

Kumar Saumitra and Another Vs. State and Others

Kumar Saumitra and Another Vs. State and Others

SooperKanoon Citation : sooperkanoon.com/1178381

Court : Delhi

Decided On : Oct-13-2015

Judge : Suresh Kait

Appeal No. : CRL.M.C. No. 1584 of 2015

Appellant : Kumar Saumitra and Another

Respondent : State and Others

Judgement :

Suresh Kait, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.) has been filed by the petitioners for quashing of the order dated 10.11.2014 passed by the learned Additional Sessions Judge in Criminal Revision No 34/2014, whereby while upholding the judgment dated 28.04.2014 passed by the learned Metropolitan Magistrate in CC No.71/1/13, the said petition was dismissed by the learned Sessions Judge.

2. Brief facts of the case are that on the intervening night of 06/07.08.2012, petitioners were going on a motor bike and hit by a Suv Car at about 11:00 PM. Both the petitioners suffered injuries due to the above mentioned road accident. They reached at AIIMS Hospital, where they were told that they would be treated in JPN Centre, New Delhi. As per complaint, the petitioners waited in JPN Trauma Centre till 1:00 AM but neither they were attended by any doctor nor given any first

aid as all the doctors and staff of the said hospital were busy in gossiping in room No. 13. When the petitioners requested the doctors and the staff of the hospital to give treatment, they were pushed outside by the security guards and thereafter, beaten with fists and blows. It was also alleged that they were locked in a room and beaten up. In the meantime, somebody informed the police and 45 police officials also reached there. They were taken to P.S. Safdarjung Enclave and were kept in lockup. It was alleged that gold chain and two lockets of the petitioners were snatched by the police officials. In the meantime, sister and brother of petitioners also reached the Police Station. Accordingly, FIR No. 279/2012 was registered in P.S. Safdarjung Enclave for the offences punishable under Sections 186/353/333/324/34 IPC against the petitioners on the allegations that they had caused injuries upon the persons of staff of AIIMS Hospital. MLCs of Dr. Varun, Dr. Ajit and Mr. Rahul (respondents) were also prepared.

3. It is alleged that on 07.08.2012, the petitioners mentioned the custodial violence against them before the learned Trial Court. When they were sent to Tihar Jail by the Court, they were not admitted by Jail Authorities as the injuries suffered by them were not corresponding to their MLC. Instead of taking them to DDU hospital for their medical examination, they were taken to AIIMS. On 08.08.2012, on the application of the petitioners for their fresh MLC and proper medical examination, a report was called by the Court from Jail Superintendent and DCP (South). It is also alleged that separate complaint was also sent by the petitioners to the Commissioner of Police, Delhi, and DCP (South) for taking action against the culprits, however, no action was taken.

4. Whereas, as per the FIR in question, both the petitioners entered in the Emergency Department of Trauma Center, AIIMS with alleged history of fall with alcohol present in their breath. Accordingly, they were attended by junior resident on duty Dr. Nupur and were advised for medication and other treatments. When the nurses on duty tried to administer injection, the petitioner No.1 refused the same. He was again requested by doctors for taking injection but he started misbehaving with the doctors and staff. Petitioner No.2 also started abusing doctors and staff in front of resident's desk. They were taken near minor OT, where they started misbehaving with other patients and their attendants. Many

persons also tried to convince them but they continued misbehaving and eventually police was called and FIR in question was registered against the petitioners. In fact, during quarrel, the petitioners injured three staff persons, namely, Ajit, Varun and Rahul, whose MLCs, which mention the factum of assault by a person under the influence of alcohol in the Emergency Department, have also been placed on record. However, the same have been stated to be fabricated by the petitioners in their complaint. As mentioned in FIR, the said incident had badly affected the working of Emergency Department for almost 2-3 hours.

5. Mr. N. Hariharan, Learned Senior counsel appearing on behalf of the petitioners submitted that the impugned order dated 10.11.2014 passed by the learned Sessions Judge is contrary to the material placed on record as the same being passed without adducing the documents placed on record, which *ex facie* shows omissions and commissions on the part of the respondents.

6. He submitted that the learned Trial Court has not appreciated the fact that the petitioner No.1 was illegally and arbitrarily detained by the respondents No. 14 to 20 in Police Station Safdarjung Enclave on 07.08.2012, which is evident from the report dated 13.08.2012 submitted by the Tihar Jail Authority, whereby it has been categorically stated that the Jail Authorities accept/admit the new entry even after 8.00 PM. Therefore, contention of respondents No.14 to 20 that fresh detenu is not accepted in Tihar Jail after 8.00 PM is not sustainable.

7. Learned Sr. counsel further submitted that the MLCs conducted by the Trauma Centre, AIIMS Hospital are contradictory with each other had not been appreciated by the learned Trial Court as the first MLC conducted by the respondent No.2 does not contain all the injuries sustained by the petitioner No.1. For that reason the doctor on duty, Tihar Jail, refused to admit the petitioners in Jail and the respondents No.14 to 20 were asked to get another MLC of the petitioner No.1 conducted from the Deen Dayal Upadhyay Hospital, which is hardly 500 meters from the Tihar Jail, however, the said respondents took the petitioner No.1 to Jaiprakash Trauma Centre, AIIMS Hospital, which is approximately 15 kilometres away from the Tihar Jail. Thereafter, the petitioner No.1 was detained at Police Station Safdarjung Enclave and was given beatings, which is *ex facie* illegal and

arbitrary.

8. Learned counsel submitted that the learned Trial Court has wrongly recorded the contention of non co-operation in first-aid by the petitioner No.1 as the same is baseless. Also submitted, the respondents in connivance with each other and in order to conceal their illegal and arbitrary actions and omissions have falsely implicated the petitioners. At the stage of pre-summoning evidence, the court has to see whether any *prima facie* case is made out or not. Moreover, the petitioners were brought to the Court in handcuffed position, which is against the human rights.

9. Mr. Hariharan further submitted that the learned Trial Court without appreciating the nature of injuries has incorrectly held that the injuries suffered by the petitioners were because of the road accident.

10. On the other hand, learned Additional Public Prosecutor appearing on behalf of the respondent/State while controverting the submissions of the learned counsel for the petitioner submitted that as per the settled legal position, at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Sec. 173 Cr.P.C., as the case may be. When the allegations made in the complaint and the statements made by the complainant and witnesses before the learned Trial Court taken on their face value do not make out an offence, cognizance cannot be taken. Therefore, considering the facts and circumstances of the case, the learned Additional Sessions Judge has rightly dismissed the criminal revision petition filed by the petitioners vide order dated 10.11.2014.

11. In support of his submissions, learned Additional Public Prosecutor has relied upon the case of *Krishnan and Another Vs. Krisnaveni and Another*, (1997) 4 SCC 241, wherein the Supreme Court held as under:-

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/ complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the

provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditious. ?

12. Also relied upon the case of *Kailash Verma Vs. Punjab State Civil Supplies Corporation and Another*, (2005) 2 SCC 571, wherein held as under:-

5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* : 1999 CriLJ3668 said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by

the revisional court.

6. In State through Special Cell, *New Delhi v. Navjot Sandhu @ Afshan Guru and Ors.* : (2003) 6 SCC 641, the power of the High Court under Section 482 came up for consideration and it was held as under:

"29. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code." Thus, the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in *Satya Narayan Sharma's case: 2001 Cri LJ 4640*; this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent powers. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice."

13. I have heard the learned counsel for the parties.

14. In order to appreciate the rival submissions, some of the provisions of the Code need to be referred. Chapter XV of the Code deals with the complaints to Magistrates. It has four Sections, 200 to 203, which read as under:

S. - 200. Examination of Complainant. "A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

S. 201. Procedure by Magistrate not competent to take cognizance of the case.- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, -

(a) If the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper court.

S. 202. Postponement of issue of process.-- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made ”

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

S. 203. Dismissal of complaint. "If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. ?

15. Sections 200 to 203 Cr.P.C. ensure that false and frivolous complaints are nipped in the bud. The object under the said provisions is to distinguish baseless cases from genuine grievances. After considering the statements on oath of the complainant and the witnesses, if any, and the result of the enquiry or investigation under Section 202 Cr.P.C., if the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and shall briefly record his reasons for such dismissal

16. Moreover, Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made.

17. To find out the above, the Magistrate himself may hold an inquiry under Section 202 Cr.P.C. or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 Cr.P.C. is without doubt a pre-issuance of process stage. The Code does not permit an accused person to

intervene in the course of inquiry by the Magistrate under Section 202 Cr.P.C.

18. The legal position is no more *res integra* in this regard. More than five decades back, the Apex Court in *Vadilal Panchal Vs.. Dattatraya Dulaji Ghadigaonker and another (1961) 1 SCR 1* with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e., for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

19. In *Chandra Deo Singh Vs. Prokash Chandra Bose and another 1964 (1) SCR 639*, a four-Judge Bench of the Apex Court had an occasion to consider Section 202 of the old Code. While referring to *Vadilal Panchal (supra)* and few previous decisions, namely, *Parmanand Brahmachari Vs. Emperor, AIR (1930) Patna 30*, *Radha Kishun Sao Vs. S.K. Misra and Anr., AIR (1949) Patna 36*, *Ramkisto Sahu Vs. The State of Bihar, AIR (1952) Patna 125*, *Emperor Vs. J.A. Finan, AIR (1931) Bom 524* and *Baidya Nath Singh Vs. Muspratt and others, ILR (1886) XIV Cal 141*, it was held that the object of provisions of Section 202 (corresponding to present Section 202 of the Code) was to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath.

20. In the case of *Pepsi Foods Limited and Another Vs. Special Judicial Magistrate and Others ?*, (1998) 5 SCC 749, the Apex Court, *inter alia*, observed as under:

27. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to

the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. ?

21. This judgment only emphasizes the need for the Magistrate to be an active participant and not merely a silent spectator at the time of examination of the complainant and his witnesses and to apply his mind to the facts of the case instead of passing mechanical orders.

22. In *Adalat Prasad Vs. Rooplal Jindal and Others*, (2004) 7 SCC 338, a three-Judge Bench of Apex Court held as under:-

12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under Section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses have not made out sufficient ground for proceeding. Per contra, if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage have materials to proceed, he can proceed to issue process under Section 204 of the Code.

13. Section 202 contemplates postponement of issue of process ?. It provides that if the Magistrate on receipt of a complaint, if he thinks fit, to postpone the issuance of process against the accused and desires further inquiry into the case either by himself or directs an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, he may do so. In that process if he thinks it fit he may even take evidence of witnesses on oath, and after such investigation, inquiry and the report of the police if sought for by the Magistrate and if he finds no sufficient ground for proceeding he can dismiss the complaint by recording briefly the

reasons for doing so as contemplated under Section 203 of the Code. ?

23. Coming back to the case in hand, in pre-summoning evidence, both the petitioners had examined themselves as witnesses. The learned Sessions Judge has recorded that it is reflected from the impugned order that the learned Trial Court has disbelieved the version of the petitioners and did not find any ground for summoning of any respondents/accused mainly due to following reasons:

(i) That as per the investigation of case FIR No. 270/12, complainants were under the influence of alcohol and they started misbehaving with the doctors and staff of the hospital and disturbed the other patients.

(ii) That under the influence of liquor, complainants themselves caused injuries to the doctors and the staff and obstructed them from discharging their official duty.

(iii) That there was no difference in respect of the material injuries in the two MLCs and the second MLC does not show any extra injuries on account of beatings.

(iv) That complainants were victims of a road traffic accident and suffered injuries and there could have been no reason for the doctors and the hospital staff not to provide medical aid to them.

(v) That there were number of other persons/patients present in the hospital at that time and independent witnesses could have been examined, but complainants did not examine any independent witnesses.

(vi) That the CCTV footage of the hospital did not support the incidence of beatings as narrated by the complainants. ?

24. While propounding the settled legal position in respect of issuance of process under Section 204 Cr. P.C., it is recorded by the learned Sessions Judge that it is clear that at the stage of Section 204 Cr. P.C, Court is not required to go into the roving enquiry of merits or demerits of the case, but court is required to look into whether there are sufficient grounds to proceed against accused. Sufficient grounds to proceed against accused is a connotation of importance in Section 204 Cr. P.C. At this stage, court is required to apply its judicial mind to assess whether

prima facie there are sufficient grounds to proceed against the accused. Accordingly, the learned Sessions Judge was of the considered view that under Section 204 Cr. P.C., Magistrate is not expected to act only on the bald allegations of complainants but he is required to assess the *prima facie* value of the evidence led by the petitioners. It cannot be interpreted from Section 204 Cr. P.C. that the learned Magistrate is required to act blindly without assessing the broader probabilities of the statement of the petitioners/witnesses.

25. Admittedly, both the petitioners were injured in a road accident and they reached to the hospital. The record clearly reflects that petitioners were under the influence of liquor and they reached in the hospital in late night time. *Prima facie*, it appears improbable that the injured of road traffic accident would not be given medical aid by the doctors and would be given beatings because of their request for providing medical aid. As per admitted case, the injuries were already suffered by the petitioners in the road traffic accident. As per MLCs, it cannot be said that any injury could be specified on account of the alleged beatings given by the respondents. The hospital like AIIMS in Delhi is one of the Premier Medical Institutes of India which entertains thousands of patients on daily basis. It is hard to believe that in such a hospital, the injured of road accident would not be given medical aid. However, if any such incidence would have occurred, there would have some *prima facie* evidence in the CCTV coverage but the CCTV footage does not suggest any such incidence. On the contrary, the MLCs of doctors and hospital staff suggest that they suffered some injuries. There is no explanation that how doctors and hospital staff had suffered injuries, if number of hospital staff and police officials had overpowered the complainants. Moreover, the trial court directed the DCP(South) to file comments on the complaint of the petitioners. The same was filed which belied the allegations made by the petitioner.

26. So far as Section 397 Cr. P.C. is concerned, it confers the revisional jurisdiction upon the Sessions Courts to examine the record so as to ascertain the impropriety, illegality or incorrectness in the order of the learned Metropolitan Magistrate. It is a discretionary jurisdiction which is to be invoked when there is some miscarriage of justice and glaring defect of a serious nature has resulted or there is glaring defect in procedure or manifest error on the point of law which

resulted in miscarriage of justice.

27. Accordingly, the learned Sessions Judge was of the opinion that the learned Trial Court has appreciated the material on record in a detailed order. Thus, finding no reason to differ with the findings of the learned Trial Court, it was opined that there was no illegality or irregularity in the impugned order. From the material on record, version of the petitioners did not inspire any confidence and appears to be a counter blast in response to the FIR against them. Accordingly, the revision petition being devoid of any merit was correctly dismissed by the learned Sessions Judge.

28. Moreover, when on consideration of the allegations made in the complaint and the statement of the complainant and witnesses made before the Magistrate, necessary ingredients of any offence are not made out and the complaint itself is a vague one excepting bald allegations, cognizance cannot be taken. Moreover, when the allegations made in the complaint and the statements made by the complainant and witnesses before the Magistrate taken on their face value do not make out an offence, cognizance cannot be taken. Similar, is the case when the allegations in the complaint amount to an abuse of the process of the court. When the complaint is a product of concoction, no cognizance can be taken on it and the complaint is liable to be quashed.

29. As regards the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, in a catena of judgments, the Apex Court has discussed the nature and scope of inherent powers conferred upon this Court. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redressal of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code,

depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly and with caution.

30. Considering the legal position discussed above and the facts and circumstances of the case, it appears that material available on record has been appreciated in the right perspective by the Courts below. Moreover, no illegality much less irregularity has been detected in the findings of the learned Sessions Court warranting interference at the end of this Court.

31. Therefore, finding no merit in the instant petition. The same is dismissed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com