State of W. B.

Vs

Rashmoy Das and Others

Criminal Appeal No.1287 of 1999

(K. T. Thomas, M. B. Shah JJ)

01.12.1999

JUDGMENT

THOMAS, J.:-

1. Leave Granted.

2. The High Court seems to have pre-empted launching of prosecution proceedings against the respondent as the High Court prematurely stepped in with an order of quashment. The State of West Bengal has therefore challenged the said order of the High Court in this appeal by special leave.

3. The facts which the appellant has set up against the respondents which led to the aforesaid order are the following:

> A search was conducted by the officers of the Excise Department of the West Bengal State, at the office-cum-godown of an institute called M/s. Homeo Implex India Private Limited on 23-03-1996. A huge quantity of spirit (9683 litters) was seized therefrom. As the storing of such sprit, according to from the contraband and forwarded them to the Chemical Examiner for the purpose of testing them in the laboratory. On the same day the officers arrested two persons. They were produced before the Sub-Divisional Judicial Magistrate, Alipore who later released them on bail. The three respondents in this appeal moved on Sessions Court for anticipatory bail and the Sessions Judge granted an order in their favour on 16-04-1996.

4. On 19-10-1996, the Chemical Examiner forwarded the report of analysis of the samples. The officers of the Excise Department took the view that the respondents, besides those who were arrested at the first instance were also responsible for the storage of the contraband and all of them are liable to be prosecuted for various offences under the Bengal Excise Act, 1909 (for short "the Act").

5. As they proposed to launch prosecution against those persons they realised that there were two hurdles to be circumvented. First is, Section 92 of the Act contains a rider that institution of the prosecution was to be made after the expiry of six months from the date of commission of offence, only with the sanction of the State Government. The second was that under Section 167(5) of the Code of Criminal Procedure (West Bengal Amendment) an order of the Magistrate was necessary for continuing the investigation beyond six months from the date of arrest of the accused. As per the said sub-section if investigation in a case tribal by a Magistrate as summons case could not be concluded within six months from the date on which the accused was arrested or made his

appear4ance, the Magistrate shall make an order stopping further investigation into the offence and shall discharged the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice continuation of the investigation beyond the said period is necessary. This is a special provision applicable only in the State of West Bengal.

6. By the time the Excise Officer received the report from the Chemical Examiner the period of six months got expired. Hence they adopted a twin measure -- one, seeking the order of the Magistrate for continuing the investigation and the other, seeking the State Government's order sanctioning prosecution.

7. Though the Magistrate initially granted further time to complete investigation that period too expired and he officers again approached the Magistrate for further extension which was granted. In the meanwhile, the respondents moved the Magistrate to discharge them from the said case on the ground that the State failed to launch the prosecution within the period of six months from the date of the alleged commission of offence. But the Magistrate dismissed the petition against which the respondents moved the High Court in revision. Learned Single Judge of the High Court disposed of the said revision as per the impugned order and all the proceedings against the respondents were quashed.

8. On behalf of the respondents it was submitted before the High Court, inter alia, that as per the provisions of the Act the Magistrate had no authority to extend the time of filing the police report and that steps should have been initiated for securing sanction within the period of six months from the date of occurrence. It appears that the learned Single Judge has upheld the said argument which could be discerned from the following observations:

> "In the background of the above submissions it appears that failure of the prosecution to apply for sanction before the expiry of the period of six months when it was unable to file the prosecution report within six months and its failure to produced the sanction order as yet and its further failure to file the prosecution report by now have entitled to accused persons to be discharged and the proceedings quashed."

9. Learned Judge further observed that

> "Where the prosecution intends to file the prosecution report beyond the prescribed period of six months for initiation of proceedings with a view to take cognizance by the Magistrate it must come with the sanction order together with the prosecution report. In the instant case neither the prosecution report has been filed before the Magistrate as yet nor the sanction order has been produced."

10. The final operative portion in the impugned judgment is "in the light of the above discussions the petition is allowed and the proceedings quashed."

11. Shri Tapas Chandra ray, learned Senior Counsel who argued for the appellant State has submitted that when the High Court found that the prosecution report had not been filed there was no scope for ordering quashment of the proceedings. There is merit in the said contention that the High Court cannot quash something which was non-existent. There is no necessity for quashing prosecution in anticipation or initiation of such prosecution proceedings. Further learned Single Judge has not correctly interpreted Section 92(!) of the Act. The sub-section is extracted below:

> "92. *Limitation of suits and prosecutions*--(1) No civil court shall try any suit against

> the Government in respect of anything done, or alleged to have been done, in pursuance of this Act, and, except with the previous sanction of the State Government, no Magistrate shall take cognizence of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue, or made against any other person under this Act, unless the suit or prosecution is instituted within six months after the date of the act complained of."

12. We need not bother ourselves in this case about the constraint imposed by the section on the civil courts, which alone is covered by the first paragraph of the said provision. The power of criminal courts in taking cognizance of an offence under the Act has been circumscribed by the second paragraph of the section. Nevertheless a reading of it makes the position clear that there is no ban on the Magistrate against taking cognizance of the offence under the Act if one of the two conditions is satisfied. If the prosecution has been instituted within six months of the act alleged there is no question of producing any sanction as the Magistrate would then be free to take cognizance under the Act. But if the aforesaid six months' period is over the court can still take cognizance of the offence under the Act when the prosecution is instituted with the previous sanction of the State Government. In other words the only requirement for initiating prosecution proceedings against an offender after the expiry of the period of six months from the date of the act alleged is that such institution should be accompanied by the sanction granted by the State Government for such institution.

13. It has to be noted that after the initial period of six months lapses no further period of limitation is prescribed in the Act for instituting the prosecution supported by the sanction. Of course such institution may be subject to the other general provisions contained in the Code of Criminal Procedure. The reasoning adopted by the learned Single Judge that steps for obtaining sanction should have been adopted before the expiry of the first six months' period has no support in Section 92 or any other provision of the Act. However, even the necessity for obtaining sanction would arise only if the prosecution has not been instituted till the expiry of the said period of six months. Hence there is no scope for suggesting that the officer should have commenced proceedings for securing sanction before the expiry of the said period of six months. If papers are complete for launching the prosecution before the expiry of the said period they can straight away approach the Magistrate for initiating such prosecution. No question of sanction would then arise. So the need for obtaining sanction would arise only after the expiry of the said period of six months.

14. Attention of the learned Single judge should have been drawn to an earlier decision rendered by a Division Bench of the Calcutta High Court in *Supdt. and Remembrancer of Legal Affairs v. Mahendra Singh* (1972 Cri LJ 544 (Cal)). In the said case the situation was that the Magistrate passed an order discharging the accused in a prosecution for certain offences under the Act on the premises that no Magistrate could take cognizance of the offence as the initial period of six months had already expired. The Division Bench of the High Court interfered with that order and observed thus:

> "The bar therefore to the institution of the proceedings without a previous sanction as enjoined under Section 92 of the Bengal Act V of 1990 relates only to a prosecution instituted after six months but if and when the same is instituted within six months, no such sanction would be necessary. The emphasis therefore put by the legislature is on a sanction on the expiry of six months and the said provisions do not constituted any bar simpliciter as Mr. Das contended. Therefore, the ration of the learned Magistrate's order in this context are not correct. The State Government can conform

> to the requirements of the statue on expiry of six months by getting a sanction before the court takes cognizance. It is, therefore, premature at this stage to hold that there has been a statutory limitation and that Section 92 of the Bengal Act V of 1909 lends assurance to the same"

15. We have no doubt that the learned Single Judge had missed that correct legal position laid down by the Division Bench in the aforesaid decision. For all those reasons we allow this appeal and set aside the impugned judgment.

16. Learned counsel for the respondents pleaded that the respondents may be allowed to raise all other contentions regarding the maintainability of the prosecution. It is needless to observe that it is open to the respondents to raise whatever contention they think proper for resisting the prosecution pitted against them.