# State Of U.P vs O.P. Sharma on 6 February, 1996

## Equivalent citations: JT 1996 (2), 488 1996 SCALE (2)356, AIR 1996 SUPREME COURT 2983, 1996 AIR SCW 1229, 1996 ALL. L. J. 601, (1996) 2 JT 488 (SC), (1996) 2 SCR 236 (SC), 1996 CRILR(SC MAH GUJ) 367, 1996 (7) SCC 705, 1996 CALCRILR 113, 1996 UP CRIR 447, 1996 CRILR(SC&MP) 367, (1996) 20 ALLCRIR 437, (1996) 1 FAC 161, 1996 SCC (CRI) 497, (1996) 1 ALLCRILR 727, (1996) 1 CURCRIR 171, (1996) 1 EFR 530, (1996) 2 ALL WC 919, (1996) 28 ALL LR 79, (1996) 33 ALLCRIC 421, (1997) 1 MADLW(CRI) 350, (1996) SCCRIR 519

## Author: K. Ramaswamy

## Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
O.P. SHARMA

DATE OF JUDGMENT: 06/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)
G.B. PATTANAIK (J)

CITATION:
JT 1996 (2) 488 1996 SCALE (2)356

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special leave has been placed before us by a reference. The facts are not in dispute. The appellant- State has filed an F.I.R. with allegations as under:

"It is submitted that Modi Paints and Varnish Works, manufactures Varnish and Paints at Modinagar. This firm had been buying linseed oil and other edible oils in large quantities for quite some time, and had been storing the same and utilizing it for the manufacture of paints and varnish. This industrial unit had been buying and storing the linseed oil and other edible oils, and in this respect the said industrial unit has not obtained any licence. The said industrial unit had given an application for obtaining a licence in respect of their business for the purpose of said oils for utilizing the same in paints and varnish but their application was rejected. Subsequent to that also, the said industrial unit kept purchasing, storing and utilizing the said oils and kept manufacturing said selling paints and varnish. Earlier also this firm had not made available its records concerning stock of bills.

To-day on 4.12.1985 in the evening at about 3.30 p.m. myself Abdul Qadir, Senior Marketing Inspector, Modinagar under the direction of Sri P.K. Upadhayaya, Addl. District Magistrate [Supply] Ghaziabad along with Sri Mohan Singh, District Supply Officer, Ghaziabad, Sri Rameshwar Dayal, Supply Inspector Modinagar, Sri Rais Ahmad, Supply Inspector Modinagar, Sri S.K. Mishra, Marketing Inspector, Sri S.K. Singh, Marketing Inspector, Sri Anil Kumar Srivastava, Marketing Inspector, Modinagar, Sri J.R. Joshi, Sub-Inspector, Sri SamaiSingh, Constable No.56, Sri Sukhbir Singh, Head Constable No.53, Police Station Modinagar etc. inspected the oilstored in the oil tankers of Modi Paints and Varnish Works, Modinagar. To verify four tanks oil stored in them the oils stated by the party, three samples each were taken from every tank total 27 samples and sealed on the spot in the presence of the representatives of the firm Sri Kailash Chandra, Store Clerk and Sri O.P. Sharma, Factory Manager, the stock register pertaining to the year 1985-86 consisting of 389 pages serially numbered was taken into custody after the used pages signed by me and the said Kailash Chandra. The stock of stored oil was inspected on the basis of the stock register and the following quantities of oil was found stored in the tanks:

1. Soyabean oil 843 Qtls. and 57 kgs.

2. Castor oil 8147 Qtls. and 45 kgs.

3. Refined Soyabean oil 32 Qtls.

& 31 kgs.

The sample fard was prepared of one sample each from the collected samples and after taking the signature of every one it was handed over to the store clerk Sri Kailash Chandra. The stock register pertaining to the year 1984-85 was taken into custody and according to it on 4.11.1985 they had in their stock 2000 kiloliters of linseed oil stored with them. According to the oil register taken into custody, the aforesaid unit had purchased the refines soyabean oil, soyabean oil and linseed oil, had stored the same, utilised the same for manufacturing of varnish and paints and sold the said paints and varnish. The said oil comes in the category of edible oils because soyabean oil and refined

soyabean oil are such oils in which the food can be cooked. In this way the said unit has utilised the edible oils in the manufacture of paints and varnish in illegal manner and without obtaining any licence.

In this way the said unit and the owner of the said unit [Modi Industrial Unit] Sri Kailash Chandra, Store Clerk, Om Prakash Sharma, Factory Manager and Modi Paints and Varnish Works, Modinagar have violated the clause 4 of the U.P. Oil Seeds and Oilseeds Products Control Order 1966 [as amended upto date] Government Order 1284/XXIX-E-C-L-112[US]/77 dated 8.3.1977 which is published in the U.P. Gazette dated 8th March 1977 and G.O. No.4500/XXIX-Section 8-22 Oil/82 dated 29.10.1982 and Clauses 2, 3, and 6 of Pulses Edible Oil Seed and Edible Oil [Storage Control] Order 1977 [as amended upto date] which is a punishable offence under Section 3/7 of the Essential Commodities Act, 1955.

Therefore register a case against all the aforesaid persons and take necessary action. The copies of recovery memos and Supurdginama are enclosed herewith accordingly the entire aforesaid stored oil has been given in the custody of Sri Nand Kishore, General Manager, Modi Industries, Modinagar and the sample seal and the nine sealed samples along with two stock registers are accordingly being handed over by me in the police station."

The respondent filed Criminal Misc. Petition No.15985 of 1985 in the High Court of Allahabad. The learned single Judge of the High Court by order dated January 7, 1986 quashed the F.I.R. holding that as per the case set out in the counter-affidavit, the respondent was not engaged in the sale or purchase of the oil seeds; he has been engaged in the manufacture of paints and varnishes. Therefore, he is not a dealer in oil seeds or edible oil covered under the U.P. Oilseeds and Oil-seeds Products Control Order, 1966 (for short, the 'Order']. Accordingly, the prosecution against the respondent is not in accordance with law. The application was accordingly allowed and the F.I.R. was quashed. Thus this appeal by special leave.

The term "dealer" has been defined in clause 2 [g] of the Order thus:

> "[g] `Dealer' means a person engaged in the business of purchase or sale or storage for sale of oil seeds - and oilseeds products, but does not include the [Food Corporation of India] the U.P. Food and Essential Commodities Corporation or a dealer who stocks less than 5 quintals of oils or less than 10 quintals of oil seeds or less than 25 quintals".

No dealer shall occupy or set up any premise for purchase or sale or storage for sale of oil-seeds and oil- seeds products, except under and in accordance with the terms of a licence granted by the Regional Food Controller under the Order.

Another Order, viz., Pulses, Edible Oil-seeds and Edible Oils [Storage Control Order], 1977 was issued.

"Dealer" under clause 2 [f] thereof was defined to mean "a person engaged in the business of purchase, sale or storage for sale of any pulses, edible oil seeds or edible oils, whether or not in conjunction with any other business and includes his representative or agent". Clause 3 thereof also provides the mandatory requirement of obtaining licence by dealers with the following language:

"3. Licensing of dealers:- Notwithstanding anything contained in any State Orders after the expiration of a period of fifteen days from the coming into force of this clause, no person shall carry on business as a dealer in pulses or in edible oilseeds or in edible oils except under and in accordance with the terms and conditions of a licence granted under a State Order if the stocks of pulses or edible oilseeds or edible oils in his possession exceed the quantities specified below :

| | |
|---|---|
| (i) Pulses | 10 quintals for all pulses taken together. |

(ii) Edible oils 5 quintals for including all edible hydrogenated oils including vegetable hydrogenated oils vegetable oils taken together

(iii)Edible oil- 30 quintals of seeds including all edible groundnut in oilseeds.

shell."

Clause 4 imposes restriction on possession of pulses, edible oil-seeds and edible oils. No dealer shall, after a period of fifteen days from the coming into force of this clauses either by himself or by any person on his behalf, store or have in his possession at any time pulses, edible oil seeds or edible oils in excess of the quantities specified thereunder. The quantities specified or stock limits - maximum and minimum - have been prescribed.

Admittedly, the respondent does not have any licence issued under either of the Orders. Both the Orders issued under Section 3 of the Essential Commodities Act regulate "possession of" ant "dealing in" of the essential commodities for equitable distribution at fair price or for supply to the consumers. The question, therefore is: whether the respondent is a dealer within the meaning of either of the Orders? The case of the respondent is that since he stored 843 quintals and 57 kgs. of soyabean oil, 8147 quintals and 45 kgs of castor oil and 32 quintals and 51 kgs. of refined soyabean oil for the purpose of manufacturer of paints and varnish, he is not a dealer. That contention was accepted by the High Court. We find that the High Court is wholly incorrect in that construction. It is seen that the dealer means a person engaged in the business of purchase or sale or storage for sale of oil-seeds or oil- seeds products. The exemption from the Order is given to the Food Corporation of India and the U.P. Food and Essential Commodities Corporation as they are public undertakings for regulating distribution of essential commodities. They are not dealer under the Orders. Any other dealer who stocks quantity less than the minimal prescribed under the Orders need not obtain licence. Even a person who is engaged in the business of purchasing oils or oil seeds for the purpose of using them in another commercial products is a dealer under the definitions referred to

hereinabove, when he stores the quantity in excess of the limits prescribed by the Orders.

This controversy is no longer res integra.In State of A.P. v. Abdul Bakhi & Bros. [(1964) 7 SCR 764], a three- Judge Bench of this Court considered a similar question having arisen under the Hyderabad General Sales Tax Act, 1950. The respondent was carrying on business of tanning hides and skins and selling the tanned skins. He kept in stores a total quantity of tanning barks. He contended that since he was not dealing in them but stored them for the purpose of manufacture, he could not be held to be a dealer and that, therefore, he is not liable to pay the sales tax on its turnover. This Court had rejected the contention and held that when a person is buying or selling a commodity- specified in the Rule for use as finished products in another commercial use, he is engaged in the business of buying, selling or supplying that commodity and, therefore, he is a dealer within the meaning of that Act.

In view of the specific definitions contained in clauses 2 [g] and 2 [f] of the respective Orders there is no doubt to conclude that he is a dealer under the respective Orders. Since he had not obtained a licence, he is liable to be proceeded with in accordance with law. ' Dr. Ghosh, learned senior counsel appearing for the respondent, contended that though the respondent had sought for licence, the licence had not been given to him and, therefore, he cannot be proceeded with. He also further contended that the F.I.R. does not contain all the ingredients of the offence and, therefore, the High Court was right in quashing the F.I.R. It is seen that the complaint is self-explanatory and has specifically mentioned about the storage of oil and oil seeds without licence under the respective Orders. It is not in dispute that the F.I.R. did mention that he purchased and kept in store the above quantity. Thus the ingredients have been specified. Whether he has applied for licence or not, we are not concerned with that controversy in this case.

The question then is: whether the High Court is right in its exercise of inherent power under Section 482 Cr.P.C.? This Court in State of Himachal Pradesh v. Pirthi i & Anr. [Crl. A. 1752 of 1995] decided on November 30, 1995 held as under:

> "It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FlR/charge- sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non- compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion

that no cognigisable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognisable offence - the court may embark upon the consideration thereof and exercise the power.

When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigating officer spends considerable time to collect the evidence and places the charge- sheet before the Court, further action should not be short- circuited by resorting to exercise inherent power to quash the charge- sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destablises the economy and causes grave incursion on the economic planning of the Stats. When the legislature entrusts the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be born in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in establishing the economy of the State regulated under the relevant provisions.

In State of Bihar v. Rajendra Agrawalla [Crl. A. No.66 of 1996] decided on January 18, 1996, this Court observed as under:

"It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face values do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out."

In Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi & Ors. [JT 199 (1) 656] this Court held as under:

> "... According to the complaint, the respondents had thereby committed breach of trust of Government money. In support of the above allegations made in the complaint copies of the salary statements of the relevant periods were produced. In spite of the fact that the complaint and the documents annexed thereto clearly made out a, prima facie, case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under Section 482, Cr.P.C. vis-a-vis that of the appellant and entered into the debatable area of deciding which of the version was true, - a course wholly impermissible...".

We accordingly hold that the High Court has committed grave error of law in quashing the F.I.R. The High Court should be loathe to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482, Cr.P.C. or under Articles 226 and 227 of the Constitution, as the case may be, and allow the law to take its own course.

The appeal is accordingly allowed. The order of the High Court is set aside. Investigating Officer is directed to complete the investigation within four weeks from the date of the receipt of this order and the appropriate Court would dispose of the case within six months therefrom.