

Gaurav Agarwal Vs. State of U.P. and

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Court : Allahabad

Decided On : Jul-01-2009

Reported in : 2009CriLJ4491

Judge : Vijay Kumar Verma, J.

Appellant : Gaurav Agarwal

Respondent : State of U.P. and ;giriraj Singh

Disposition : Revision dismissed

Judgement :

Vijay Kumar Verma, J.

1. Challenge in this Revision preferred under Section 397/401 of the Code of Criminal Procedure (in short, 'the Cr.P.C.') is to the order dated 16.05.2009 passed by Addl. Sessions Judge, Fast Track Court No. 2, Mathura in Session Trial No. 245 of 2009 (State v. Devi Das and Anr.) under Sections 323, 504, 506 Indian Penal Code (in short, 'the I.P.C.') and Section 3(1)(X) Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, 'the SC/ST Act'), P.S. Highway, District Mathura.

2. By the impugned order, the court below has declined to discharge the applicant and co-accused Devi Das in case crime No. 745 of 2007 of P.S. Highway

(Mathura) for the offences mentioned herein-above and their discharge application has been rejected. The court below has also opined that there is sufficient ground to charge the accused persons under Section 323, 504, 506 IPC and 3(1)(X)

3. Shorn of unnecessary details, the facts leading to the filing of this Revision, in brief, are that on the basis of order passed by the Magistrate concerned on the application under Section 156 Cr.P.C. moved by the complainant Giriraj Singh s/o Jhamman Lal (opposite party No. 2 herein), an FIR was lodged on 16.12.2007 at P.S. Highway (Mathura), where a case under Section 323, 504, 506 IPC and Section 3(1)(X) SC/ST Act was registered at crime No. 745 of 2007 against Devi Das and ten other unknown persons. Annexure-I is the copy of that FIR. It is alleged in the said FIR that the complainant Giriraj is a member of Scheduled Caste (Jatav). He had one-fourth share in Khata No. 21, Khasra No. 221, area 1.243 hectare and Khasra No. 232, area 2.675 hectare situated in Palikhera, Tehsil and District Mathura. Smt. Angoori Devi is the widow of Ganga Ram, who was younger brother of complainant. She also had one-fourth share in that land. It is alleged that Devi Das resident of Dampier Nagar after occupying the land of Angoori Devi raised pakki boundary wall. It is further averred in the FIR that on 15.07.2007, the complainant Giriraj Singh and Smt. Angoori Devi with some other persons went to Nursing Park to have talks with Devi Das about giving back the land of Angoori Devi, which he has illegally occupied. It is said that when the complainant asked Devi Das to leave the land or pay the cost as per market rate, he became annoyed and on his exhortation, his companions hurling abuses began to cause marpeet with the complainant and humiliated him publicly saying 'dhed chamar' and also gave threatening to kill. This incident is said to have been witnessed by Dhruv Kumar Sharma, Murari Lal Tomar, Rajesh Kumar Verma and Brij Kishore etc., who saved the complainant from accused persons. It is also alleged in the FIR that after the said incident, the complainant went to police station to lodge the FIR, but in vain and thereafter, he gave an application to S.S.P., Mathura, but even then no action was taken.

4. After investigation, chargesheet (Annexure-V) was submitted against Devi Das Baniya and Gaurav (applicant herein), on which cognizance was taken by the Magistrate concerned. The accused persons moved an application under Section

482 Cr.P.C. being Criminal Misc. Application No. 31954 of 2008 to quash the proceeding of the case. An order was passed by this Court on 02.12.2008, whereby application under Section 482 Cr.P.C. was finally disposed of with the direction to the Court below to decide the discharge application expeditiously if moved by the accused persons through counsel within a period of 30 days. Since the offence under Section 3(1)(X) SC/ST Act is triable by special court, hence the case was committed by the Magistrate concerned to the Court of Session for trial vide order dated 13.04.2009 (Annexure-7) passed in criminal case No. 4714/9 of 2008. On the basis of that committal order, S.T. No. 245 of 2009 was registered, in which application for discharge was moved on behalf of the accused persons. That application has been rejected by the court below vide impugned order. Hence this Revision.

5. I have heard Sri Pankaj Kumar Shukla, Advocate appearing for the Revisionist and AGA for the State and also perused the entire material on record carefully.

6. The main submission made by learned Counsel for the revisionist was that the complainant Giriraj Singh and Smt. Angoori Devi had already transferred their share in the disputed land to the accused Devi Das and hence there was no occasion for them to go to the accused Devi Das to have talks with him on 15.07.2007 for leaving the land. It was contended by learned Counsel in this context that since the land in dispute had already been sold by the complainant and Smt. Angoori Devi, hence the story set-up in the FIR about going to have talks with the accused Devi Das on 15.07.2007 is absolutely false and hence, the accused persons are liable to be discharged.

7. Next submission made by learned Counsel for the revisionist was that only interested witnesses were interrogated by the Investigating Officer during investigation. Statement of Smt. Angoori Devi, who was the prime witness of alleged incident, was not recorded by the Investigating Officer and hence filing of the chargesheet merely on the basis of the statements of interested witnesses recorded under Section 161 Cr.P.C. was not justified and on this ground also, the accused persons are liable to be discharged.

8. Placing reliance on the case of Rukmini Narvekar v. Vijaya Satardekar and Ors. (2008) 14 SCC 1, it was further submitted by learned Counsel for the revisionist that the material placed by the accused persons in trial court was not considered at the time of passing impugned order and hence, on this ground the impugned order is bad in law and is liable to be set-aside. The contention of the learned Counsel was that the documents produced by the accused also ought to have been considered by the trial court at the time of deciding the matter of framing charge and since in the present case, the court below has ignored the documents filed by the accused persons in trial court, hence on this ground, the impugned order is liable to be set-aside.

9. Next submission made by learned Counsel was that after lodging the FIR on 16.12.2007 on the basis of the application under Section 156(3) Cr.P.C., another FIR (Annexure-2) was lodged by Ashok Kumar, son of the complainant, on 24.01.2008 against Devi Das and eight other persons at P.S. Govindnagar, Mathura, where a case under Sections 420, 467, 468, 469, 471, 120-B IPC and 3(1)(5) SC/ST Act was registered at crime No. 26 of 2008. Thereafter, another FIR (Paper No. 36) was also lodged by Ashok Kumar against Devi Das Agarwal at P.S. Highway, Mathura at case crime No. 125 of 2008 under Sections 403, 420, 467, 468, 469, 471 IPC and Section 3(1)(5) SC/ST Act. It was submitted by learned Counsel in this context that lodging of successive First Information Reports by the complainant and his son Ashok Kumar shows the mala fide intention on their part and on this ground it can very well be said that FIR of present case was also lodged by the complainant with mala fide intention with a view to cause harassment to the accused and hence, on this ground also, accused persons are liable to be discharged.

10. It was also submitted by learned Counsel that in the FIR of present case, the applicant was not named and he has been falsely implicated by naming him in the statements of the complainant and witnesses recorded under Section 161 Cr.P.C. and hence, on this ground also the applicant deserves to be discharged.

11. It was also submitted by learned Counsel for the Revisionist that absolutely false story was concocted by the complainant and since legal process has been

misused, hence the applicant is liable to be discharged on this ground also.

12. It was further submitted that the dispute of civil nature has been dragged into criminal litigation by the complainant Giriraj Singh and hence on this ground also, the applicant and co-accused Devi Singh are liable to be discharged.

13. Next submission made by learned Counsel was that although ten persons are said to have caused marpeet with the complainant, but no injury report has been filed and hence, on this ground also the case as set-up in the FIR becomes false.

14. In reply to aforesaid contentions raised by the counsel of the Revisionist, it was vehemently contended by learned AGA that there is sufficient material in the case diary to proceed against the accused persons and hence, the learned court below did not commit any illegality in not discharging the accused and rejecting their discharge application. It was also submitted by the learned AGA in this context that at the time of framing charge, the trial court is not competent to make assessment of the evidence and it is only to be seen whether there is sufficient ground for proceeding against the accused and if the material in case diary is sufficient, then charge may be framed against the accused.

15. Having given my thoughtful consideration to the rival submissions made by learned Counsel for the parties and after going through the material on record, in my considered opinion, the court below did not commit any illegality in rejecting the discharge application of the accused persons. As argued by learned AGA, the accused can be discharged only if there is no sufficient ground to proceed.

16. The offence punishable under Section 3(1)(X) SC/ST Act is triable by Special Court, which is the Court of Session. Chapter XVIII of the Code lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is 'sufficient ground' to proceed

against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

17. It is trite that the words 'not sufficient ground for proceeding against the accused' appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonable possible.

18. The jurisdiction of the Session Judge while exercising power under Section 227 Cr.P.C. is limited. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by Hon'ble Apex Court in State of Orissa v. Debendra Nathi Padhi 2005(51) ACC 209 (SC), wherein it was held as under:

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the Trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

19. The Hon'ble Apex Court has held in the case of State of Delhi v. Gyan Devi and Ors. 2001 (42) ACC 39 that at the stage of framing charge, the court is not required to examine and assess in detail the material placed on record and the court is required to examine the material only with a view of a prima facie case of commission of offence. In this context, reference may be made to the case of

State v. S. Vangarappa 2001(42) ACC 137 (SC) also.

20. In the light of aforecited principles, I may now consider whether or not in the present case, the learned Addl. Sessions Judge was justified in declining to discharge the applicant. I have already narrated the allegations made in the FIR lodged by the complainant Giriraj Singh against Devi Das and other persons at case crime No. 745 of 2007. The incident mentioned therein is said to have occurred on 15.07.2007. Annexure 4 is the copy of the statement of the complainant Giriraj Singh recorded under Section 161 Cr.P.C. The allegations made in the FIR have been fully supported by the complainant in his statement. On the basis of his statement, it is established that on exhortation of the accused Devi Das, other persons had caused marpeet with the complainant and also had humiliated him by making aspersion about his caste and also had threatened him to kill. The statements of the eyewitnesses Brij Kishore, Dhruv Kumar Sharma and Rajesh Kumar Verma were also recorded by the Investigating Officer under Section 161 Cr.P.C. and their names have been shown in the chargesheet as witnesses. Although the copies of statements of these witnesses have not been filed by the applicant in this Revision, but making them witnesses in the chargesheet is indicative of the fact that these witnesses also had supported the allegations made in the FIR and it was for this reason that they have been made witnesses in the chargesheet. Since the allegations made in the FIR were duly supported by the complainant and witnesses in their statements recorded under Section 161 Cr.P.C. hence, there was no occasion for the Court below to discharge the accused persons, because on the basis of the material available in the case diary, there was sufficient ground to proceed against them. Merely because two more first information reports were lodged subsequently by the son of the complainant against the accused, in present case the accused persons can not be discharged, because on the basis of subsequent first information reports, it can not be said that earlier FIR was lodged with mala fide intention.

21. After thorough investigation, chargesheet has been submitted. The accused persons had approached this Court by moving application under Section 482 Cr.P.C. in criminal misc. application No. 31594 of 2008 to quash the proceeding of the case, which was registered on the basis of chargesheet filed in case crime No.

745 of 2007. From the order dated 02.12.2008 (Annexure-6) passed by another Bench of this Court on the application under Section 482 Cr.P.C. in aforesaid case, it is revealed that it was contended on behalf of the accused persons that no injury was sustained and the allegations have been made for the purpose of harassment of the applicants and without doing fair investigation, chargesheet has been submitted. These contentions raised by the learned Counsel of the accused persons in aforesaid case were discarded and proceeding of the case was not quashed. This shows that the chargesheet was submitted on sufficient grounds and it was for this reason that this Court did not make any interference in the proceeding of the case. On this ground also, it can very well be said that the court below was fully justified in not discharging the applicant and co-accused Devi Das. In my considered opinion, the accused persons can not be discharged on the basis of the contentions which were raised by learned Counsel for the applicant at the time of argument, which I have mentioned herein-above. The court below has considered the entire matter in correct perspective and reasoned order has been passed on the discharge application. There is no legal infirmity in the impugned order and interference by this Court in that order is not warranted.

22. Before parting with this judgement, it is worthwhile to mention that the accused persons did not appear in trial court after submission of chargesheet, as discharge application was moved through their counsel in view of the order passed by this Court on 02.12.2008 in Cril Misc. Application No. 31594 of 2008. It appears that the accused are not on bail and it was for this reason that on the date of committal also they were not present in the Court of Magistrate concerned. Hence, a direction should be issued to the applicant to appear in trial court.

23. The applicant is directed to appear in trial court concerned on the date fixed in S.T. No. 245 of 2009. If the applicant is not on bail, then he shall be taken into custody. If any bail application is moved by the applicant, the same be heard and disposed of expeditiously, preferably on the same day, if possible.

24. Consequently, the Revision is hereby dismissed.

25. The office is directed to send a copy of this order within a week to the trial court concerned for compliance.

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