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

**State of Karnataka Vs. N.K. Shanthappa**

**State of Karnataka Vs. N.K. Shanthappa**

**SooperKanoon Citation** : sooperkanoon.com/376975

**Court** : Karnataka

**Decided On :** Nov-26-1996

**Reported in** : 1997CriLJ2802; ILR1997KAR1396; 1997(2)KarLJ467

**Judge** : Chidananda Ullal, J.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 323

**Appeal No.** : Criminal Appeal No. 520 of 1991 (Against the judgment passed by J.M.F.C., Somwarpet, D/- 5-8-1991)

**Appellant** : State of Karnataka

**Respondent** : N.K. Shanthappa

**Advocate for Def.** : L.S. Chikkanagoudar, Adv.

**Advocate for Pet/Ap.** : B.M. Satish, HCGP

**Judgement** :

1. The instant appeal is directed against the judgment dated 5-8-1991 in C.C. No. 725/1988 passed by the learned Judicial Magistrate First Class, Somwarpet acquitting the accused of the offences punishable under Section 7(1)(d) of the Protection of Civil Rights Act and under Section 323, IPC.

2. I heard the learned High Court Government Pleader Mr. B. H. Satish appearing for the appellant-State and the learned counsel Sri L. S. Chikkannagoudar

appearing for the respondent/accused. I also perused the records.

3. The brief facts of the case are :

That on 8-5-1988 at about 9.30 p.m. near Rama Mandira of Sulugalale village, the respondent-accused abused and insulted P.Ws. 1 and 2 by referring to their caste. At that point of time P.Ws. 1 and 2 along with others were holding a meeting regarding encroachment of land of Sulugalale village. That P.Ws. 1 and 2 had sent words to the respondent/accused to attend the meeting and the meeting in question was confined for the purpose of erecting 'Rama Mandira'. That the Respondent/Accused not only abused P.W. 1 and P.W. 2 but also poked the chin of P.W. 1 by a torch which he was having at that point of time. That P.W. 1 could not lodge a complaint well in time and lodged complaint on the next day morning before the jurisdictional police at Somwarpet Police Station. The complaint is at Ex. P. 1, on the basis of which the police registered a case against Respondent/Accused for offences under Section 7(1)(d) of the Protection of Civil Rights Act (hereinafter called as 'P.C.R. Act) and also under Section 323, I.P.C. in Cr. No. 61/88 and after investigation the police had also filed charge sheet as against the Respondent/Accused.

4. The prosecution had examined in all 6 witnesses and produced 4 documents in support of the case. The learned Judicial Magistrate, First Class, Somwarpet (Hereinafter referred to as 'Magistrate') after hearing the parties and on appreciation of evidence on record, acquitted the Respondent/Accused of the offences as above. The State is now before this Court in appeal as against the said order.

5. The learned High Court Government Pleader Sri. B. H. Satish while urging the grounds in the appeal memorandum argued that the learned Magistrate had erred in acquitting the Respondent/Accused though there was material evidence on record. He further pointed out that the presence of the accused could not be disputed for the reason that P.Ws. 1, 2, 3 and 4 have clearly deposed before the learned Magistrate that the Respondent/Accused was present at the scene of incident and he had abused P.W. 1 and P.W. 2 by touching upon their caste. He submitted that the prosecution had proved the guilt of the Respondent/Accused

beyond reasonable doubt and therefore prayed that the impugned judgment passed by the learned Magistrate be set aside and the Respondent/Accused be punished in consonance with law.

6. The learned counsel appearing for the Respondent/Accused however, argued that the impugned judgment passed by the learned Magistrate was just and proper for, according to him, there is no material evidence proving the guilt of the Respondent/Accused at all. He canvassed before me that Ex. P. 1 Complaint was lodged as late as at 10.00 a.m. on the next day when the incident had taken place on the previous day night and further when the police station was at a distance of about one kilometre away from the place of the accident. He pointed out that the delay in filing the complaint Ex. P. 1 was not properly explained. According to him, the delay was for the reason that there were deliberations to implicate the Respondent/Accused falsely. Therefore, his submission is that the delay is fatal to the case of the prosecution. The other point which he argued is that there cannot be a case under Section 7(1)(d) of P.C.R. Act for P.Ws. 1 and 2 as well as the Respondent/Accused belong to the one and the same social group and that being the position there cannot be a charge of preaching and practising of untouchability within the meaning of Section 7(1)(d) of P.C.R. Act. While summing up his argument, he submitted that the impugned judgment passed by the learned Magistrate is just and proper in the facts and circumstances of the case and does not call for any interference by this court.

7. The short point that arises for my consideration in the case is whether the Respondent/Accused was guilty of the offence under Section 323, IPC and further under Section 7(1)(d) of the P.C.R. Act.

8. It is pertinent to mention here that the prosecution had not produced any evidence either by producing the medical certificate or by examining a doctor to show that P.W. 1 had suffered injuries in the hands of the Respondent/Accused. That apart, the prosecution had not examined the I.O. in the instant case. When that is the position I do not find there can be any convocation against the Respondent/Accused under Section 323 of IPC. The other charges against the Respondent/Accused is that he was guilty of the offence under Section 7(1)(d) of

P.C.R.L. Act. In this context it is relevant here to quote Section7(1)(d) of P.C.R. Act. The same reads as follows :-

'Section 7(1)(d) :- Whoever insults or attempts to insult, on the ground of 'untouchability', a member of a Scheduled Caste shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.'

In the instant case P.Ws. 1 and 2 as well as the Respondent/Accused belong to one and the same social group which is listed in the list of Scheduled Castes. The said point is not in dispute. When P.Ws. 1 and 2 as well as the Respondent/Accused belong to the same social group., falling in the list of S.Cs, in my view, there cannot be either preaching or practising of untouchability and also insult by the Respondent/Accused as against P.Ws. 1 and 2 within the meaning of Section 7(1)(d) of the P.C.R. Act. Even if it was proved by the prosecution that Respondent/Accused was present on the day of the incident i.e. on the night of 8-5-1988 and touched upon the caste of P.Ws. 1 and 2 and uttered the words as stated in the complaint Ex. P. 1 or as deposed by P.W. 1 in his evidence as :

(Vernacular matter is omitted) the same in my considered view, does not amount to preaching or practising of untouchability within the meaning of Section 7(1)(d) of the P.C.R. Act. We should not forget here the social situation of the parties and the attendant circumstances. I do not rule it out that the Respondent/Accused might have as well given vent to his social Philosophy in expressing the above words. It appears to me in the facts and circumstances of the case that even if he had uttered as above, in that what the Respondent/Accused did was a self-condemnation of the community to which he equally belonged to when there was dispute as to the choice in construction of 'Rama Mandira' by one section and for the construction of school building by another. Probably, the Respondent/Accused having more social awareness had given more importance to the construction of school building in place of 'Rama Mandira' and in that context he might have uttered those words and nothing beyond. That being the position, in my considered view, the Respondent/Accused had not committed any offence as

complained of against him.

9. For the aforesaid reasons, I do not find any good reason to interfere with the impugned judgment passed by the learned Magistrate. I therefore hold that there is no merit in the instant appeal and the same is liable to be dismissed. Accordingly, the appeal stands dismissed.

10. Appeal dismissed.

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