

Munna Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-23-1995

Reported in : 1996CriLJ65

Judge : K.L. Sharma, J.

Acts : Uttar Pradesh Dacoity Affected Areas Act, 1983 - Sections 6, 7, 7(2) and 216; Indian Penal Code (IPC) - Sections 148, 149, 323, 324, 396 and 436; [Evidence Act, 1872](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 190, 207, 308, 326 and 482

Appeal No. : Criminal Misc. Application No. 697 of 1995

Appellant : Munna

Respondent : State of U.P.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Vinod Kumar Sharma, Adv.

Judgement :

ORDER

K.L. Sharma, J.

1. This is an application under Section 482, Cr.P.C. for a direction to the Special Judge, (Dacoity Affected Area) at Agra to frame charges afresh and hold the trial de novo in Sessions Trial No. 449 of 1980 State v. Laxmi, under Sections 396, 148, 149, 436, 324, 149, 323/ 149, I.P.C., P. S. Chatta, district-Agra pending in the Court of Special Judge Dacoity Affected Area. Agra.

2. I have heard Sri Vinod Kumar Sharma counsel for the applicant as well as learned A.G.A. and perused the material brought on record.

3. The offences mentioned in the sessions trial of the year 1980 had occurred prior to the commencement of the Special Act known as Uttar Pradesh Dacoity Affected Areas Act 1983 (hereinafter referred to as the Dacoity Act). The Magistrate had taken cognisance of the offence on the police charge sheet and had committed the accused to the Court of Session in the year 1980 to stand their trial. The sessions trial was assigned to the III Additional Sessions Judge, Agra who in the course of time recorded evidence of three witnesses up to the year 1985. At that stage, it was noticed that since the sessions trial involves a scheduled offence under Section 396, I.P.C. under the Dacoity Act, it shall have to be tried only by the Special Court established at Agra and consequently the sessions trial was transferred at that stage to the Special Court, Dacoity Affected Area, Agra. An application was moved on behalf of the accused before the Special Court to frame charges afresh and hold the trial de novo and the then Special Judge was impressed with the contention and ordered for the de novo trial but he could not actually proceed with the case, as he was transferred. The Successor Special Judge did not agree with the de novo trial and decided to proceed in the case from the stage at which it was received, and the application of the accused was rejected. Thereafter the present application under Section 482, Cr.P.C. has been filed in this Court.

4. The contention raised by the learned counsel for the applicant is that the Special Court alone has got jurisdiction to try a scheduled offence along with the other offences and the learned Sessions Judge has ceased to exercise jurisdiction under the Dacoity Act and as such the evidence recorded before the learned III Additional Sessions Judge, prior to the transfer to the Special Court at Agra,

having jurisdiction cannot be considered and relied upon by the Special Court and the Special Court will have to proceed in the case afresh from the stage of framing charges. In this connection the relevant provisions in the Dacoity Act are contained in Sections 6 and 7 which are reproduced as follows:

6. Jurisdiction of Special Courts - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, a scheduled offence shall be triable only by a Special Court.

(2) In trying any scheduled offences a Special Court may also try any offence other than such offence with which a scheduled offender may be charged at the same trial under any law of the time being in force.

7. Procedure and powers of Special Courts - A Special Court may take cognizance of any scheduled offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed:

Provided that all cases triable by a Special Court under this Act, pending before any Court immediately before the date of the commencement of this Act in a dacoity affected area, shall stand transferred to the Special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act.

(2) A Special Court shall, while trying a scheduled offence, so far as may be, follow the procedure provided by the Code of Criminal Procedure, 1973 for trial of sessions cases;

Provided that the Special Courts may, wherever necessary, perform the functions of a Magistrate under Section 207 of the said Code and proceed to try the case as if the case had been committed to Court of Sessions for trial under the provisions of such Code.

(3) Save as otherwise expressly provided in this Act, the provisions of the Indian [Evidence Act, 1872](#) and the Code of Criminal Procedure, 1973 shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purposes of the provisions of the said Code, the Special Court shall be deemed to be a Court of Sessions and the person conducting the prosecution before a Special Court shall be deemed to be a public prosecutor.

(4) A Special Court may, with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to any scheduled offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other persons concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall for the purposes of Section 308 of the said Code, be deemed to have been tendered under Section 307 thereof.

(5) A Special Court may pass upon any accused person convicted by it any sentence authorised by law for the punishment of offence of which such person is convicted.

It is clear that a scheduled offence under the Dacoity Act shall be triable only by a Special Court after it is established. This Special Court has also been given power to take cognizance under Section 190 Code of Criminal Procedure. It has also been clearly provided that all cases triable by Special Court under the Special Act pending before any Court immediately before the commencement of the Act in the Dacoity Affected Area shall stand transferred to the Special Court under the jurisdiction and shall be dealt with and disposed of in accordance with the provisions of this Act. The Special Court shall follow as far as possible the same procedure provided by the Code of Criminal Procedure for trial of sessions cases. The procedure for trial of sessions cases has been provided under Chapter XVIII of the Code of Criminal Procedure and general provisions relating to inquiries and trials before the Courts of Magistrates and Sessions Judges are contained in Chapter XXIV of the Code of Criminal Procedure. Section 326 of the Code

empowers the Magistrates or the Sessions Judges to act on the evidence recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself. This section further indicates that the Magistrate or the Judge is the Predecessor to the Judge or Magistrate who ceases to exercise jurisdiction in the case and is succeeded by another Magistrate or Judge. This provision makes it clear that it is not obligatory on the successor to act on the evidence recorded wholly or partly by his Predecessor. This provision is not inconsistent with the provision of Section 7(2) of the Dacoity Act wherein a Special Court shall, while trying a scheduled offence so far as may be, follow the procedure provided by the Code of Criminal Procedure, 1973 for trial of sessions cases. Therefore, the Special Judge can either proceed with the transferred case de novo or may proceed from the stage at which he has received the case of a scheduled offence which had taken place before the commencement of the special Act. In such a situation no direction is called for from the High Court to the Special Court either to proceed with the transferred case de novo or proceed in the case from the stage at which it has been received by him.

5. Learned counsel for the applicant further contended that if the Special Court reconsiders the charges already framed, there is a likelihood that the scheduled offence under Section 396, I.P.C. may not be found justified by the material available on the file, and if that charge is not framed against the accused, then the case will have to be remitted to the Court of Session for trial in accordance with the general law, This contention has some force but against it lies in the discretion of the Special Court either to modify, reframe, or drop the charges during the course of the trial or to proceed with the same. The Code makes a provision in this regard also vide Section 216 that during the course of the trial any charge can be modified, added or substituted during the course of trial and appropriate orders can be passed by the Court at that stage.

Therefore, it is always open to the Trial Judge to reconsider the position of charges as may arise from the evidence received by him in the course of trial of the case. On the basis of this contention also, this Court does not think necessary to issue any direction to the Special Judge who is fully competent to deal with such a situation as and when it arises.

6. Learned A.G.A. has also brought to the notice that the sessions trial of the year 1980 has not been concluded for over 14 years and if any de novo trial is ordered by this Court or even by the Special Court it is going to materially affect the position of witnesses whose whereabouts may not be available and who may not be able to recollect what they had stated in the year 1985 and as such the rehearsal of the entire evidence is not called for. In the present situation, I do not want to make any observation on the submission of the learned A.G.A. but it is the demand of justice that the trial should not be unduly delayed for any reason whatsoever as the justice has to be dispensed with speedily.

7. For the aforesaid reasons and subject to aforesaid observations, this application is finally disposed of without making any directions.

8. Let a certified copy of order be issued on payment of usual fee within 3 days.

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