to the framing of the charge on the footing that all questions are open to be decided by him, in the light of the evidence produced at the trial, and in the light of the arguments that may be urged before him, in due course.

6. The appeals are allowed accordingly.

</html