

Sunil Kumar Singh and anr. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-25-2005

Reported in : 2005(2)MPHT362

Judge : S.L. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 120A, 120B, 328, 364, 395 and 397

Appeal No. : Misc. Cr. Case No. 6626/2004

Appellant : Sunil Kumar Singh and anr.

Respondent : State of Madhya Pradesh

Advocate for Def. : J.K. Jain, Govt. Adv.

Advocate for Pet/Ap. : Vijay Nayak, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.L. Jain, J.

1. Invoking extra-ordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (henceforth, 'the Code'), petitioners have filed this petition

for quashing the proceedings pending in the Court of Special Judge, Satna in Sessions Trial No. 106/2004 for offences punishable under Section 364, 395, 397, 328 and 120B of the IPC.

2. The case of the prosecution is that on 12-1-2004, Tirath Prasad Gupta was kidnapped from Uchehra by certain persons. After investigation, the petitioners and 10 other co-accused were arrested and charge-sheet was filed against them. On the basis of material on record, Special Judge, Satna framed charges against all the accused persons for the offences punishable under Sections 364, 395, 397, 328 and 120B of the IPC.

3. It is the case of the petitioners that they are doing the business of electronics in Naseem Market, Patna and have no concern with the incident or any of the co-accused persons. Petitioners have been arrested and charge-sheeted only on the memorandum of accused Anil @ Vikki.

4. It is also the case of the petitioners that there is no evidence of conspiracy against them. There is no evidence that the petitioners participated in the incident of kidnapping. The petitioners have not been identified by any of the prosecution witnesses.

5. The petitioners also averred that as there is no material whatsoever against them, the charge-sheet filed against them for the offences punishable under Sections 364, 395, 397, 328 and 120B of the IPC, charges framed against them and proceedings pending against them are liable to be quashed.

6. I have heard Shri Vijay Nayak, learned Counsel for the petitioners and Shri J.K. Jain, G.A. for the State.

7. Learned Counsel for the State submits that there is sufficient evidence against the petitioners.

8. So far as applicant Sunil is concerned, the kidnapped person Tirath Prasad Gupta examined before the Special Judge during trial as P.W. 2, has specifically stated that accused Sunil was one of the persons who kidnapped him.

9. It is true that no identification parade was held for the identification of applicant Sunil but the identification in the Court is substantive evidence. What is the value of such evidence is not to be seen at this juncture.

10. So far as applicant Anil Singh is concerned, from the statement of co-accused Anil Singh @ Vikki, a fact has been disclosed that present applicant Anil handed over his mobile phone to co-accused Anil @ Vikki. An analysis of telephone call statement, submitted by Vishal Chopra, JTO, Maihar, reveals that Mobile No. 3314245 was used for the purpose of contracting different persons. Therefore, it can not be said that there is no evidence against petitioner Anil. Looking to the aforesaid material, at this stage, it can not be said that no offence under Sections 364, 395, 397, 328 and 120B of the IPC is made out against petitioner Anil.

11. There is material on record that the petitioners used to contact different persons on telephone. The voice of the persons who contacted relatives of Tirath Prasad Gupta was recorded. Whether this voice was of the present petitioners or not is a matter which will be decided by the Trial Court after recording the relevant evidence.

12. Sections 120A and 120B of the IPC brought the law of conspiracy in India by making the overt act unessential when conspiracy is to commit a punishable offence. The offence of conspiracy is agreement between two or more persons to do any illegal act or a legal act by illegal means which may or may not be done but the very agreement is an offence and punishable. Overt act in a case of conspiracy consists in the agreement of the parties. The very plot is an act itself and the act of the each of the parties is promise against promise enforced for a criminal object or for use of criminal means completes the offence.

13. In a case of conspiracy it is difficult to establish the same by direct evidence. Conspiracy can be proved by circumstantial evidence showing connection between the alleged conspiracy and the act done pursuant to that conspiracy. When from the allegations made in the charge-sheet it can be inferred that accused entered into a conspiracy with other person to commit an offence, there is justification in framing the charge against that accused and in directing him to stand for trial. The gist of the offence of conspiracy lies in forming the scheme or

agreement between the parties.

14. The material on record in this case and its totality is sufficient to raise a strong suspicion that there was well thought out plan to commit kidnapping and allied offences. At this stage it can not be seen that the evidence is flimsy or suffers from various infirmities or there is inconsistencies in the evidence and the same lacks corroboration from independent source.

15. Ordinarily, criminal proceedings initiated against accused must be tried under the provisions of the Code and this Court would be reluctant to interfere with such proceedings at an interlocutory stage. It is not the allegation of the petitioners that they are being prosecuted with any ulterior motive or with a view to harass them.

16. Normally, this Court in exercise of jurisdiction under Section 482 of the Code, can interfere only in those cases where the entire evidence, if taken at its face value and accepted in its entirety does not constitute an offence alleged. The power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

17. This Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR and the facts found during investigations.

18. In the order dated 6-7-2004, passed by the Trial Judge while framing the charges against the petitioners, a brief survey of the material available against the petitioners has been given. This is not the stage when this Court can enter into the meticulous consideration of the material available. I refrain from going into the details of the matter, least any observation which I make might prejudice either party to the trial. This is not a case which calls for the interference of this Court in the present proceedings of extra-ordinary nature. The petition is, therefore, dismissed.