

PUNJAB AND HARYANA HIGH COURT

Dr. Shankar Singh Ganda Singh

Vs

State of Punjab

(Falshaw, J.)

13.08.1953

ORDER

Falshaw, J.

1. This order will dispose of five connected petitions all filed by the same petitioner Dr. Shankar Singh describing himself as the Managing Agent of Hoshiarpur Dasuya Bus Service Limited, Hoshiarpur. Three of the petitions are under Section 526, Criminal P. C., and are for the transfer to some other district of three cases which are pending in the Court of the Additional District Magistrate at Hoshiarpur in which the petitioner is an accused person, the cases being under Sections 406, 408, 409 and 471A, Indian Penal Code, Section 384, Penal Code, and Section 32 read with Section 36 of the Administration of Evacuee Property Act, The other two petitions are under Section 561A, Criminal Procedure Code, and are for the quashing of proceedings in the first and third of the above mentioned cases, the second case under Section 384, Penal Code, having apparently been overlooked by the petitioner in this connection, since the cases are all inter-connected and he wants all the proceedings against him to be quashed.

2. The petitioner and the other persons who are involved as accused in these cases are all apparently connected with the management of the Hoshiarpur-Dasuya Bus Service Limited, and there does not seem to be any doubt that the cases against them were started in a somewhat unusual and unorthodox manner. The original complaint was in the form of the letter addressed to the District Magistrate of Hoshiarpur by a gentleman named Suraj Parkash describing himself as the President of the District Transport Workers Union of Hoshiarpur. This letter is dated 12-11-1952 and it was apparently presented by Suraj Parkash in person to the learned District Magistrate, Who apparently treated the letter as a complaint, and recorded the statements of Suraj Parkash and one Jiwan Singh who described himself as an Assistant Cashier in the Bus Company and thereafter on the same day ordered the issue of search warrants under Section 06, Criminal P. C., as a result of which the Police raided the Company's office and seized all the books. The allegations in the complaint were that the management of the company was keeping false

account books and embezzling money which was the property of the company by making false entries about payments to non-existing employees and showing actual employees as receiving larger wages than they were really receiving, and there are other allegations of this kind, including one of non-payment of the proper passenger tax, and it was also alleged that the shares of an evacuee named Ghulam Mohammad had been fraudulently transferred in the name of a Director of the company. It seems that the Investigation of the Company's affairs was entrusted by the learned District Magistrate to the Police though no formal order for an enquiry by the Police under Section 202, Criminal P. C., appears to have been passed, and whether as a result of the investigation or not it seems that on 19-12-1952 Rura Ram Sharma, the Accountant of the company, appeared before the District Magistrate and made a comprehensive statement about the alleged misdeeds of the persons in charge of the company's affairs with the result that on that date the learned District Magistrate passed this order:

"The complaint and the above statement of the complainant along with the documents Exhibits P-1 to P-5 produced reveal commission of offence under Sections 406, 408, 409, 417 and 420, Indian Penal Code, and offences under the Indian Income Tax Act, Indian Companies Act and Administration of Evacuee Property Act. I therefore direct Station House Office City to register a case on the basis of this complaint and the statement and investigate and take further necessary action."

In other words, it seems that the learned District Magistrate decided that the earlier complaint of Suraj Parkash, which was in any case very vague and obviously made by a person who did not have first-hand knowledge of the affairs of the company, should be shelved or otherwise abandoned, though no formal order of dismissal under S 203. Criminal P. C., was passed on it, and that instead the statement of Rura Ram Sharma, which was much more fully detailed and authoritative should be treated as a fresh complaint. Further more, in view of the nature of the charges, he evidently considered that the matter was not a suitable one for a private complaint and that the Police should register a case and take the matter up officially. In pursuance of this order, the case was registered by the Police on 19-12-1952, the statement of Rura Ram Sharma recorded by the District Magistrate being embodied in the first information report. As a result of the ensuing investigation, the three cases which the petitioner now seeks to have transferred to some other district were in due course instituted in the Court of the Additional District Magistrate.

3. The grounds on which the transfer is sought consist largely of allegations against the learned District Magistrate, whose bona fides are impugned, but they also include allegations against the learned Additional District Magistrate, particularly regarding harassment of the accused in such matters as bail. I must say at once on this view of the case that I should certainly be inclined to

hold that there were grounds for transferring the cases to some other district if the learned District Magistrate who is attacked in these applications was still in charge of the district, since in my opinion it is extraordinary that he should have acted as he did on 12-11-1952 merely on such vague allegations as Suraj Parkash had put forward in his complaint. These allegations clearly principally concerned the authorities dealing with income-tax, passenger-tax and evacuee property which ought obviously to have been consulted before any steps at all were taken against the accused, and the remaining allegations about falsification in the company's accounts really only concerned the share-holders of the company, and I should have thought that even on these matters the Magistrate would only have taken action on being moved by some interested member of the company and not by a mere outsider. Even the subsequent order of the learned District Magistrate dated 19-12-1952 appears to indicate excessive zeal on his part, since he included in the offences which he considered were disclosed offences under the Income-tax Act and the Indian Companies Act, whereas the briefest study of the law relating to offences under these Acts would have revealed to him that a prosecution under the Income-tax Act can only be instituted on the complaint of an Inspecting Assistant Commissioner of the Income-Tax Department, and that offences under the Indian Companies Act are not cognizable. Moreover, although the Indian Companies Act itself apparently does not prescribe on whose complaint cognizance of an offence can be taken, the commentary to Section 278 of the Act clearly indicates that a complaint should only be entertained from the Registrar of Joint Stock Companies or from persons actually interested in the company. However, the learned District Magistrate in question has now been transferred to another district and his place has been taken by another officer of the Indian Administrative Service, and, I can see no reason why this new officer is not qualified to deal with these cases unless and until it is shown that he is taking an undue and improper interest in their subject-matter. Thus, as far as the applications for transfer go, I consider that it would be sufficient to order that the learned District Magistrate should himself deal with these cases and withdraw them from the court of the learned Additional District Magistrate.

4. The question then arises whether there are any grounds for taking the unusual step of quashing the proceedings in these cases under Section 561A, Criminal Procedure Code although, owing to the fact that the proceedings in the cases have been stayed during the pendency of the present petitions in this Court, so far no evidence has been recorded in any of the cases. The only circumstances in which this Court will ordinarily interfere to quash proceedings in a preliminary stage are, (1) where the prosecution allegations even if true do not disclose any offence, (2) where the allegations, if true do disclose any offence, but there is no evidence to support them, and (3) if there is some legal bar to the continuance of the proceedings such as want of proper sanction or lack of jurisdiction. As regards the first of these points, I do not think it can be said

from a perusal of the statement of Rura Ram Sharma that the allegations made against the petitioner and other Directors of the Company do not disclose any offence if they are true. On the second point no evidence has been led as yet, and therefore it is quite impossible at this stage to decide whether the allegations were capable of proof or not. On the third point it cannot be said that the Court in which the cases are pending has no inherent jurisdiction and I am quite satisfied that the proper sanction exists for the prosecution of the accused in the only case in which any such sanction is required, i.e., that under the Evacuee Property Act.

5. It is, however, contended that the cases cannot proceed because of certain illegalities in their inception. It is contended that since the letter of Suraj Parkash was treated by the learned District Magistrate as a complaint and taken cognizance of by him as such under Section 200, Criminal P. C., and then the matter was referred by him to the Police for enquiry under Section 202, which is what in fact was done although no formal order seems to have been passed, it was no longer open to the learned District Magistrate to treat the statement of Rura Ram Sharma as a fresh complaint, and still less open to him to pass an order on this complaint for the Police to register a case on it. It is certainly true that when the learned District Magistrate decided to treat the statement of Rura Ram Sharma as a complaint it would have been better and more regular on his part to have passed some formal order of dismissal on the previous complaint of Suraj Parkash but it is evident that in fact the previous complaint was discarded and treated as having been superseded by the more detailed and better informed statement of Rura Ram Sharma, and I do not consider that in these circumstances the absence of the formal order on the complaint of Suraj Parkash is an illegality which bars any further proceedings on the complaint of Rura Ram Sharma.

6. The question thus arises whether, on treating the statement of Rura Ram Sharma as a complaint, it was open to the learned District Magistrate to refer the matter to the Police by way of an order to register a case rather than simply by instructing the Police to hold an enquiry under Section 202, Criminal P. C., and submit a report. There are undoubtedly cases which appear to support the contention of the learned counsel for the petitioner on this point. In -- '*Ulfat Khan v. Emperor*', AIR 1928 Pat 359 (A), Jwala Prasad J. has expressed the opinion that having once taken cognizance on a complaint, the Magistrate cannot act otherwise than under Sections 200 to 203, Criminal P. C. and he can direct the Police to make an enquiry under Section 202, but he cannot direct the Police to treat the complaint as a first information report. I notice, however, that in this case one of the main points for consideration was what in the circumstances constituted the first information report in the case and evidently the learned Judge did not think that the trial of the accused which followed this irregular inception of the case was illegal since he upheld the conviction of two of the accused. There is also an earlier decision by the same learned Judge in -- '*Rampabitar Singh v. Kasim Ali Khan*', which was cited, but I find from the judgment that the

main point on which proceedings were quashed was that the matter in dispute was a civil matter and a civil suit was already pending between the parties about the same dispute.

7. Another case which was cited was the --'Emperor v. Durga Prasad', AIR 1922 All 211 (C), but I do not find it particularly authoritative, since the learned Judge, Lindsay J. merely endorsed without discussion the recommendation by a Sessions Judge setting aside the conviction and sentence passed on one particular accused and ordered his retrial in a case which the learned Sessions Judge himself had already set aside the conviction of some other accused in the same case and ordered their retrial, and it seems to me that if the ground on which this recommendation was made had any force, the whole proceedings were illegal from the start and no retrial should have been ordered.

8. The next case -- '*Abdul Rahim v. Abdul Mukhtadin*²', is not quite in point. A complainant in that case had lodged a report with the Police on which a case against certain persons was registered under Sections 147 and 325, Penal Code. After investigation the Police submitted a report to the Magistrate concerned that the complainant's allegations were not made out. The complainant then filed a petition in the Court of the Magistrate asking him to issue summonses against the accused and without any further enquiry the Magistrate directed the Police to send up a charge-sheet. In these circumstances, it was held by Thadani c. J. and Deka J. that the Magistrate had acted wrongly, and that he should now treat the petition of the complainant as a complaint and take further proceedings if he thought it justified after holding a preliminary enquiry himself under Section 202, Criminal P. C. Perhaps, the strongest of the cases cited is --'*Isaf Nasya v. Emperor*³', In that case a complaint was filed in the Court of the District Magistrate of Rungpore accusing a number of persons of an offence under Section 366, Penal Code. After recording the complainant's statement under Section 200, Cri. P. C., the learned District Magistrate simply passed an order sending the case to the Police for enquiry and adding that the Police should see if there is any evidence for the submission of a charge-sheet and after that they should send it to the Magistrate concerned. As a result of the investigation the Police submitted a charge-sheet to the Sub-Divisional Magistrate at Nilphamari. It was held by Chotzner and Duval JJ. that this order of the District Magistrate was illegal and that the District Magistrate should pass appropriate orders under Section 203 or Section 204, Criminal P. C., on the report of the Police and then if he thought fit transfer the case to some other Magistrate for trial.

9. The real question appears to me to be whether it is legally at all possible for a case which has been started on a private complaint to be converted into an official prosecution, and although it would seem that the Code of Criminal Procedure does not contain any explicit provisions for such a course to be adopted, I cannot believe it was intended to prevent this from being done in cases considered suitable, and this opinion appears to receive some support from the cases cited

by the learned Assistant Advocate-General on the other side. The earliest of these cases is -- '*Emperor v. Bhola Bhagat*'⁴, In that case a complaint was filed in the Court of a Magistrate alleging that certain persons had robbed the complainant of a bottle of liquor and a purse containing some money and on the complaint the Magistrate recorded the complainant's statement and ordered on it the Police to take cognizance under Section 379, Penal Code, make a quick enquiry and report by 8-2-1922. The Police duly made enquiries and arrested certain persons and then instituted a case which resulted in the conviction of the accused. They were acquitted by the Sessions Judge who held that the arrest of the persons was illegal. The Government appealed and it was held by Mullick and Bucknill JJ. that the order of the Magistrate was not an order under Section 202, Criminal P. C., but an order directing the Police to exercise the independent powers conferred on them by the law and therefore that an arrest made by them in the course of their Investigation was not illegal and it was held further that even if the order was made under Section 202 the Police had power to arrest the accused and send up a charge-sheet, as a Magistrate's order under Section 202 directing the Police to enquire into a cognizable case does not debar the Police from exercising their powers of arrest and investigation in regard to the same subject-matter as of the complaint.

In -- '*Gopal Naik v. Alagirisami Naick*'⁵, Jackson J. has held that the Police on receiving information in a complaint forwarded for enquiry under Section 202, Criminal Procedure Code, can Investigate under Section 156 of the Code. Finally in -- '*Rashid Ahmad v. Emperor*'⁶, Abdul Qadir and Monroe JJ. held that the powers given to the police by Section 156 are not affected when an order to investigate under Section 202 is made, and though it, is not open to the Magistrate when a complaint has been made to him to direct the Police to make a charge in the same case, but it is open to the Police to do so if they think proper.

10. The nature of the present cases is such that in my opinion the learned District Magistrate rightly considered that the alleged offences could only be adequately investigated by the Police, and that they could only be properly prosecuted if found to be substantially true by the official prosecuting agency rather than by a private complaint. This is particularly so in the case under the Evacuee Property Act relating to the allegation that some shares in the company belonging to a Muslim evacuee had been fraudulently transferred in the name of a Director of the company. In the circumstances I consider that his order of 19-12-1952 directing the Police to register the case and investigate the matter was not illegal and that the proceedings should not be quashed on this ground.

11. The net result is that I dismiss the application for quashing the proceedings in the cases against the petitioner, and accept the transfer petitions only to the extent of ordering that the learned District Magistrate shall withdraw the cases from the Court of the Additional District

Magistrate and try them himself, and at the same time I direct that the trial shall be conducted as expeditiously as possible. The parties have been directed to appear in the Court of the District Magistrate at Hoshiarpur, on 2-9-1953.

Cases Referred.

167 Ind Cas 499 (Pat) (B)

2AIR 1953 Assam 112 (D)

3AIR 1928 Cal 24 (E)

4AIR 1923 Pat 547 (F)

5AIR 1931 Mad 770 (G)