

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1438 OF 2009
[Arising out of SLP(Crl.) No. 4409/2007]

SHASHI PRAKASH SINGH

... APPELLANT(S)

:VERSUS:

STATE OF U.P. AND ORS.

... RESPONDENT(S)

ORDER

1. Leave granted.

2. At the material time, Smt. Beena, respondent No.5 herein, was the District Magistrate of Sultanpur District in the State of U.P. She, in the said capacity, was also a licensing authority in terms of the provisions of Arms Act, 1959. Appellant is working as a permanent clerk in the Kamla Nehru Institute, Sultanpur. Inter alia on the premise that she had been threatened with dire consequences by the appellant on 9.1.2007, when she refused to succumb under undue and illegal demand to divert a sugarcane purchase order to some other sugar mill outside Sultanpur District, a show cause notice under Section 17 of the Arms Act was issued to the appellant on 9.1.2007. The said show cause notice reads as under:

“Shri Shashi Prakash Singh son of Sri RD Singh

resident of CPI Building near Bus Station, Sultanpur, PS Kotwali City, Dist. Sultanpur.

On 9.1.2007, you ere hearing public complaint letters before the undersigned in the Meeting Hall of Collectorate and the point of Cane Purchase Centre located in Semri Bazar which was being allotted to some other sugar mill outside the District was taken up before the undersigned with a view to get political pressure in the matter. On refusal to the sanction, you were threatened the undersigned of public agitation and in case of suppression of the agitation, threat of murder was given by you. You are a person of furious nature. You are habitual of threatening and terrifying government officials for getting illegal work done through them. You are terrorist type person. Your aforesaid activities indicates your violent nature and because of your such activities, there is always a threat of law and order and public safety in the society. By using your licensed weapon, you can spread violence and terrorism at any point of time. Thus, there is always a danger of violence in the society and that danger may be resulting in law and order problem to the public peace and security. Keeping in view your aforesaid activities as well as in public interest, it seems improper that you hold a licensed weapon with you.

I Veena, District Magistrate, Sultanpur, therefore, using powers under Section 17 Armed Act hereby suspend your weapon licence no. 1857 Pistol No.RP-109406 with immediate effect and instruct you to immediately deposit your licensed weapon in the Police Station. You are also warned that keeping in view the aforesaid allegations against yo, why your weapon licence could not be cancelled? Your written clarification must be submitted on 16.1.2007 either by you personally or through an advocate before the Court. In case of non-compliance, it will be considered that you have nothing to say in this connection and further action will be taken on the basis of available evidences.”

3. Pursuant to or in furtherance of the said show cause notice, the counsel for the appellant appeared before the District Magistrate and asked for some time to file the show cause. Inter alia on the primise that the situation was grave, the learned Magistrate gave an opportunity to the learned counsel for the appellant to file the show cause till the sitting of the Court. As the said order was not complied with, the impugned order dated 16.1.2007 was passed, the operative portion whereof reads as under:

“In addition, FIR be registered against the opposite party under appropriate Section for threatening and terrorizing government officers and giving threat of committing murder. Copy of the order be sent to Incharge Officer, Weaponry and Incharge Inspector Kotwali Nagar for necessary action. After taking necessary action, file of the case of submitted in the office.”

4. We may, however, notice that while the said show cause notice dated 9.1.2007 was issued, a copy thereof was sent to the Superintendent of Police, Sultanpur, not only to serve the said notice on the appellant but also to get his weapon deposited in the police custody and not to return the same till the disposal of the case.

5. The appellant preferred an appeal against the aforesaid order dated 16.1.2007 before the Commissioner, Faizabad Circle. By an order dated 1.2.2007, the operation of the said order was stayed directing:

“This appeal was came up before me. Heard arguments of both the Ld. Counsels. Prima facie the Appeal seems to be admitted and, therefore, admitted.

As far as the question of stay is concerned, the Appellant has no criminal background. Therefore, the order of lower court dated 16.01.2007 is hereby stayed till further order. File of the lower court and parawise reply therein be summoned. The file be presented on 17.5.2007 for hearing.”

6. Pursuant to or in furtherance of the said purported direction contained in the aforementioned order dated 16.1.2007, the officer incharge of the Police Station Kotwali Nagar, Sultanpur, lodged a first information report. In the said first information report, the name of Smt. Beena, District Magistrate, Sultanpur was mentioned as the complainant. The first information report was said to have

been received by post. It was expected that a copy of the letter issued by the District Magistrate, Sultanpur, containing the allegations made against the appellant would have been annexed to the counter affidavit. It was not, however, done. We are, therefore, not sure whether the District Magistrate, Sultanpur herself lodged the first information report making the allegations, whereby commission of cognizable offence was disclosed or merely a copy of the order dated 16.1.2007 was sent.

7. Appellant aggrieved by the recording and lodging of the first information report by the Officer Incharge of Kotwali Nagar Police Station, Sultanpur, filed a writ petition before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, wherein Smt. Beena was impleaded as a party. The High Court by reason of the impugned order dated 17th May, 2007 while dismissing the application opined that although some sections mentioned in the first information report might not have been attracted, a case under Section 506 I.P.C. was attracted. In regard to the contention raised by the appellant that the said first information report was directed to be lodged with mala fide motive, the High Court has to say as as under:

“Mr. Sharad Pathak submits that the complaint is registered with mala fide motive and for that purpose he seeks exercise of power by this Court under Section 482 Cr.P.C. or Article 226 of the Constitution. He has placed reliance upon the judgment of Apex Court, reported in 1992 Supp. (1) SCC 335, State of Haryana and others V. Bhajan Lal and others. We are not prepared to accept this submission. The petitioner claims to be a social worker and still desires to have an arm licence. A notice has been issued subsequently by the Collector to cancel his arm licence. The learned counsel for the petitioner submits that this shows Collector's mala fides. This cannot be accepted since the threat given by petitioner has led to this notice. All these factors cannot go to vitiate the complaint which has been registered by the

Collector. The Collectors do not normally register such complaints, obviously the occurrence must have taken place. Learned counsel for the petitioner states that the notice of the Collector regarding arm licence has been subsequently stayed by the Commissioner. That is no reason to interfere with the prior registration of offence under Section 506 I.P.C.”

The appellant is thus before us.

8. From a bare perusal of the entire proceedings before the learned District Magistrate, Sultanpur, it is evident that the same is actuated by malice. If a cognizable offence has been committed by the appellant in the office of the District Magistrate on 9.1.2007, a first information report could have been directed to be lodged then and there. There was absolutely no reason as to why for the said purpose, a proceeding under Arms Act was required to be initiated. Apart from the District Magistrate herself, there cannot be any doubt, whatsoever, that when such overt acts are committed by the appellant, any staff working in the office of the District Magistrate also could have lodged the first information report. Even the police constables posted therein also could have seen to it that the offender is brought to book.

9. We have noticed that the District Magistrate for all intent and purport even directed the Superintendent of Police to serve the notice on the appellant and return the duplicate copy thereof before the date fixed. By reason of the said order, the Superintendent of Police was directed to seize the weapon and get it deposited in the police custody.

10. We are not apprised of any provision in the Arms Act, 1959 in terms

whereof such extraordinary steps could be taken by the learned District Magistrate. The proceedings under the Arms Act is a statutory proceedings. The District Magistrate while acting under a statute must act within the four corners thereof. The procedure laid down therein must be complied with.

11. We do not intend to enter into the correctness, legality or otherwise of the proceedings initiated under the Act at present. As the matter is pending before the learned Commissioner, Faizabad Circle, we have no doubt in our mind that while exercising a quasi judicial function under the provisions of the Arms Act, the District Magistrate could not have issued the order for lodging the first information report. If initiation of the entire proceedings was wholly without jurisdiction, the same would be a nullity. It may be correct that any person can set the law in motion but for that purpose the District Magistrate could have lodged a first information report herself. If such a procedure was not adopted, in our opinion, the High Court was not entirely correct in considering the matter as to whether the contents of the first information report disclosed a cognizable offence or of what offence.

12. We, therefore, are of the opinion that it was a fit case where the High Court should have exercised its jurisdiction under Article 226 of the Constitution on the premise that the first information report suffers from the doctrine of malice in law and issued a writ of mandamus directing the officer incharge of the Police Station not to make or cause any investigation to be made pursuant thereto or in furtherance thereof. There cannot be any doubt, whatsoever, that if any person intends to bring the appellant to justice, including

respondent No.5 herein, as has been contended by her in her counter affidavit filed before us, an appropriate action in that behalf may be taken. But only on that ground we should not refrain ourselves from exercising our jurisdiction which, according to us, appears to be mala fide on the face of it. The first information report is therefore quashed.

13. The appeal is allowed with the aforementioned observations and directions. However, there shall be no order as to costs.

NEW DELHI,
AUGUST 6, 2009.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

