

Nafis Agha Vs. State

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Court : Allahabad

Decided On : Jan-19-1979

Reported in : 1979CriLJ1097

Judge : Mahavir Singh, J.

Appellant : Nafis Agha

Respondent : State

Judgement :

ORDER

Mahavir Singh, J.

1. This is an application under Section 407, Cr. P.C. for commitment of a case pending in the Court of the Magistrate to Sessions. The relevant facts are that a case under Section 324/326, I.P.C. was pending against the opposite party in the Court of Magistrate. It was alleged that the opposite party had thrown acid on the applicant with the result that he lost both of his eyes and suffered some other injuries. The Magistrate thought that the case was such as required deterrent punishment and he was not competent to do so, so he proceeded under Section 323, Cr. P.C. and committed the case to Sessions.

2. The opposite party then filed a revision in this Court, No. 86 of 1978 contending that under the scheme of present Code of Criminal Procedure cases being triable

either by Sessions or by Magistrate it was not open to the Magistrate to commit the case to Sessions, which was within its exclusive jurisdiction even on the ground that the case required more punishment than what he was competent to give. This contention was upheld by this Court by order dated 25-7-1978. It was however, observed that if the Magistrate thought that he was in a position to inflict proper punishment he should refer the case to the Chief Judicial Magistrate under Section 325, Cr. P.C. as Chief Judicial Magistrate has power to award sentence up to seven years and if further sentence was called for, the parties concerned could move this Court under Section 407, Cr. P.C.

3. The complainant (applicant) who was the victim of this offence has accordingly come to this Court. He contends that considering the gravity of the offence even 7 years' sentence, which the Chief Judicial Magistrate can award, would not be enough and still further deterrent punishment was needed and it was, therefore, expedient in the interest of justice that the case should be committed to Sessions.

4. Learned counsel for the opposite party first contends that the applicant has no locus standi to move this application. The case pending against him in the trial Court is on the basis of a charge-sheet filed by the police and, therefore, the State alone could be a party interested within the meaning of Sub-section (2) of Section 407, Cr. P.C. This contention has no force. The words 'party Interested' were interpreted by this Court in *Jag Bhushan Jain v. State* : AIR1962 All288 . It was held therein that these words were wide enough to include a person who lodged a police report and thereby set the machinery of law in motion. The earlier view to the contrary taken in the single Bench case *Sri Krishna v. Baijnath* : AIR1953 All698 was overruled. This view had been followed by Mysore High Court in *Shivasharan Reddy v. State of Mysore* 1968 Cri LJ 638 : AIR 1968 Mys 119 and by the Calcutta High Court in *Punyananda Avadhut v. State* : AIR1970 Cal241 .

5. The words in the present case are similar. So the view of this Court being clear, the contention raised by the learned Counsel for the opposite party has no force and the applicant could move this application.

6. The learned Counsel for the opposite party then contends that even then the case is not such which is covered by any of the clauses of Section 407(1) Cr. P.C.

The learned Counsel for the applicant relies only on that part of Sub-clause (c) which provides that when it appears to the court that it is expedient for the ends of justice that an application under this section can be moved.

7. The learned Counsel for the opposite party contends that these words contemplate some other matter of policy and not such cases whether punishment to be awarded by the trial court would be sufficient or not. I do not agree with this limited interpretation put to these words by the learned Counsel for the opposite party. A proper punishment is always a part of the scheme of justice. Without the proper punishment justice can be frustrated so in appropriate cases where proper punishment cannot be given by the court of Magistrate, it will certainly be expedient for ends of justice that the Case should be transferred to a higher court. The punishment under Section 326 IPC is punishable with life imprisonment also and the courts of Magistrate are not competent to inflict that much punishment under the present Code.

8. The learned Counsel for the opposite party contends that even if it is so, the appropriate procedure would have been for the State to appeal under Section 377 Cr. P.C. That section provides that if the sentence passed by a Court is less, a proper sentence can be passed by the High Court. But the second proviso to Section 386 provides that the appellate court shall not inflict more punishment than might have been inflicted by the court passing the order under appeal. So the High Court could not enhance the sentence more than the sentence which the Magistrate or the Chief Judicial Magistrate could pass if the case was tried by them i.e. the High Court, in that case could not sentence more than three or seven years' rigorous imprisonment if the case was tried by the Magistrate or the Chief Judicial Magistrate, as the case may be.

9. The case is really such that if true, the guilty person deserves deterrent punishment. The applicant has suffered heavily. Vision of both of his eyes has been lost and thus he has been ruined for his life.

10. The application is, therefore, allowed and so, as provided by Sub-section (iii) of Section 407(1) Cr. P.C. the lower court is directed to commit the case to sessions for trial.

