

Dharmvir and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-07-1989

Reported in : 1990CriLJ2525

Judge : Palok Basu, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 307, 323 and 324;
Code of Criminal Procedure (CrPC) , 1974 - Sections 202, 202(2) and 209

Appeal No. : Civil Misc. Writ Petn. No. 16512 of 1989

Appellant : Dharmvir and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Chandra Shekhar Sharma

Judgement :

ORDER

Palok Basu, J.

1.This writ petition has been filed by Dharmvir and 6 others, against an order of the Magistrate concerned summoning them under Section 147/148/149/323/307 IPC, which order has been upheld in revision by the Sessions Judge, Saharanpur on 14-9-1989. The brief facts are that a complaint was filed by Ram Swaroop under the aforesaid Sections alleging that the incident took place on 1-7-1988

around 2.30 p.m. when the accused petitioner had come variously armed and assaulted the prosecution side causing them serious injuries. Since the matter was reported to the police and it did not take suitable action, the Magistrate was approached by means of criminal complaint. Being prima facie satisfied that since the complaint allegations were making out a case under Section 307 IPC also, the Magistrate perhaps thought it best to direct the complainant to examine all his witnesses. The complainant consequently examined Naresh, Ram Baran, Ved Pal, Hukum Singh, Jail Singh and Dr. Lok Nath Deepak as prosecution witnesses number one to number six respectively. On a perusal of the material thus produced by the complainant, the Magistrate had proceeded to pass the impugned order summoning the accused.

2. Sri Chandra Shekhar Sharma learned Counsel for the petitioner has raised two points for consideration.

3. Firstly, that other witnesses namely, Tufail, Maqsood, Baburam, Idris, Yaseen and Dharmvir though mentioned by the complainant as witnesses of the occurrence have not been examined under Section 202, Cr. P.C.

4. Secondly, the statement of the doctor namely PW 6 Doctor Lok Nath Deepak does not indicate that any injury sustained by the prosecution side could be sufficient in the ordinary course of nature to cause death. The argument, therefore, proceeds that the summoning order under Section 307, IPC would be illegal.

5. Sri Ashok Mehta, learned Counsel for the complainant has brought to the notice of this Court that the complainant Ram Swaroop had moved application before the Magistrate showing that those witnesses (named above) have been won over by the accused's side and presently were not prepared to speak the truth and, therefore, he was willing to give them up and they may be examined during trial. This application was allowed by the Magistrate. It was further argued by him that the statement of Dr. Lok Nath Deepak that he found grievous injuries on vital parts of some of the victims, has tentatively made the order of the Magistrate summoning the accused under Section 307, IPC valid and legal. Sri R. P. Tripathi learned Additional Public Prosecutor appearing on behalf of the State of U.P. has supported the argument of Mr. Mehta.

6. There is a wisdom behind enacting the proviso to Sub-section (2) of Section 202, Cr. P.C. In a police case normally an investigation reveals the nature of the alleged crime and, therefore, when after collecting the materials, a charge-sheet in a case exclusively triable by the Court of Sessions comes before the Magisterial Court, he has not to refer to anything further and commit the case to the Court of Sessions under Section 209, Cr. P.C. But in complaint cases the Magistrate has been, by the said proviso, called upon to examine all the complainant's witnesses. This appears to have been done with the purpose that the accused may not be harassed by false and frivolous complaints. The duty of the Magistrates in complaints about offences triable by the Sessions Judges becomes onerous. The legislative intent behind the said proviso must be carried to its logical end.

7. In the present case since the doctor has been examined, it has to be seen as to what transpires from his statement. If, according to his opinion the injuries sustained bring the case within the four corners of Section 307, IPC, it will be legitimate to pass an order for summoning and then for commitment, but if from the statement such an opinion is prima facie not possible, then the order in so far as it relates to summoning the accused under Section 307, IPC would be illegal.

8. It is admitted case that according to the statement of doctor Lok Nath Deepak, a true copy of whose statement has been filed as Annexure 3 to this writ petition, he medically examined Ved Pal Singh, Ram Swaroop, Hukum Singh, Tufail and Idris and that he had directed X-Ray examination to be done concerning the injuries of Ved Pal and Idris. His opinion, however, is that the injuries of Ved Pal, Ram Swaroop and Hukum Singh were on vital parts. Nowhere in the statement it is to be found that those injuries could have been likely to cause death in the normal circumstances.

9. It goes without saying that in cases where the prosecution examines a medical expert to prove that the intention of the accused as revealed by the injuries examined by him travelled up to the stage of making the offence punishable under Section 307, IPC, such evidence must come forthwith as to make out the said case even prima facie. As noted above, Doctor Lok Nath Deepak has not said in the statement before the Magistrate that any of the injuries sustained were likely to

cause death or were in the normal case suspected to cause that harm. The benefit of this statement must go to the accused because the summoning order itself may make a lot of difference as to the forum of trial.

10. Under these circumstances this writ petition is partly allowed. The Magistrate's order dated 26-5-1989 is quashed in so far as he has summoned the accused/petitioner under Section 307, IPC but it is upheld in so far as it relates to Sections 147/148/149/323/ 324, IPC.

11. It is hereby directed that in case petitioners Dharmvir, Bhanwar Singh, Mahavir, Harvir, Baljor, Ratan and Jairam are arrested and brought before the competent Court or surrender before it and make an application for bail, it will be decided in accordance with law on the day it is moved, unless prevented by unforeseen circumstances.

12. Notwithstanding anything stated above, it will be open to the Magistrate to frame, add or alter the charges concerning the accused petitioners, if and when from the evidence it transpires that apart from Sections 147/148/149/324, IPC any other offence is made out. In that event, he will proceed to try or commit the accused in accordance with law.

13. A certified copy of this order may be furnished to the learned Counsel for the parties on payment of usual charges within a week from today. Warrant of arrest, if any, shall not be executed for 15 days from today, unless the accused voluntarily surrenders to the said warrant before the Court concerned.