



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.439 OF 2018

Umashankar Yadav & Anr.

.... Appellant(s)

Versus

State of Uttar Pradesh,
Through Chief Secretary & Anr.

.... Respondent(s)

J U D G M E N T

Joymalya Bagchi, J.

1. Appellants have assailed a cryptic order dated 02.07.2015 whereby the High Court refused to quash Crime No.93 of 2014 under Sections 186 and 353 of Indian Penal Code¹.

2. *Guria* is a well known and reputed organization fighting against human trafficking and commercial sexual exploitation of girls/children in the State of Uttar Pradesh. Due to its relentless

¹ For short, 'IPC'

efforts a number of minor girls have been rescued from the clutches of traffickers. While the pioneering efforts of the organization received accolades at national and international levels, its foot soldiers i.e. the appellants have suffered the ignominy of being branded as “criminals” for alleged overzealousness in course of a raid to rescue bonded labour/minor children from a brick kiln at Varanasi, Uttar Pradesh.

- 3.** The unfortunate saga commenced when the first appellant, a Project Coordinator at *Guria* submitted an application before the District Magistrate, Varanasi alleging bonded/child labourers were engaged in a brick kiln at Varanasi and prayed that the exploited labourers including children be rescued. In response to the application, Deputy District Magistrate, Varanasi ordered Assistant Labour Commissioner to take necessary action.
- 4.** Pursuant to the directions of the Assistant Labour Commissioner, on 06.06.2014 at 10 am, one Raja Ram Dubey², Ram Avatar Sharma and Ram Lakhan Swarnkar (Labour Employment Officers), Inspector Ajit Kumar Singh of Anti Human Trafficking Force (AHTF) and two constables of Lohta Thana Varanasi

² Informant

proceeded to inspect the spot. Appellants also accompanied the team.

- 5.** Appellants contend they found children and labourers at the brick kiln who were brought to the Police Station. At that time the owner of the brick kiln intervened and took away the labourers. First appellant submitted a faxed message disclosing these facts to the District Magistrate.
- 6.** On the other hand, informant lodged a complaint at Lohta Police Station though no child was found working at the spot, alleging when his team had reached Shakti Mark Brick Kiln, appellants along with others forcibly put the labourers and the children in dumpers and took them away. Appellants did not obey the instructions of the joint team and did not let them record their statements before taking away the labourers. Thereby they obstructed and hampered their discharge of official duty.
- 7.** On his complaint, FIR came to be registered under Sections 186, 353 and 363 IPC.
- 8.** On further statement of one of the labourers, namely, Om Prakash, Section 363 IPC was dropped. Statements of other witnesses were recorded and charge sheet under Sections 186 and

353 IPC came to be filed. Magistrate took cognizance of the chargesheet which was assailed before the High Court. The High Court by the impugned order refused to quash the chargesheet holding as follows :-

“From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submission made at the bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482, Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge under section 239, 245(2) or 227/228, Cr. P.C. as the case may be through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the trial Court.”

- 9.** Above quoted paragraph shows the High Court did not advert either to the facts of the case or the contentions raised on behalf of the appellants. In a perfunctory manner it observed the issues involved disputed questions of fact which could not be adjudicated before the court under Section 482 Cr.PC. It also observed the appellants have right to seek discharge before the trial court.
- 10.** However, prior to arriving at such finding it is the duty of the High Court to ascertain whether the uncontroverted allegations in the FIR/Chargesheet constitute an offence, or continuation of the

proceeding suffers from a legal bar or is wholly vexatious and an abuse of process of law.

11. Summoning of an accused is a serious matter which affects liberty and dignity of the individual concerned. Judicial intervention under Section 482 Cr.PC to weed out vexatious proceedings is of pivotal importance in order to protect individuals from untelling harassment and misery and to ensure unmerited prosecutions do not crowd overflowing dockets of criminal courts and yield space for deserving cases. Faced with the agony of a lame prosecution, it is of little solace to a litigant to be told that inherent powers are shut out as he is entitled to approach the trial court and pray for discharge. The inherent power of the High Court to prevent abuse of process of court is much wider in amplitude than the discharge powers and cannot be whittled down on the plea of existence of such remedy³.

12. As the High Court had not adverted to the facts of the case at all and mechanically recorded a finding that the case did not merit

³ Ashok Chaturvedi & Ors. vs. Shitul H. Chanchani & Anr., (1998) 7 SCC 698.

intervention at the preliminary stage, we have ourselves undertaken such exercise.

13. What emerges from scanning the allegations in the chargesheet and statements of witnesses is that the appellants had accompanied a team of Labour Enforcement Officers to verify the allegation that bonded/child labour were employed at the brick kiln. During inspection, a difference of opinion cropped up between the labour officers and the appellants as to the manner in which the inspection was to be conducted. While the appellants wanted the workmen and children to be brought to the Police Station for interrogation, the members of the labour officers intended to record their statements at the site before taking further action.

14. In this backdrop, the appellants had put the labourers and the children in a Dumper and carried them away from the site before their statements could be recorded. Thereby, it is alleged they had obstructed discharge of official duties.

15. Appellants have a counter version. Even prior to lodging of FIR, first appellant through a faxed message had informed the District Magistrate that at the intervention of the brick kiln owner the

labourers and children who had been taken to the Police Station were illegally released.

16. We need not detain ourselves with regard to truthfulness of the rival versions.

17. The moot issue is do the uncontroverted allegations as narrated in the chargesheet disclose the ingredients of offences under Sections 186 and 353 IPC ?

18. Essential ingredients of offence under Section 186 are as follows:-

- (i) Obstruction of a public servant in discharge of public functions
- (ii) Such obstruction is done voluntarily and with the intention to prevent discharge of official duties.

19. Section 353 is attracted when the following ingredients are satisfied:-

- (i) Use of assault or criminal force on a public servant during execution of his duty.
- (ii) With the intention :-
 - (a) to prevent or deter discharge of such duty; or
 - (b) as a consequence of anything done or attempted to be done in the lawful discharge of his duty.

20. The words *force* and *criminal force* are defined in Sections 349 and 356 IPC and 'assault' is defined in Section 351 of the said Code.

21. A person is said to use *force* when :

(i) He causes motion, change in motion or cessation of motion of another person by :

(a) use of bodily power; or

(b) using a substance which comes in contact of the body, wearing apparel etc or with anything which affects the other person's senses; or

(c) inducing any animal to move or change its motion or cease to move.

22. *Criminal force* is defined as use of force by a person in order to commit an offence or done with the intention that such force is to cause or likely to cause injury, fear and annoyance to other person.

23. *Assault* involves any gesture or preparation which is done with the intention that such gesture or preparation will cause an apprehension about use of criminal force. Use of *criminal force* or *assault* on a public servant is essential to attract Section 353 IPC.

- 24.** Coming to the facts of the case, uncontroverted allegations in the chargesheet do not disclose use of force or holding out threatening gestures giving rise to an apprehension of use of force towards public servant. Physical movement of the labourers would not amount to use of force far less criminal force on a public servant.
- 25.** Given this situation, we can safely conclude uncontroverted allegations in the chargesheet do not disclose the ingredients of offence under Section 353 IPC.
- 26.** This brings us to Section 186 IPC. It would be argued the appellants obstructed discharge of official duties by not permitting the statements of bonded labourers/children to be recorded before removing them from the site. Obstruction to a public servant must be done with the requisite *mens rea* i.e. to prevent the latter from discharging his official duty.
- 27.** Statements of labourers unequivocally show that no force was used to take them away and they were promptly released. These statements do not give an impression that such action was with the intention to impede discharge of official duty. It appears there was a genuine difference of opinion between the appellants and the officials concerned. Members of the social organization were

of the impression that bonded labourers/children ought to be interrogated at a neutral place i.e. Police Station whereas the officers wanted to interrogate them at the site.

28. It goes without saying the manner and mode of interrogation was to be decided by the labour officers but appellants' endeavours were not to impede interrogation but to ensure it was conducted in a more effective manner. Such factual position denudes their action of the requisite *mens rea*, i.e. intention to obstruct official duty. When profile of the allegations emerging from the factual matrix of the case renders existence of *mens rea* patently absurd or inherently improbable, such prosecution is liable to be quashed as an abuse of process of law.

29. Malicious animus of the labour officials towards the appellants is evident from the reports annexed to the counter affidavit. Annexure CA/2 is a report of the Additional Labour Commissioner, U.P to National Commission for Protection of Child Rights regarding the incident. In the report, the Additional Commissioner had gone to the extent of alleging the appellants had offered bribes to the labourers to make false statements. Such insinuations are wholly unfounded and not borne out from the statements recorded

during investigation. This hostile stance of the department fortifies our conclusion that registration of the criminal case was a product of malice and personal vendetta against the appellants.

- 30.** Even assuming the ingredients under Section 186 are disclosed, prosecution under the said section simplicitor suffers from various insurmountable legal hurdles.
- 31.** Firstly, Section 186 is a non-cognizable offence and in absence of ingredients of Section 353 (cognizable offence) disclosed in the FIR, prior permission of Magistrate under Section 155 (2) Cr.PC was necessary to register FIR.⁴ No such permission was obtained rendering the registration of FIR and ensuing investigation bad in law.
- 32.** Secondly, cognizance of offence under Section 186 IPC was taken on a police report in breach of Section 195 Cr.PC. Section 195, *inter alia*, provides no court shall take cognizance of offence under Section 186 save and except on a complaint in writing by the aggrieved public servant or his superior. In view of the aforesaid

⁴ State of Haryana and others v. Bhajan Lal and others 1992 Supp (1) SCC 335 [see Para 102(4)]

legal bar, cognizance taken of the offence under section 186 on a police report/chargesheet is impermissible in law.

33. It would be argued as FIR was registered for both cognizable (section 353 IPC) and non-cognizable offences (section 186), even if Section 353 IPC is quashed, police report under Section 186 may be treated as ‘complaint’ in view of the Explanation to Section 2(d) Cr.P.C.

34. Section 2(d) Cr.P.C. reads as follows:-

“2(d). complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

As per the explanation appended to the definition clause, a police report disclosing a non-cognizable offence (section 186 in the present case) shall be deemed to be a complaint and the police officer shall be deemed to be the complainant. Even then, the legal embargo under section 195 Cr.PC is not dispelled as the legal fiction deems the police officer and not the aggrieved public servant as the complainant.

35. Similar view has been taken in *B.N. John v. State of U.P. & Anr.*⁵

36. For the aforesaid reasons, impugned prosecution is quashed and the appeal is allowed. Pending applications, if any, shall stand disposed of.

.....**J.**
(PAMIDIGHANTAM SRI NARASIMHA)

.....**J.**
(JOYMALYA BAGCHI)

**New Delhi,
May 08, 2025**

⁵ 2025 SCC OnLine SC 7