SUPREME COURT OF INDIA

State of Orissa

Vs.

Ujjal Kumar Burdhan

Crl.A.No.546 of 2012

(D.K. Jain and Anil R. Dave JJ.)

19.03.2012

JUDGMENT

D.K. JAIN, J.:

1. Leave granted.

2. This appeal by special leave, assails the judgment dated 12th February, 2008, rendered by a learned Single Judge of the High Court of Orissa at Cuttack. By the impugned order, on a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short the Code), the investigation initiated by the Vigilance Department of the State Government into the allegations of irregularities in the receipt of excess quota, recycling of rice and distress sale of paddy by one M/s Haldipada Rice Mill, a proprietary concern of the respondent, has been quashed.

3. On receipt of a complaint, the civil supply department of the State Government initiated an inquiry against the said concern, relating to the processing of paddy for and on behalf of the Food Corporation of India. Preliminary inquiry conducted by the Food and Supply department revealed certain irregularities in the procurement and milling of paddy by the respondent. A subsequent departmental inquiry recommended initiation of a proper administrative action against the respondent. Consequently, the State Government directed the Vigilance Cell of the Police department to conduct a preliminary inquiry regarding the alleged criminal acts.

4. In the meantime, on filing of a Writ Petition, being W.P. No.8315 of 2005, by the respondent, a Division Bench of the High Court while ordering the issue of the enforcement certificate to the respondent pending the ongoing inquiry, directed the

completion of the said inquiry within twelve weeks of the receipt of that order. In compliance with that order, the Civil Supply Department of the State Government issued enforcement certificate to the respondent. However, the respondent filed yet another Writ Petition, being W.P. No.10761 of 2005, inter-alia, praying for quashing of inquiry proceedings initiated by the State vigilance department on the ground that an inquiry had already been conducted on the same complaint by the department concerned. By way of an interim order, the High Court directed the State Government not to take any coercive action against the respondent till further orders. As a result thereof, the preliminary inquiry came to a standstill. For a similar relief, respondent filed another petition, being Crl.M.C.No.2808 of 2006 under Section 482 of the Code in which the impugned order has been passed. Aggrieved by the said order, the State Government as also its two functionaries, viz. Director- cum-Addl. D.G.P., Vigilance and Dy. Superintendent of Police, Vigilance Cell have preferred this appeal.

5. Mr. Suresh Chandra Tripathy, learned counsel appearing for the appellants submitted that it is settled law that a preliminary inquiry ought not to be quashed by the High Court in exercise of its jurisdiction under Section 482 of the Code. He argued that the High Court was not at all justified in interfering with the investigation at the threshold even before the registration of an FIR, particularly when in his report dated 4th June 2005, the civil supply officer had reported fabrication and forgery of accounts maintained by the respondent as also violation of the guidelines laid down in the Food and Procurement Policy for the marketing season 2004-2005. Referring us to the order dated 18th July 2005, passed by a Division Bench of the High Court in W.P.(C) No.8315 of 2005, whereby, as aforesaid, a direction was issued for expediting the inquiry, learned counsel stressed that having observed that if in the inquiry any irregularity is established, the respondent could be proceeded under the relevant provisions of law, the High Court committed a serious illegality in law in quashing the same inquiry/investigation.

6. Per contra, Mr. Randhir Jain, learned counsel appearing for the respondent supported the impugned judgment and submitted that the respondent was being harassed by repeated investigations on the same set of facts. It was alleged that the inquiry was ordered at the behest of an Ex- M.L.A. who belonged to the ruling party and with whom the respondent shared a long history of animosity and antagonism. He thus, contended that the appeal deserved to be dismissed.

7. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary

jurisdiction on the High Court to act according to whims or caprice. This extra-ordinary power has to be exercised sparingly with circumspection and as far as possible, for extra-ordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those incharge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

8. In State of West Bengal and Ors. Vs. Swapan Kumar Guha and Ors.1, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to 1 (1982) 1 SCC 561: 1982 SCC (Cri) 283: (1982) 3 SCR 121 collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed....Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case....If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.

(emphasis supplied by us)

9. On a similar issue under consideration, in Jeffrey J. Diermeier Anr. Vs. State of West Bengal Anr.2, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: 20.....The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give 2 (2010) 6 SCC 243 effect to an order under the Code; (ii) to prevent abuse

of the process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

10. Bearing in mind the afore-said legal position with regard to the scope and width of the power of the High Court under Section 482 of the Code, we are constrained to hold that in the fact-situation at hand, the impugned decision is clearly indefensible. In the present case, the S.P., Vigilance Cell, had merely approved the opening of an inquiry and converted it into a Cell File. The preliminary inquiry was yet to commence and an FIR was yet to be lodged. In the first instance, the High Court stayed the preliminary inquiry by an interim order in the Writ Petition, and then by the impugned judgment quashed the same. It goes without saying that commencement and completion of an investigation is necessary to test the veracity of the alleged commission of an offence. Any kind of hindrance or obstruction of the process of law from taking its normal course, without any supervening circumstances, in a casual manner, merely on the whims and fancy of the court tantamounts to miscarriage of justice, which seems to be the case here.

11. We are convinced that the circumstances that have weighed with the High Court, do not justify the conclusion it has arrived at. The High Court has allowed the petition under Section 482 of the Code, inter-alia, on the following grounds; firstly, the enforcement certificate had been issued to the respondent which evidences compliance with the Rice and Paddy Procurement (Levy) and Restriction on sale and Movement Order, 1982. The observation came to be made by losing sight of the fact that the said enforcement certificate had been issued pursuant to the order dated 18th July 2005, passed by the High Court in W.P. (C) No.8315 of 2005. Secondly, two inquires on the same facts had already been conducted, wherein the respondent had been exonerated. The High Court has committed a grave error of fact in observing that the respondent had been exonerated in the two inquiries held previously as both the inquiry reports had in fact concluded that the respondent had committed serious irregularities and proper action needs to be initiated against him. As far as the two previous inquiries are concerned, it may also be noted that those inquiries were departmental inquiries

and what has been quashed by the impugned judgment is the initiation of police investigation. Both the inquiries are entirely different in nature; operate in different fields and have different object and consequences.

12. Further, the impugned order also notes that in view of the arbitration agreement between the agent and the Government, all the alleged violations fell within the purview of Arbitration and Conciliation Act, 1996 and therefore, the respondent could not be held liable for any criminal offence. This observation is against the well settled principle of law that the existence of an arbitration agreement cannot take the criminal acts out of the jurisdiction of the courts of law. On this aspect, in S.W. Palanitkar Ors. Vs. State of Bihar Anr.3, this Court has echoed the following views: 22. Looking to the complaint and the grievances made by the complainant therein and having regard to the agreement, it is clear that the dispute and grievances arise out of the said agreement. Clause 29 of the agreement provides for reference to arbitration in case of disputes or controversy between the parties and the said 3 (2002) 1 SCC 241 clause is wide enough to cover almost all sorts of disputes arising out of the agreement. As a matter of fact, it is also brought to our notice that the complainant issued a notice dated 3-10-1997 to the appellants invoking this arbitration clause claiming Rs.15 lakhs. It is thereafter the present complaint was filed. For the alleged breach of the agreement in relation to commercial transaction, it is open to the Respondent 2 to proceed against the appellants for his redressal for recovery of money by way of damages for the loss caused, if any. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even prima facie.

(Emphasis supplied)

13. The High Court has also adversely commented upon the progress of the preliminary inquiry and has recorded that no new material has been placed on record by the Vigilance Cell. This has been recorded without having regard to the fact that the High Court by another order, dated 5th September 2005, had, by way of an interim order, directed the State Government not to take any coercive steps against the respondent, with the result that there was no occasion for the department concerned to bring to the fore any material to unravel the truth. It is also pertinent to note here that the High Court had itself, by order dated 18th July, 2005 directed the completion of inquiry within a set time-frame of twelve weeks, which was subsequently interjected by an interim order and finally the entire investigation/inquiry came to be quashed by the impugned judgment. It seems incongruous that in the first instance the court set into motion the process of law

only to ultimately quash it on the specious plea that it would cause unnecessary embarrassment to the respondent.

14. For all these reasons, in our opinion, High Court's interference with the investigation was totally unwarranted and therefore, the impugned order cannot be sustained. We, accordingly, allow the appeal, quash and set aside the impugned judgment and restore the investigation initiated against the respondent and direct the Vigilance Cell of the State to proceed with and complete the investigation expeditiously, in accordance with law.