SUPREME COURT OF INDIA

State of Kerala

Vs.

Orison J. Francis

Crl.A.No.1723 of 2008

(Dr. Arijit Pasayat, C.K. Thakker and Lokeshwar Singh Panta JJ.)

04.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge quashing the proceedings in CC No. 917 of 2004 in the Court of Chief Judicial Magistrate, Ernakulam.

3. Background facts in a nutshell are as follows:

> "A complaint was filed alleging commission of offences punishable under Section 18(c) read with Section 27(b)(ii) of the *Drugs and Cosmetics Act, 1940* (in short the `Act'). Allegation was that the three accused persons were manufacturing and selling and storing DXN Ganocelium (GL) and DXN Rishi and (RG) capsules, which are drugs within the definition of Section 3(b) of the Act, without a manufacturing licence. In the complaint M/s. Deshsan Trading (India) Pvt. Ltd. represented by Abdul Rahmath Puvarasar Abdulla, Director and Abdul Rahmath Pavarsan Abdulla and Orison J Francis, Branch Manager were arrayed as accused persons Nos. 1 to 3. A petition under Section 482 of the Code of Criminal Procedure, 1973 (in short the `Code') was filed by the accused No. 1 and 3 who are respondents 1 & 2 in the present appeal. Basic stand before the High Court was that the alleged drugs seized belonged to "Ayurvedic" category which is dealt with under Section 3(a) whereas the "Allopathy drugs" are defined under Section 3(b). Separate Chapter i.e. Chapter IVA deals with Ayurvedic drugs etc. while Chapter IV deals with "Allopathy drugs". The charge is that the appellants violated Section 18(c) of Chapter IV, i.e. with respect to Allopathy Drugs. According to the accused the article sold was food supplement and at best is only an Ayurvedic proprietary drug. The Drug Department of State of Tamil Nadu has issued drug licence under Chapter IV-A as an Ayurvedic drug and thereafter licence was issued by the Food and Drug Administration, Pondicherry. Hence, sanction under Section 33 M of the Act ought to have been obtained to launch

prosecution, which is lacking. It is also not established that the person who launched the complaint is a public servant under Section 21 of the Act. According to them, gazette notification and the letter of appointment of the complainant/Drug Inspector are insufficient to satisfy Section 21 or Section 33G. What has been produced is only a transfer order. It was further contended that the court has not considered the pre-summoning evidence in the matter. Nowhere it is mentioned in the complaint that the same has been filed by the complainant in his capacity as public servant and the examination of the complainant can be dispensed with."

4. Stand of the present appellant before the High Court was that whether the goods seized were Ayurvedic Drugs can only be decided in the trial and the threshold interference by the High Court is not called for. Additionally it was submitted that the undisputed position being that the respondents did not possess a licence, the High Court could not have interfered. The mere fact that the licence was granted subsequently is of no consequence. It was pointed out that the inspector who made the seizure and filed the complaint was authorized to do so. In this connection, reference is made to the order dated 3.5.2000 transferring the concerned Drug Inspector from the Drugs Control Society, Trivendrum to be posted as Drug Inspector in the office of the Assistant Drugs Controller. Reference is also made to the Notification dated 19.11.2001 relating to the power of inspection of inspectors. It is stated that the explanatory note has no application because only when the drug is shown to be Ayurvedic drug, the explanatory note shall have relevance.

5. Learned counsel for the respondents, on the other hand, submitted that the seized drugs are nothing but Ayurvedic drugs. The complaint itself was filed after two years on 2.12.2003, though the seizure was made on much earlier. It is also submitted that the licence was subsequently granted after a long lapse of about two years. Same is a factor which has weighed with the High Court and for a technical breach the proceedings should not continue. The drugs were seized on 12.12.2001 and on the next day itself the respondent had obtained the licence.

6. Whether the goods in question are Ayurvedic drugs is essentially a matter for trial. Section 18(c) of the Act reads as follows:

"18. Prohibition of manufacture and sale of certain drugs and cosmetics - From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf.

(a).....

(b).....

(c) manufacture for sale (or for distribution), or sell, or stock or exhibit (or offer) for sale, or distribute any drug (or cosmetic), except under, and in accordance with the conditions of a licence issued for such purpose under this Chapter."

7. Obviously, a licence was required for dealing with the drugs. The mere fact that the application for licence was filed, did not entitle the respondent to manufacture and/or to sell the concerned drugs. The High Court, therefore, was not justified in quashing the proceedings. This is a not a case where threshold interference by exercising power under Section 482 of the Code was called for.

8. The scope for interference at the threshold by exercising power under Section 482 of the Code has been succinctly stated by this Court in *State of Haryana v. Bhajan Lal*[1]. In paragraph 102 it was stated as follows:

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the

institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. The present case does not belong to any of the aforesaid categories.

10. The appeal is accordingly allowed. We make it clear that we have not expressed any opinion on the merits of the case.

[1] *[1992 Supp(1)SCC 335]*