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Ramesh Chand Bahree Vs. Om Pradash and anr.

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Court : Rajasthan

Decided On : Sep-20-1976

Reported in : 1976WLN(UC)563

Judge : M.L. Jain, J.

Appeal No. : S.B. Criminal Misc. Application No. 291/1975

Appellant : Ramesh Chand Bahree

Respondent : Om Pradash and anr.

Disposition : Petition allowed

Judgement :

M.L. Jain, J.

1. Non-petitioner Om Prakash filed a complaint in the court of the Judicial Magistrate, Khetri, on 4-10-74 against R.C. Bahree and Har Bhajan Singh Bhattal, under Sections 166, 167, 218 and 120B I.P.C. He alleged that he was a drillman in the employment of the Hindustan Copper Ltd., and is an active member of the Workers' Union, namely, Rashtriya Khetri Tamba Project Mazdoor Sangh. There is a rival union Tamba Sharamik Sangh which enjoys official patronage. The accused who are officers of the company were determined to destroy the union to which the complainant belonged. On 5-5-73 the complainant was beaten by the drill operator. He submitted a report of this beating to the Drilling Engineer but no action was taken. On the other hand, a charge-sheet was issued against the complainant for beating & for disobeying the operator. He was instructed to regularly report at the main gate barrier and sign a register for suspended workmen available with the security staff. This direction was in contravention of the certified standing orders. Further, according to the said orders, a suspended workman is required to be paid an allowance equal to half his basic pay plus D.A. for the entire period of suspension. If the enquiry is not completed within three months, then, the subsistence allowance is paid at the rate of 3/4 of the basic salary plus D.A. But R.C. Bahree who was responsible for such payment, did not make any such payment knowingly and intending to cause injury in the body and mind of the complainant, and thus acted against the clear direction of law.

2. The inquiry was conducted by Har Bhajan Singh Bhattal. He did not allow him to put questions to the witnesses. He then complained that the Inquiry Officer was biased. But the Inquiry Officer Mas not charged. On 10-1 -74 the complainant was refused an adjournment and the Inquiry Officer continued the inquiry behind his back. And yet, the Inquiry Officer mentioned in his report that lull opportunity was given to the complainant and that after inquiry, the charges were found proved.

Thereupon, the accused No. 1 Shri R.C. Bahree made an order on 15-2-74 reducing his basic pay by three steps. When the accused No. 1 came to know that the complainant had earned only two increments and the order passed by him cannot cause the full harm intended he charged his order and issued another one stopping three grade increments. He h as thus passed two punishment orders in respect of one misconduct. According to the certified standing orders, he was tint her required to mention the authority to whom and the time within which an appeal can be filed but the accused No. 1 did not mention both these things in the punishment order with the sole motive that the complainant may remain in dark and may not be in a position to file an appeal against the unlawful order. Having thus violated the various provisions of law, the accused have committed the aforesaid offences.

3. The learned judicial Magistrate on 18-4-75 took cognizance against Ramesh Charid Bahree under Section 166 IPC and against Bhattal under Section 167 IPC and directed issue of process. Aggrieved by this order, the present petition has been filed.

4. The learned Counsel for the non-petitioner has raised a preliminary objection that the impugned order is an interlocutory one and revisions against interlocutory orders having been specifically barred under Sub-section (2) of Section 397 CrPC, the powers under Section 482 thereof, cannot be invoked to revise an interlocutory order. I have discussed this matter in detail in Malam Singh v. State S.B. Cr. Misc. Application 747/1975 decided on 17th September, 1976). I have held therein that what Section 397(2) bars is a revision against interlocutory orders but the revisional jurisdiction is quite different from the inherent jurisdiction, each one dealing with separate situations and matters. Therefore, there is no bar to the exercise of the powers under Section 482 CrPC in respect of interlocutory orders, Section 397(2) notwithstanding. The only restrictions on such exercise are (1) that such powers can be invoked only in case of the three situations mention' d in Section 482 CrPC and (2) that such powers cannot be exercised in regard to matters which are specifically covered by any other provision of the Cede.

5. The learned Counsel for the non-petitioner relies mainly upon Stint Pal v. Kishan Lal 1976 CRLJ 215, which is said to be a direct authority on this point. In this case, an order under Section 204 Cr.P.C. was held to be an interlocutory order. It was observed that a revision petition against such an order is clearly barred by Sub-section (2) of Section 397. This bar cannot be circumvented by having recourse to Section 482 Cr.P.C. which does not apply to cases which are covered by the said specific provision of the Code. The learned Judge said however, that even if it is presumed that the petition is maintainable under Section 482 Cr.P.C., the petition had no merits. Such an observation is generally made only when the court is unable to make a categorical pronouncement.

6. Another case which was referred to was B.S Rao v. T.B. Shartna 1976 CRLJ 394. In this case it was stated that an order, of the Magistrate taking cognizance of a case against a person being an interlocutory order, the High Court will not interfere with it in revision under its inherent powers under Section 482 CrPC. Such inherent powers cannot be invoked to do an act which would conflict with an express provisions of law and other general principles of criminal jurisprudence and therefore the bar under Section 397(2) cannot be got over by the invocation of the inherent powers under Section 482 Cr.P.C.

7. Yes, these two authorities appear to support the contention of Mr. Tibrewal, the

learned Counsel for the non-petitioner. But the legal position in this respect has recently been classified by the Supreme Court in Sml. Nagawwa v. Veranna 1976 CrLJ 246 : : 1976CriLJ1533 . In this case, the Magistrate by his order dated-February 11, 1975, directed process to be issued against the accused respondents, under Section 204(1)(b) of the Cede of Criminal Procedure. The respondents then, preferred a revision in the High Court under Section 482 (sic) of the Code of Criminal Procedure praying that the order of the Magistrate may be quashed. The revision was allowed by the High Court by its impugned order made in Cri. Petitions Nos. 50 and'51 of 1975 dated 16-12-1975. On appeal by special leave, the Supreme Court observed that the Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegation in the complaint, if proved, would ultimately end in conviction of the accused, but an order made by the Magistrate issuing process against the accused can be quashed or set aside in the following cases:

1) where the allegations made in the complaint or the statement of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or no materials which are wholly irrelevant or inadmissible; and

4) where the complaint suffers from a fundamental legal defect such as want of sanction or absence of complaint by a legally competent authority and the like.

8. The cases mentioned above were parley illustrative but they provide sufficient guidance to indicate contingencies where the High Court can quash proceedings. It is no doubt that Section 397 Cr.P.C. is a bar, to revisions against interlocutory orders. But it will be noticed that the two jurisdictions, namely, revisional and inherent are quite distinct jurisdictions. Under Section 397 the revisional jurisdiction is available in order to satisfy the court, as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed or as to the regularity of any proceeding of any inferior court. Section 482 Cr.P.C., on the other hand, provides to preserve the powers to make such order as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. Thus, it hardly needs any comments or explanation to show that the powers under the aforesaid two sections are widely different. If it was an intention of the farmers of the Code that inherent powers shall not be exercised in matters of interlocutory order, there was nothing to prevent them to specifically provide for the same. It is difficult to agree with the proposition that the High Court shall stand by and watch in helplessness an injustice or abuse of process of the court being committed simply because it has arisen out of an interlocutory order. While exercising such jurisdiction the court certainly cannot do what the code expressly prohibits it from doing or can make ah order which is in contravention of of in direct conflict with

any provision of the Code. Whenever a court intervenes under Section 482 Cr.P.C., it cannot be said that it is exercising the powers of revision. I do not find that Section 397 purports to circumscribe the powers which inhere in the High Court.

9. I therefore, reject the preliminary objection. The learned Counsel next submitted that this Court should not interfere in the order made by the learned Magistrate for one more reason. He invited my attention to Section 245(2) Cr.P.C. which provides that the Magistrate can discharge the accused' at any stage prior to recording of evidence, if for reasons to be recorded he considered the charge to be groundless. The petitioners should first request the Magistrate and show to him that the charge is groundless instead of invoking, in the first instance, the inherent jurisdiction of the court which is required to be exercised sparingly.

10. I have considered this objection. According to Section 204 CrPC if the Magistrate after the examination of the complaint and the witnesses under Section 200 or after the enquiry or investigations made under Section 202, is of the opinion that there is sufficient ground for proceeding, then he is required to issue summons or a warrant as the case may be. At the stage of issuing; process, the Magistrate is mainly concerned With the allegation made in the complaint or the evidence led in support of the same and he is only to' be prima-facie satisfied whether there was Sufficient ground for proceeding against the accused. In the said Supreme Court case it was no doubt officered that where the Magistrate has exercised his discretion and has given cog-net reasons for his conclusion, whether the reasons are good or bad, sufficient or insufficient, is not a matter which could be examined by the High Court. But it appears to me that inspite of the provisions of Section 215 Cr.P.C., this Court shall be entitled to intervene in such categories of cases as have been illustrated by the Supreme Court in the aforesaid judgment.

11. Applying the aforesaid principles let us now examine whether the present case falls into any of the said categories so as to entitle this Court to quash the order made by the Magistrate. The learned Counsel for, the petitioners submitted that this is; a matter which properly pertains to the sphere, of Civil Courts but a complaint has been filed in order to harass the petitioners and to compel them into some type of action favour able to the respondent. The learned Counsel in this connection invited by attention to Ladha Shah v. Zaman Ali AIR 1925 Lah. 281, wherein it was observed that parties should not be encouraged to resort to the criminal courts in cases in which the point at issue between them is one which can more properly be decided by a Civil Court and the tendency on the part of litigants to do so should be checked by criminal courts who should be on their guard against lending their aid to such procedure. In Mst. Sudeshara v. Emperor AIR 1933 All. 813, it was observed that to use the criminal courts for enforcing a civil claim is 'highly improper; it may almost amount to blackmail. It was contended that the^ complainant in the instant case had two remedies available to him, one by way of an appeal to a Superior Authority and the other',, by way of invoking' the jurisdiction of labour or industrial tribunals. My attention was also drawn to a decision of this Court dated July 22, 1976, given in R.C. Bahori v. Prabhusingh S.B. Cr. Misc. Application No. 1093 of 1975 decided by me on July 2, 1976. The allegations in that case also fell in a similar compass. This court, observed that the provision of Section 166 IPC are attracted only if the alleged of lender disobeyed the direction of law knowingly and with the intention to cause or knowing it to be likely that he will by such disobedience cause injury, to the complainant. Mere omission in the order of punishment as-to where and within what time an appeal could lie, was held to be an act of sheer inadvertence. The certified

standing orders are published in a prescribed manner and certainly an active member of a trade union must have the knowledge how to proceed in the matter of appeal-against the order made against him. It was held by me that to invoke the provision of Section 166 IPC in a case like this was an abuse of the process of law. The learned Counsel for the petitioner-surged that the allegations made in the complaint and taken at their face value, make out absolutely no case against the accused nor does the complaint disclose the essential ingredients of the offence for which process has been issued against the accused.

12. The petitioner Bhattal is summoned for an offence under Section 167 because he was a public servant enquiring into the conduct of the respondent but he did not allow him to put questions to the witnesses. He was biased against him and prepared a false enquiry report against him. It is said that in so doing he knew or believed his report a document to be incorrect and intended thereby to cause or knowing it to be likely that he may thereby cause ii jury to the respondent. Frankly speaking, it has not been possible for me to see how the case is covered by the provisions of Section 167 I.P.C. It is not a case where the accused was charged with the preparation of a document. If an enquiry officer is biased and gives a report contrary to the facts of the case or the record, he is not thereby preparing a document in the sense that it may be used as evidence of the matter which it contains, vide Section 29 of the Indian Penal Code. Moreover, if a malicious or a incorrect report is made by an enquiry officer then a case can be made out for malice giving rise to a remedy by way of civil suit or by way of appeal to the proper authorities. It may be noted that the enquiry report is a sort of a fact finding report on which the Disciplinary Authority takes action. There was ample opportunity for the respondent to reply to show the disciplinary authority that the report was unjustified and malacious. If every public servant were to be prosecuted for enquiry reports which the delinquent officer considered incorrect, then no public servant shall ever be free to make any adverse report against a delinquent officer for fear of prosecution. I therefore, hold that the complaint does not disclose the essential ingredients of an offence under Section 167 IPC which is alleged against the petitioner No. 2 Shri Bhattal.

13. As regards the petitioner No. 1 accused Bahree, the allegations against him are that:

(1) the direction given by him, that the respondent should regularly report at the main gate of the factory premises was in contravention of the certified standing orders;

(2) he failed to pay subsistence allowance to the respondent during the period of his suspension;

(3). he did not change the enquiry officer inspite of the allegation of bias made by him against the enquiry officer;

(4) he did not mention in the order of punishment the name of the authority to whom and the time within which the appeal could be filed and

(5) he changed the order of punishment thereby disobeying the command of law and exibiting the intention that he was determined to cause injury to the respondent.

14. In order to bring a case within the mischief of Section 167 I.P.C., it is to be seen

prima-facie whether any of the aforesaid acts was a disobedience of any direction of law and further whether such disobedience was intended to cause or known to be likely to cause injury to the respondent.

15. I have thought over the matter and it will not be advisable for me at this stage to say categorically whether the directions contained in the certified standing orders and alleged to have been violated in the aforesaid manner are directions of law. I am also not prepared to say at this stage that all the aforesaid violations attract the provisions of Section 166 I.P.C. It appears to me that the refusal to pay the subsistence allowance to the respondent during the period of his suspension prima facie shows that a direction of the law has been violated with a view to cause an obvious injury to the respondent. It will be no answer to the charge to say that the refusal to make such payment attracts the provisions of the Payment of Wages Act and, that the complainant had in fact filed an application before the Payment of Wages Authority for wrongful deduction of the subsistence allowance. Since an offence appears to have been made out at least in respect of the allegations stated at No. 2 above, I would like to leave the other allegations also to be proved by the complainant. A prima facie case appears to have been made out against the petitioner No. 1 and the case has therefore, to proceed.

16. Consequently, I accept the petition of Har Bhajan Singh Bhattal petitioner No. 2 and quash the proceedings against him but I dismiss, the petition of Shri R.C. Bahree petitioner No. 1.

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