

Allahabad High Court

Jauhari Mal And Anr. vs The State Of U.P. on 8 August, 1967

Equivalent citations: AIR 1969 All 241, 1969 CriLJ 590

Author: R Prasad

Bench: R Prasad

ORDER Rajeshwari Prasad, J.

1. This petition under Section 561-A, Cr.P.C., and the Revision Petition No. 2057 of 1965 connected with that case can be disposed of by a common order because the subject-matter of both is the same. The applicants of this petition are Sri Johri Mal and Kumari Arun Bala, minor daughter of Sri Johri Mal. They have prayed that this Court may quash the proceedings pending against the applicants in Criminal Case No. 614 of 1964 under Section 7 of the Telegraph Wires (Unlawful Possession) Act. The prayer in the revision petition is also to the same effect by asking for the setting aside of the order passed by the revisional Court and to discharge the applicants.

2. It appears that the police got information that the petitioners were in possession of some telegraph wire as well as stolen utensils kept in their shops. Search of the shop was made and some telegraph wire was recovered. The police, however, found that crime could not be worked out 'and, therefore, they made a final report. When the final report came up for consideration before Sri Jai Dayal, a Magistrate, First Class, of the District, he directed the police to make fresh investigation and to submit a charge-sheet. Such a charge-sheet was subsequently submitted and on the basis of that charge-sheet a complaint under Section 7 of the Telegraph Wires (Unlawful Possession) Act was made by the Superintendent of Police against the petitioners. That complaint was first filed in the Court of Sri Jai Dayal, learned Magistrate mentioned above. An application for the transfer of the case appears to have been moved whereupon the learned Magistrate made the following order:--

"D.M.--In this case under Section 5 of Telegraph Wires Act, the police submitted a final report. But I declined to agree with the report and directed the police to submit charge-sheet after reinvestigation. Now the charge-sheet has been received. The accused desires that the case be transferred to some other Court under Section 190 (1) (c), Cr.P.C. I have no objection. It may kindly be sent to some other Magistrate."

3. When the case was transferred to the Court of Mr. A. N. Khare, Sub-Divisional Magistrate (S.D.M., Jansath), he ordered that the complaint submitted by the Superintendent of Police against Jauhari Mal and Kumari Arun Bala be dismissed as not maintainable on account of the reasons recorded by him in his order. He proceeded to discharge the petitioners. The view taken by Mr. Khare, learned Sub-Divisional Magistrate, was that the order of the learned Magistrate Mr. Jai Dayal requiring the police which had made a final report in the matter, to submit a charge-sheet after reinvestigation was illegal, and that a complaint filed on the basis of such a charge-sheet was not maintainable in law. Mr. Khare noticed the various decisions relating to the point and came to the conclusion that the Magistrate did not have the jurisdiction to require the police to submit a charge-sheet in case where the police had made a final report. The Magistrate certainly would have the power to require further investigation to be made but to make a direction for submitting a charge-sheet there was no sanction in law. It is on such consideration that the complaint was

dismissed by Mr. Khare and the petitioners were discharged.

4. The State filed a petition in revision before the Sessions Judge, Muzaffarnagar, which was disposed of by Mr. Vikram Singh, Second Additional Sessions Judge, Muzaffar nagar, by his order dated 16th October, 1965. The learned Sessions Judge allowed the revision petition and set aside the order of the learned Magistrate by which the learned Magistrate had discharged the petitioners.

5. It is this order of the learned Sessions Judge which is sought to be set aside and quashed by both, the petition under Section 561-A, Cr.P.C., as well as the connected revision petition.

6. The view taken by the learned Sessions Judge is that whatever may have happened earlier to the filing of the complaint, the complaint itself had been filed by the Superintendent of Police, who was an officer authorised to make such a complaint under Section 7 of the Telegraph Wires (Unlawful Possession) Act, 1950. This being so, according to the learned Sessions Judge, the complaint could not be said to be tainted with any infirmity and consequently could not be dismissed. The learned Sessions Judge had also observed that there was no charge-sheet on the record, nor was there any final report, nor the alleged order of Sri Jai Dayal, Magistrate directing the police to make further investigation and to submit a charge-sheet against the petitioners. On these two considerations, the learned Sessions Judge proceeded to set aside the order of discharge passed by the learned Magistrate.

7. I am unable to agree with the view taken by the learned Sessions Judge. So far as the absence of the charge-sheet or the order of the learned Magistrate Sri Jai Dayal from the record is concerned, it is sufficient to mention that all these facts were assumed on all hands to be correct before the learned Magistrate Mr. Khare. The learned Magistrate has referred to these papers and it is on the basis of these papers that he proceeded to pass the order of discharge. The facts mentioned by the learned Magistrate in his order, therefore, were not in controversy between the parties at all. There was no justification for the learned Sessions Judge to make an observation with regard to the absence of the papers from the record in support of those undisputed facts. The view of the learned Sessions Judge with regard to the maintainability of the complaint filed by the Superintendent of Police, is not quite correct. The Superintendent of Police undoubtedly had the authority to make a complaint of an offence committed within the meaning of the Telegraph Wires (Unlawful Possession Act), but then he had to file the complaint on his own initiative. It may be that before filing the complaint, the Superintendent of Police could validly require an investigation to be made by the police and to act upon that investigation and to proceed to file the complaint on the basis thereof. But in the instant case, it is obvious that the Superintendent of Police did not take any initiative in the matter, nor did he require any investigation to be made by the Police. It was Shri Jai Dayal, the learned Magistrate, who commanded the Police to submit the charge-sheet against the petitioner after disagreeing with the final report, which had been made by the police. The initiative, therefore, must be attributed to that learned Magistrate and not to the Superintendent of Police which finally culminated into the filing of the complaint. Kumari Arun Bala has also been prosecuted as it was held out that when recovery of the telegraph wires was made from the shop of Shri John Mal, Shri John Mal was absent and Kumari Arun Bala his minor daughter aged about ten years, was present in the shop.

The learned Sessions Judge has also taken the view that Shri Khare, the learned Magistrate, who passed the order assumed the role of an appellate authority against the order of the learned Magistrate Shri Dayal, while passing the order which is the subject-matter of the present revision petition. To my mind, a Magistrate seized of a case had power to dismiss the same on the consideration that the complaint was not maintainable inasmuch as it had emerged out of an illegal order passed by another learned Magistrate. This, therefore, did not amount to sitting in appeal over the order of Shri Jai Dayal, the learned Magistrate, as observed by the learned Sessions Judge. The learned Magistrate seized of the case, was well within his powers to come to the conclusion that the complaint was not maintainable in view of the fact that its origin could be traced to an order of another learned Magistrate which was wholly illegal.

8. I am, therefore, of the opinion that both the petition under Section 561-A, Cr. P. C. and the petition in revision must be allowed.

9. I allow the petition under Section 561-A of the Code of Criminal Procedure so also the petition in revision set aside and quash the order passed by the learned Sessions Judge dated 16th October 1965 and all sub sequent proceedings thereafter and confirm the order passed by Shri A. N. Khare, Sub-

Divisional Magistrate, Jansath, dated 30th March 1965.