Supreme Court of India
Varinder Singh vs State Of Punjab & Anr on 16 January, 1947
Author: V Gowda
Bench: Sudhansu Jyoti Mukhopadhaya, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 147 OF 2014
(Arising out of SLP (Crl.) No. 7107 of 2013)

Varinder Singh …Appellant

Versus

State of Punjab & Anr. ...Respondents

J U D G M E N T

V.Gopala Gowda, J.

Leave granted.

2. This appeal is filed by the appellant questioning the correctness of the judgment and final order passed by the High Court of Punjab and Haryana at Chandigarh in petition Crl. Misc. No. M-13296 of 2011 (O & M) urging various facts and legal contentions in support of his case.

3. Necessary relevant facts are stated hereunder to appreciate the case of the appellant and also to find out whether the appellant is entitled to the relief prayed for in this appeal.

The appellant had gone as a visitor to the Central Jail, Ferozepur on 17.09.2009. There, on being searched, a mobile phone was recovered from his turban and a charger was recovered from his shoes. An FIR dated 24.09.2009 was filed at the Police Station Ferozepur, under Sections 42 and 45 (12) of the Prisons Act, 1894 (in short "the Act"). The Chief Judicial Magistrate of Ferozepur charged him on 01.05.2010 under Sections 42 and 45 of the Act. The appellant approached the High Court of Punjab and Haryana by way of a petition under Section 482 of the Code of Criminal Procedure, 1973, praying that the FIR be quashed. The High Court of Punjab and Haryana by way of impugned judgment and final order dated 19.07.2013 dismissed the petition, and inter alia held that "....the accused is at liberty to take all pleas available to him during the trial".

4. The High Court in its impugned order has interpreted Section 42 of the Act, and held that whoever communicates or attempts to communicate with any prisoner is liable for punishment. It said that the appellant herein was entering the jail with a mobile phone and its charger, apparently to enable communication with a prisoner. It was held that " After presentation of challan, charges have already been framed against the petitioner. In these circumstances, at this stage, no ground for quashing of the FIR in question is made out."

5. The learned counsel for the appellant contended that the High Court had not appreciated the contention that the offence under Sections 42 and 45 of the Act is not made out, and that mobile phone and charger are not included in the list of the prohibited articles. It was also contended that section 52-A, which prohibited the carrying of a mobile phone, has not been notified yet, and that it is still a Bill. It was further contended that even if the notification were to be taken as implementable, it was dated 08.03.2011. The offence is admittedly of 2009, and thus, this notification will not apply to the case as the same is prospective in nature.

6. The learned counsel for the respondents contended that the appellant was hiding a mobile phone in his turban and a charger in his shoe, thus, prima facie, the case under Section 42 of the Act has been made out against him. The counsel also contended that the sections mentioned in the charge sheet are attracted, and that there is no reason for the courts to interfere at this stage.

7. We have heard the rival legal contentions and perused the documents produced on record. Two issues arise for our consideration:

1) Whether an offence is made out under Sections 42 and 45 (12) of the Prisons Act?

2) Whether the High Court was justified in rejecting the petition to quash the FIR?

Answer to Point no.1

8. We have to examine Sections 42 and 45 of the Act in detail in order to understand the issue at hand. Section 45 of the Act provides for acts which are declared to be prison offences when committed by a prisoner. Clause (12) makes receiving, possessing or transferring any prohibited article a prison offence.

9. The appellant was not a prisoner at the date of the commission of the offence. He could thus, not have committed a 'prison offence' as defined under Section 45 of the Act. Hence, no offence is made out under Section 45 of the Act. Insofar as Section 42 of the Act is concerned, it provides that only that communication, which is contrary to the rules made under Section 59 of the Act is prohibited. Section 42 of the Act reads as under :

> "42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.— Whoever, contrary to any rule under section [59] introduces or removes, or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rules, communicates or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two

hundred rupees, or to both."

10. The Punjab Jail Manual lists the prohibited articles in Punjab prisons. Para 606 of the Manual lists the following Prohibited Articles:

"…..

1) Spirituous liquors of every description

2) Tobacco and all other substances whatsoever which are or may be intended to be used for the purpose of smoking, chewing or snuffing, and all instruments and appliances whatsoever, which may be used for or in connection with smoking, chewing or snuffing,

3) All explosive, intoxicating or poisonous substances, and chemicals whether fluid or solid of whatever description.

4) All arms and weapons, and articles which are capable of being used as weapons of whatever description.

5) All bullion, metal, coin, jewellery, ornaments, currency notes, securities and articles of value of every description.

6) All books, paper and printed or written matter and materials and appliances for printing or writing of whatever description.

7) String, rope, chains and all materials, which are capable of being converted into string or rope or chains, of whatever description.

8) Wood, bricks, stones and earth of every description." This list does not mention Mobile phone or charger as one of the prohibited articles. Thus, the communication, even if it was attempted to being done, was not contrary to the prison rules, and thus, is not an offence under Section 42 of the Act.

11. The Prisons (Punjab Amendment) Bill, 2011 provides for the addition of section 52-A to the Act. This Section reads thus :

> "52-A. (1)-Notwithstanding anything contained in this Act, if any prisoner is found guilty of possessing, operating or using a mobile phone or their component parts as like SIM card, memory card, battery or charger or if the prisoner or any other person assists or abets or instigates in the supply thereof, he shall be punished with imprisonment for a term, not exceeding one year or with fine not exceeding Rs 25,000 or with both……" This Section, thus, makes the possession of the mobile phone by the prisoner and supplying the phone by any person an offence. The notification by the Punjab Government that this section is in force is dated 08.03.2011.

The FIR for the offence was dated 24.09.2009. This notification will obviously not apply to the case in hand as the alleged offence was committed in 2009, and retrospective effect will not apply in the case of criminal laws. Hence, there is no offence made out against the appellant and we cannot accept the reasoning of the High Court in the impugned judgment. We hereby hold that this section cannot be made applicable to the facts of the present case.

Answer to point no.2

12. It is our view that in light of the settled legal principles, the High Court has erred in dismissing the petition to quash the FIR.

13. Section 482 of the Code of Criminal Procedure reads as under :-

> "482. Saving of inherent powers of High Court: Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders 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." Under this Section, the High Court has the power to quash an FIR. This court in the case of State of Haryana v. Bhajan Lal [1] has laid down the following categories of cases in which the High Court can exercise its power under Section 482 and quash the FIR:-
>
> "1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
>
> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.
>
> 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

> 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."[2]
>
> 14. These principles were further reiterated by a three judge bench of this Court in the case of Sunder Babu v. State of Tamil Nadu[3].

15. The case of the appellant clearly falls under category (1) of the grounds of quashing of FIR mentioned in the case of Bhajan Lal (supra). On the date of the offence, mobile phone was not listed as one of the prohibited articles under the Punjab Prison Manual. Thus, no offence is made out under Section 42 of the Act, as there was no communication which was done or was attempted to being done contrary to the rules. Further, the appellant was not a prisoner on the date of the offence. Hence, he could not have committed a prison offence as defined under Section 45 of the Act.

16. In view of the foregoing reasons, the appeal is allowed and the impugned judgment of the High Court is set aside. The FIR dated 24.09.2009 and the proceedings against the appellant are quashed. There will be no order as to costs.

.....J.

[SUDHANSU JYOTI MUKHOPADHAYA] .....J.

[V. GOPALA GOWDA] New Delhi, January 16, 2014.

---

[1] 1992 Supp (1) SCC 335.
[2] Ibid /Para 102.
[3] (2009) 14 SCC 244 at para 7.
