MANU/BH/0173/1946

Equivalent Citation: AIR1947Pat185

IN THE HIGH COURT OF PATNA
SPECIAL BENCH

Decided On: 22.08.1946

Appellants: **B.K. Ray Nicholas Lines and Ors.**
Vs.
Respondent: **All India Spinners Association and Ors.**

Hon'ble Judges/Coram:
Manohar Lall, Actg. C.J., Sinha and Das, JJ.

JUDGMENT

Manohar Lall, Actg. C.J.

1. These civil revisions were directed by me to be placed before a Special Bench for hearing, as it was represented on behalf of both sides that an important question calls for consideration, namely, the construction of the provisions of Bihar Act 3 [III] of 1943 (hereinafter to be called the Act).

2. A number of suits instituted by the various respondents against the petitioners are pending in the Courts below. In each case the plaintiffs sued the defendant or defendants for damages alleged to have been caused to them as a result of certain illegal acts said to have been wrongly committed by the officers of the Crown during the period of disturbances in the province from 8-8-1942, till 9-4-1943. In some of the cases the Province of Bihar is made a defendant and relief is also sought against this defendant on the ground that the acts complained of were done or ordered to be done at the instance of the Province of Bihar.

3. The simple question for consideration in each case is whether the institution of the various suits giving rise to these applications in revisions is barred as no previous sanction of the Provincial Government was obtained as required by Section 4(a) of the Act and whether it was not the duty of the Courts to have referred the decision of this question to the Provincial Government as provided by Section 4, Sub-clause (b) of the Act.

4. The Courts below have taken the view that at this stage when no evidence has been adduced it cannot be held that the institution of these suits is barred by the provision of the Act. In some cases the Courts below have taken the view that it was not desirable to have a piecemeal trial and that these questions will be decided along with the other questions of law and fact that are involved in the suits.

5. The defendants have approached this Court and want us to exercise our extraordinary powers in revision under Section 115, Civil P.C. and to hold that in the circumstances about to be narrated further trials of these suits are prohibited by the provisions of the Act.

6. It is desirable to observe in the first place that Section 115, Civil P.C. gives discretionary powers to the High Court to interfere or not and that the High Court will not usually interfere if another remedy is available to the aggrieved party, see for

instance Raghunandan Prosad Misra v. Ram Charan Manda A.I.R. 1919 Pat. 425. Secondly, Section 115 applies to jurisdiction only, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved, but if the Civil Court should have arbitrarily and whimsically declined to exercise its jurisdiction and refused to make any orders in certain cases which it should have done, the High Court will interfere under Section 115, Civil P.C., per Lord Atkinson in delivering the judgment of the Board in Balakrishna Udayar v. Vasudeva Aiyar A.I.R. 1917 P.C. 71.

7. In the second place it is to be observed that their Lordships of the Judicial Committee have expressed their severe disapproval with the Courts of fact in appealable cases forbearing from deciding on all the issues joined. In Mahomed Sulaiman v. Birendra Chandra Singh A.I.R. 1922 P.C. 405 it was observed by Sir John Edge at p. 254:

> Their Lordships will quote for the information of those learned Judges what Lord Justice Turner, in delivering the judgment of the Board in Tarakant Bannerjee v. Puddomoney Dossee (66) 10 M.I.A. 476, said as to the duty of High Court Judges to pronounce their opinions on all important issues in cases before them. The Lord Justice said: 'The cause has not been decided in either Court on the principal point whether the lands formed part of the jote tenure or of the talook. Their Lordships are unfortunately Unable to decide this appeal finally by reason of this defect. The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigants, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points'.

8. In Jagannath Rao Dani v. Rambharosa MANU/PR/0041/1932, Sir George Lowndes in delivering the judgment of the Board made similar observations at p. 53:

> It has been repeatedly pointed out by this Board that it is the duty of the Courts below to pronounce their opinion on all the important points in an appealable case, and that a failure to do so not infrequently necessitates a remand with the consequence of heavy additional costs. The observance of this rule is, their Lordships think of special importance where the decision of other points depends, as it well may in the present case, upon the sifting of a mass of oral evidence, or upon the proper significance of the language employed in a vernacular document.

9. It is now convenient to take each case separately.

Civil Revision No. 66 of 1946.

10. In this case the plaintiff claims rupees 11,265 from defendant 1, the Province of Bihar, defendant 2, Mr. R.N. Lines, I.C.S., and defendant 3, Nur Mohammad Khan, dafadar. His allegations are that on 20-8-1942, defendant 2 was serving as the District Magistrate of Darbhanga and defendant 3 as the dafadar of village Muhammadpur in which the bhandar of the plaintiff was located, that on that date defendant 2 accompanied by defendant 3 and a number of soldiers and chaukidars

came to the bhandar and took the bunch of keys of the bhandar from the manager of the bhandar and illegally and wrongfully seized and took into custody the bhandar along with all the materials, and that the seven workers of the bhandar were arrested on the spot. It was also alleged that the defendants kept the goods of the bhandar in detention without making any arrangement for their safe custody and that due to the gross negligence of the defendants all the goods of the plaintiff were lost or at any rate remained unaccounted for. On these allegations the plaintiff claims a sum of Rs. 9065 as the price of goods seized and lost and compensation for damages to the buildings. He also prayed that a sum of Rs. 2000 be awarded on account of trespass and wrongful and illegal seizure and detention of goods.

11. On summons being served defendant 1 appeared on 24-9-1945, and filed a petition drawing attention in (to?) the relevant provisions of the Act and prayed that as the plaint did not disclose that any such sanction had been obtained previous to the institution of the suit, the Court would be pleased to dismiss the suit with costs to this defendant or would be pleased to refer the matter to the Provincial Government, that is defendant 1 itself, as laid down in the Act. The Provincial Government has not filed any written statement up to date.

12. On 7-11-1945, defendants 2 and 3 appeared and filed a petition to the same effect and prayed that the suit might be dismissed with costs to these defendants or the matter might be referred to the Provincial Government. In their case also no written statement has yet been filed.

13. The learned Subordinate Judge came to the conclusion that as in this suit defendant 1 was the Province of Bihar to which the provisions of the Act were not applicable, he could not reject the plaint. With regard to the contention of other defendants he came to the conclusion that the allegations in the plaint were the only materials that existed before him and on those allegations no question arose within the meaning of Section 4(b) of the Act, making it obligatory on him to make a reference to the Provincial Government and further that he could not hold at present that the suit must be dismissed at once.

14. It is against this order of 22-12-1945, that the present application has been filed on behalf of defendants 2 and 3 only No application has been filed on behalf of defendant 1, the Province of Bihar, so that the suit has to proceed against the first defendant in any view of the matter.

15. We have heard elaborate and learned arguments on behalf of the petitioners by the learned Advocate. General in all the cases. He was followed by the Government Advocate in one particular case. The learned Government pleader for the Province of Bihar, opposite party, in some of the cases, submitted that he bad instruction to endorse the arguments advanced by the learned Advocate-General.

16. The main argument advanced on behalf of the petitioners was that as soon as the defendant informs the Court that no previous sanction has been obtained to the institution of the suit, the Court has no jurisdiction to proceed with the further trial of the suit, and it must refer the decision of the question so raised to the Provincial Government, and that the Court has no jurisdiction to decide that question.

17. On the other hand, Mr. Baldeo Sahay appearing on behalf of the plaintiff-respondent urged in the course of his learned and elaborate arguments, (1) that it was for the Court to decide in each case whether the question arises for decision and if the Court takes the view on the materials before him that no question has arisen

which should be referred under Section 4(b) of the Act, then his order is not an order passed without jurisdiction that it calls for our interference at this stage, (2) that the provisions of a 4(b) are ultra vires of the Act inasmuch as the decision of a question of fact and law is thus removed from the jurisdiction of the Court who has to try all the facts and law arising in the litigation before granting or refusing relief to the plaintiff, and (8) that the entire Act itself is ultra vires of the Provincial Legislature, especially where the Province of Bihar who is a defendant in the action is being empowered to decide whether the suit should proceed against it and its servants.

18. In my opinion, it would not be proper at this stage to embark upon a decision of these difficult questions of law which have been raised on behalf of the parties. The learned Subordinate Judge has not stated in the order of revision that he will not refer the question to the Provincial Government. All he says is that on the materials before him he is not satisfied that the institution of the suit is barred. The learned Subordinate Judge will no doubt, When evidence has been gone into, consider and decide the points raised on behalf of the defendants along with the other issues of fact and law which will emerge for decision.

19. Assuming the provisions of the Act to be intra vires, Section 4(b) does not indicate the stage at which the Court must refer the question for decision. The Court has jurisdiction to decide whether, in the particular circumstances of the case on the materials before him, the question has arisen. Again, the Court may decide rightly or wrongly that the question has not arisen on the materials before him. It will also be observed that what the Provincial Government has to decide is not that the question has arisen but that, after the question has been referred to it, whether in this particular case, previous sanction of the Provincial Government was or was not necessary.

20. How can it be said in the present case that the Subordinate Judge has arbitrarily or whimsically refused to refer this particular question to the Provincial Government. I am also of opinion that this is not a case in which the observations of their Lordships of the Judicial Committee cited above should not be followed.

21. For these reasons I would decline ton exercise the extraordinary powers of interference under Section 115, Civil P.C. at this stage. If the ultimate decision of the suit is against the petitioner he has adequate remedy provided under the law and the questions can then be satisfactorily decided in appeal after the evidence has been gone into. I would dismiss this application with costs. Hearing fee one gold mohur.

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[C R Nos. 67 to 72 were disposed of for the same reasons as C.R. No. 66--Ed.]

Civil Revision No. 272 of 1946.

22. Civil Revision No. 272 of 1946 arises out of money suit No. 106 of 1943 instituted by the plaintiff Awadh Ram Gupta against the defendant Bhupendra Nath Chatterjee before the Subordinate Judge at Dhanbad. The plaintiff's allegations are that the defendant who was a Sub-Inspector of Police at that time on 16-8-1942 illegally and wrongfully arrested the plaintiff and his brother Molluram Gupta under Rule 129, Defence of India Rules, and on 11-9-1942 he lodged a complaint against the plaintiff and his brother alleging contravention of Rule 28.(1), Defence of India Rules. It was further alleged that in the report the defendant falsely complained that the plaintiff and his brother had attended a meeting at Shambazar on 15-8-1942 and

while returning from there they were leading a procession of about 300 men who damaged telephone wires etc. The plaintiff and his brother were put on trial and were acquitted on 27-11-1942. The plaintiff's allegation is that the arrest of the plaintiff was malicious and illegal and the criminal prosecution of the plaintiff and his brother was also malicious and illegal. On those allegations the plaintiff claims Rs. 2100 as damages on account of these illegal acts of the defendant.

23. On summons being served the defendant appeared and filed a written statement on 6-3-1944. In that written statement the defendant has traversed the allegations of the plaintiff on-material particulars. He also took the defence that the suit was not maintainable as the previous sanction of the Provincial Government was necessary for the institution of the suit, and that the act complained of by the plaintiff was done by the defendant as a servant of the Crown in order to maintain and restore order within Katras Police station during the period of emergency.

24. After the written statement was filed the learned Subordinate Judge framed issues on 6-3-1944. The important issue for the purpose is issue No. 3 which is as follows:

> Is the suit barred under Section 270, Government of India Act, as also under the provisions of the Defence of India Act and Rules, thereunder? Is it also barred under the provisions of the Bihar Maintenance and Restoration of Order (Indemnity) Act, 1943?

25. The various orders in the order-sheet show that the parties asked for time for issue of summons upon the witnesses named by them in their respective petitions: see order 11 of 19-12-1944 for issue of summons upon his witnesses by the defendant and order 12 dated 20 12-1944 for issue of summons upon his witnesses by the plaintiff. After the witnesses had been summoned the defendant filed hazri on 21-5-1943. On 4-7-1945 the Government Pleader for the first time on behalf of the defendant filed a petition stating that the Government had undertaken the defence in this case and prayed that necessary entries be made in the register to that effect. The Government Pleader suggested on that date that the point of maintainability of the suit be considered first but the plaintiff objected. Thereupon the Court observed as follows:

> It appears that piecemeal trial is not desirable. The facts are inter-connected and the plaintiff will adduce evidence on facts in order to show that the suit is maintainable and that the case is not governed by the Bihar Act III [3] of 1943. Under these circumstances, I think it is desirable to take up all the issues together.

Then the case was adjourned to 6th August 1945, for hearing. On 19th November 1945, the suit was transferred to the file of the Additional Subordinate Judge for disposal. On 2nd January 1946, the plaintiff filed hazri but the defendant filed a petition stating that the plaint was liable to be rejected under Order 7, Rule 11(d), Civil P.C., or the matter be referred to the Government for orders on the question of sanction under Section 4(b) of the Act. On 8th January 1946, the Court passed an order rejecting the prayer of the defendant, and observed that this was an action under the Torts for damages for false and malicious arrest against the defendant. The learned Additional Subordinate Judge refers to the previous order passed by his predecessor who was of opinion that before the case was transferred to him as specific issue on the point as to the maintainability of the suit was raised it was

desirable to take up all the issues together and that this petition appeared to be a repetition of the former one. The argument of the defendant was dealt with as follows:

> It was argued that the act of the defendant on which cause of action has been based was performed in course of his official duty and as good faith is to be presumed the previous sanction of the Provincial Government is necessary. So far as good faith is concerned it is a rebuttable presumption and before the Bihar Indemnity Act can be used as a shield against such actions it is necessary that the act complained against must have been done for the purposes of maintaining or restoring order in any part of the Province of Bihar. The test is not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a public servant in an act done or purporting to be done in the execution of his duty. Unless it is proved that the act complained of was done by the defendant in execution of his official duty and for the purposes of maintaining or restoring order, the provisions of the Bihar Indemnity Act would not apply and there would be no question of sanction of the Provincial Government for instituting the legal proceeding. This in itself is a question of fact which will depend upon the evidence at the time of trial. In case this is proved, the suit will be thrown out for want of sanction and not otherwise. Under these circumstances the plaint cannot be summarily rejected as prayed for. As a definite issue has been raised, it is better to try all the issues together as taking of evidence for this purpose alone would involve evidence regarding other issues already raised.

The application of the defendant was rejected and hence the application in revision. In this particular case apart from the reasons given while disposing of civil Revision No. 66 of 1946, it cannot be said that the Court in its order sought to be revised, has committed any error of jurisdiction. He refused to revise the order passed by his predecessor on 4-7-1945, which gave rise to a civil revision in this Court, and in the second place he considered that the question of sanction could be satisfactorily disposed of after the evidence had been gone into. For these reasons the application of the petitioner must be dismissed with costs. Hearing fee one gold mohur.

Civil Revision No. 373 of 1946.

26. Civil Revision No. 378 of 1946, arises out of Money Suit No. 35 of 1945, instituted against a single defendant in the Court of the first Subordinate Judge at Chapra. The allegations in the plaint are that the defendant, who was then serving as the Deputy Inspector-General of Police in the Northern Range in Bihar, on 20-8-1942, led an armed troop of white soldiers and came near the bhandar of the plaintiff without any rhyme or reason or any legal justification and began firing from a short distance on those who were in the plaintiff's bhandar with the result that four persons were injured and those who were not injured removed themselves from the bhandar. Thereupon, it is alleged that the defendant with the troops came near the bhandar and ordered it to be set on fire. Accordingly, under orders of the defendant and in his presence the soldiers who accompanied the defendant sprinkled over the thatched roof of the bhandar petrol, which they carried with them and also Kerosene oil, which they removed from a neighbouring shop, and set the premises of the bhandar on fire. On these allegations the plaintiff has claimed damages to the extent of Rs. 4207-7-3 against the defendant.

27. On summons being served the defendant put in an application on 28-11-1945, Stating that the suit was liable to be dismissed as previous sanction of the Provincial Government under Section 4(1) of the Act had not been obtained. Accordingly, he prayed that the suit might be dismissed or in the alternative the matter be referred to the Provincial Government for orders on the question of sanction. The learned Subordinate Judge by his order dated 14-2-1946, rejected the prayer of the defendant. In the course of his order the learned Subordinate Judge observes that it is clear from the expression "Unless the contrary is proved" that

> Section 3 of the Act instead of operating as a bar contemplates a suit affording an opportunity to the plaintiff to rebut the statutory presumption arising in favour of the servant of the Crown as enacted in the section itself. The plaint cannot, therefore, be thrown out on the ground that this section operates as legal bar to the institution of the suit.

He then points out that in his opinion the enactment appears to be intended to prevent unnecessary and vexatious suit, and would address himself to the question that the previous sanction of the Provincial Government was or was not necessary has at all arisen and observes as follows:

> There is no doubt that the act referred to in the plaint was committed during a period which has been defined in the Act to be the period of emergency. The plaint further shows that the act was done under the orders and in the presence of the defendant, a servant of the Crown. There is nothing, however, in regard to the purpose of the act itself to bring it within the purview of the enactment. The plaint does not state that the act was done or ordered to be done by the defendant for the purpose of maintaining or restoring order and obviously there is nothing in the plaint that the act was done in good faith and in the reasonable belief that it was necessary for the purpose. In the petition of the defendant dated 28-11-1945, there is no averment to that effect. In a civil suit a question is said to arise when a material proposition of fact and law is affirmed by one party and denied by another (Order 14, Rule 1, C.P. C). No written statement has yet been filed in the suit and, as I have said, there is no averment in the defendant's petition. Thus, at this stage there is no material before the Court on the basis of which it can be said that the question on the point of previous sanction has arisen. I am, therefore, definitely of opinion that the petition is premature and it is accordingly rejected.

28. It seems to me that the Court has passed a proper order which does not call for our interference at this stage. The Court will be able to decide effectively and more satisfactorily after the evidence has been adduced whether in the circumstances of this particular case the question of the previous sanction of the Provincial Government has arisen within the meaning of Section 4(b) of the Act.

29. For these reasons and also for the reason given while disposing of civil Revn. No. 66 of 1946, this application must be dismissed with costs. Hearing fee one gold mohur. Let the trial of these suits now proceed with all convenient and possible speed so that the evidence may not become state.

Sinha, J.

30. I agree.

Das, J.

31. I agree, and would like to add that, assuming Bihar Act (3 [III] of 1943) is intra vires, about which I express no opinion at this stage, Section 4(a) of the Act makes previous sanction of the Provincial Government a condition precedent to the institution of a suit in respect of such acts only as are ordered or done etc., by a servant of the Crown for the purpose of maintaining or restoring order during the period of emergency. Therefore, the foundation of the protection given is the purpose for which the act is ordered or done etc. As I read Section 4(b), it is for the Court to decide if any question as to previous sanction arises or not. The Court may well say that there must at least be some prima facie evidence as to the purpose for which the acts complained against were done, before it can be held that a question as to the previous sanction of the Provincial Government has arisen. I am unable to accept the contention of the learned Advocate-General that as soon as a petition is filed on behalf of one or some of the defendants that previous sanction of the Provincial Government is necessary (without even stating the purpose for which the acts were ordered or done etc.), the jurisdiction of the Court is ousted and it must either throw out the plaint or refer the matter to the Provincial Government. In my view, the express words used in Section 4(b) to the effect--"If any question arises as to whether previous sanction etc. is necessary under Clause (a)"--are against such a contention. There may be a case where the defendant after filing a petition of the kind referred to above absents himself or gives no evidence: circumstances may even arise when the suit may have to be decreed ex parte on one-sided evidence. Can it be said that in such a case also the question of previous sanction has arisen merely by reason of the petition filed, without even an averment or prima facie proof of the purpose for which the act was ordered or done etc., by the servant of the Crown? I venture to say that the answer must be in the negative. The Courts below were right, therefore, in holding that the question of previous sanction did not arise at the particular stage in which the suits are at present; and that it might arise at a subsequent stage.