

Devta Shanker Mishra Vs. Vith Additional Session Judge, Varanasi and Others

Devta Shanker Mishra Vs. Vith Additional Session Judge, Varanasi and Others

SooperKanoon Citation : sooperkanoon.com/463192

Court : Allahabad

Decided On : Dec-01-1997

Reported in : 1998(1)AWC765; 1998CriLJ4687

Judge : G.S.N. Tripathi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154, 200, 202 and 203; [Indian Penal Code \(IPC\), 1860](#) - Sections 182, 307, 333 and 504

Appeal No. : Crl. Writ Petition No. 2323 of 1997 and Crl. Misc. Writ Petition No. 3242 of 1996

Appellant : Devta Shanker Mishra

Respondent : Vith Additional Session Judge, Varanasi and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ravindra Rai, Adv.

Judgement :

G.S.N. Tripathi, J.

1. Both the above writ petitions are being finally disposed of by this order. A copy of this order shall be placed in the connected Writ Petition No. 3242 of 1996.
2. Criminal Misc. Writ Petition No. 2333 of 1997 has been filed with a prayer that by a writ of certiorari, the order dated 12.12.1995 passed by the Additional Chief Judicial Magistrate, Varanasi and the order dated 4.7.97 passed by the VIth Additional Sessions Judge, Varanasi be quashed.
3. Criminal Misc. Writ Petition No, 3242 of 1996 has been filed with a prayer that by a writ of certiorari, the order dated 11.8.96 passed by the Chief Judicial Magistrate, Varanasi (Annexure-10) and the order dated 6.9.96 passed by the revisional court (Annexure-11) be quashed.
4. At the instance of higher police authorities, an F.I.R. of the petitioner was registered on 15.4.1994, in which the allegations had been made that the accused had committed offences punishable under Section 307/333/504. I.P.C. against the complainant. The police investigated the case and, ultimately, submitted a final report and further reported that since the petitioner had misused the provisions of law by launching a false case, he himself should be prosecuted for committing an offence under Section 182. I.P.C. The complainant filed by the petitioner was dismissed under Section 203, Cr. P.C. On the recommendations of the police for launching a prosecution against the petitioner, under Section 182. I.P.C., a case was registered.
5. The petitioner filed an application before the Court that he had committed no offence and his allegations in the F.I.R. were correct. Therefore, his prosecution under Section 182. I.P.C. be stalled. Being unsuccessful, the revisionist filed a Criminal Misc. Writ Petition No. 3242/96 (connected case), in which the respondents' counsel Sri V. P. Srivastava appeared on 2.7.96 on behalf of the respondents and wanted to file counter-affidavit, which was allowed. The petitioner was also authorised to file a rejoinder-affidavit and no stay order had been passed so far. This way, the order dated 11.8.96 passed by the Chief Judicial Magistrate, Varanasi (Annexure-10) and the order dated 6.9.96 passed by the revisional court (Annexure-11) have been sought to be quashed.

6. The brief facts are that the petitioner Devta Shanker Mishra filed a complaint against the accused alleging that on 14.4.1994, the accused all of a sudden formed a gang and prevented the petitioner from cutting his crops. They assaulted him with kicks and fists. Shyam Behari exhorted other accused to murder the petitioner and his family members, upon which, the accused Mohan Lal, chased the petitioner with his armed gun and fired at him. But the petitioner took the shelter behind a temple and escaped unhurt. Accused Tolan Ram with a Katta entered into the house of the complainant. He was caught hold by Lalji Tewari, the brother-in-law, of the complainant. But Tolan fired at him causing him injuries on the whole of the body. The condition of Lalji was very serious. Therefore, he was first taken to the hospital for treatment and, thereafter he approached the police for registering his case. But it was not done as allegedly the police was under the influence of the accused. Thereafter, the complainant moved the S. P. (R.A.) and narrated the entire story. On his orders, the local police registered a case, no doubt, but unwillingly and became hostile to the complainant because he had made a complaint against the local police to the higher authorities due to which the local police were antagonised and did not investigate the case fairly, rather it held the complainant as an accused and directed him to face the trial under Section 182, I.P.C.,

7. He also filed an injury report of Lalji, which shows that he had received as many as 5 injuries on his person. He was bleeding from the injuries at the time of examination on 14.4.94 at 11 a.m. The X-ray was advised. There was found to be a fracture on the IInd, IIIrd, Fourth and Fifth Metacarpal bones. The complainant had examined himself under Section 200, Cr. P.C. and narrated the entire version as noted above. Independent witness Dengur was also examined under Section 202, Cr. P.C. apart from the injured Lalji Tewari and other witnesses Gulab Chand and Dr. Rakesh Pathak, who had proved the injury reports as noted above. The Radiologist was examined to prove the X-ray report.

8. After hearing the parties, learned Magistrate concerned, rejected the complainant under Section 203, Cr. P.C. by passing a very detailed order, as if he was deciding the matter finally after evidence, on 11.8.95.

9. Aggrieved against that order, a Criminal Revision No. 534 of 1994 was filed by the complainant before the learned Sessions Judge, Varanasi, who also examined the entire evidence at stretch and rejected the revision on 6.9.96.

10. Aggrieved by the orders passed by both the Courts below, these writ petitions have been filed by the complainant with a prayer for quashing the proceedings pending against the complainant and others and, further, requesting that the learned Magistrate concerned should be ordered to summon the accused and his order rejecting the complaint under Section 203, Cr. P.C. should be set at naught.

11. Both the above writ petitions have been heard together and I find that both of them deserve to be allowed.

12. The jurisdiction of the Court at the stage of Section 203, Cr. P.C. is very limited. The Court is not expected to sift evidence and analyse it thoroughly as if it were a case to be disposed of finally. The witnesses had not been cross-examined by that time. The accused had not come forth with their own case nor did they lead any evidence nor they were authorised to do so. Therefore, what is required under Section 203, Cr. P.C. is that believing the entire evidence and circumstances to be true, if a reasonable man can find that the allegations against him were correct, then normally the accused should be summoned and the trial should proceed. Again at the stage of framing charge, the accused have a right to urge before the Court that the evidence available on the record, is not sufficient to make out a case for the prosecution. The learned trial court can discharge the accused even at that stage.

13. Supposing if the accused loses at that stage too and the trial proceeds further, again the learned trial court will come to a conclusion that the allegations made in the complaint are true or not or whether the allegations have been properly proved. Thereafter, the accused may be called upon to lead evidence in their defence and then only the learned trial court could conclude the trial by recording a final judgment and order. Therefore, the detailed discussion of evidence at the stage of Section 203, Cr. P.C. is not warranted by law.

14. Unfortunately, I find that both the Courts below have fallen in a trap laid by the accused and have decided the matter finally that the prosecution has failed to make out a case. .

15. Similarly, the police challan of the complainant on the charge under Section 182, I.P.C. was totally misconceived. Not only that, both the Courts below did not realise that serious allegations had been made against the local police of favouritism towards the accused and others. It is also a fact that the F.I.R.. of the complainant was not registered in the normal course. Therefore, he had to move to the S. P. (R.A.). He naturally would have made some allegations against the local police also. Then only the S.P. (R.A.) ordered the case to be registered and investigated. It was quite natural that local police might have felt aggrieved and a fair investigation could not be expected from them.

16. Without disbelieving the doctor, who had prepared the injury reports, it could not be said by the police that the prosecution case was totally false. The injuries received by the complainant Lalji go to show that firearms had been used and the victim had received several injuries including flactines. Therefore, prima facie case was made out before the police but it did not proceed further faithfully and honestly, rather it submitted a charge-sheet against the complainant and final report against the accused.

17. I have gone through the orders passed by the Courts below. I find that the orders passed by the learned Magistrate concerned as well as the learned Sessions Judge. Varanasi impugned in Crl. Misc. Writ Petition No. 3242 of 1996, suffer from the vice of illegality and non-application of mind resulting in gross injustice to the complainant.

18. The Criminal Misc. Writ Petition No. 3242 of 1996, is allowed. The orders dated 11.8.96 (Annexure-10) and 6.9.96 (Annexure-11), passed by the Chief Judicial Magistrate. Varanasi and revisional court (Annexure-11), are quashed. A direction is issued to the learned Magistrate concerned to summon the accused and hear them on the point of charge and, thereafter, he shall proceed in accordance with law. Parties are directed to appear before the learned Magistrate on 10.12.97, it will be better if the learned Sessions Judge in exercise of his

jurisdiction, transfers this case for a fair trial, to another Magistrate of his district, which may inspire confidence in the local Judiciary.

19. Criminal Misc. Writ Petition No. 2323 of 1997 is also allowed. The order dated 12.12.95 (Annexure-11) passed by the Additional C.J.M.. and order dated 4.7.97 passed by the VIth Additional Sessions Judge. Varanasi are quashed. The proceedings under Section 182. I.P.C., launched by the police being totally illegal, is directed to be dropped forthwith. No proceedings on this police report shall be started or continued or tried against the complainant. The police charge-sheet against the complainant, shall also remain non est and quashed as orders passed by both the Courts below have been quashed. It is made clear that henceforth only the complaint case launched by Sri Devta Shankar Mishra shall be tried in accordance with law.

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