

Ameen and Another Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Dec-11-2000

Reported in : 2001CriLJ1947; 2001(2)MPHT144

Judge : Mr S.C. Pandey, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 43, 178, 179, 329 and 365; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 397 and 401;

Appeal No. : Criminal Revision No. 1586/2000

Appellant : Ameen and Another

Respondent : State of M.P.

Advocate for Def. : Shri P. Gupta, Panel Lawyer

Advocate for Pet/Ap. : Shri Hamid Khan, Adv.

Disposition : Criminal revision dismissed

Judgement :

ORDER

S.C. Pandey, J.

1. This Criminal Revision under Section 397/401 of the Code of Criminal Procedure is directed against the order dated 22-11-2000 passed by VIIth

Additional Sessions Judge, Jabalpur in Session Trial No. 701/2000.

2. The learned Session Judge has framed two charges against the petitioners. One against under Section 365 of the Indian Penal Code and the another under Section 329 of the Indian Penal Code. The learned counsel states that the petitioners are not aggrieved by framing the charges under Section 365 of the IPC but argued that there is no material for framing a charge under Section 329 of the IPC.

3. The facts of this case as per charge sheet are that the petitionersway laid the complainant Deepak Rajput in front of Saint Aloysius School Gate and slopped him. Then they brought him near Railway Colony, Jabalpur on the point of knife. He was given beating and was physically assaulted. They kept confined him in Madar Tekri and in the village Shobhapur. The offence was committed by the petitioners with a view to put pressure upon the complainant so that he may not give evidence in a different criminal case. Now it is being argued that the offence under Section 329 of the IPC is not made out.

4. Section 329 of IPC is reproduced here as follows :--

'329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.-- Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

The following ingredients are essential for commission of an offence covered under Section 329 of the IPC :

(i) Voluntarily causing grievous hurt to extort property from the sufferer or from any person interested in the sufferer; or (ii) any valuable security; or (iii) of constraining the sufferer or any person interested in such sufferer to do anything that is illegal;

or (iv) with which facilitate the commission of an offence. It is urged that the actions of the petitioners are not covered by the phrase 'constraining the sufferer to do anything illegal'.

5. Learned counsel for the petitioners has pointed out to me that the word 'illegal' has been defined in Section 43 of the IPC as follows :--

'43. 'Illegal', 'Legally bound to do'.-- The word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be 'legally bound to do' whatever it is illegal in him to omit.' The ingredients of definition aforesaid are :--

(i) the word 'illegal' is applicable to (i) what is an offence; or (ii) what is prohibited by law; or (iii) furnishes a ground of civil action. It is further stated in the definition that a person is said to be 'legally bound to do' whatever it is illegal in him to omit. Applying the aforesaid definition to the facts of this case it is clear that the petitioners were forcing the complainant from doing what was legally required for him to do.

6. In the opinion of this Court, the use of the word 'constraint' implies that a person is controlled or obstructed from doing an act which the person wants to do. The applicants allegedly wanted to obstruct the complainant from deposing against them in another criminal case. The question is if they were trying to force him to an illegal act. It is clear from the definition that whatever be 'an offence' within the meaning of the Penal Code would be covered by it. The legislature has made elaborate provisions in the Code itself regarding evidence. If a person refuses to take oath or state on affirmation before a Court of law, he is liable to be punished under Section 178 of IPC. If a person refuses to answer question as a witness in a Court of law, he is liable to be punished under Section 179, IPC. The complainant may have been required to commit any of the aforesaid offences by constraint put upon him by the applicants. It is not in dispute that pursuant to their intention of preventing the complainant from giving evidence against the applicants, they caused him voluntarily grievous hurt. Thus applicants were requiring him to commit an offence within the meaning of Indian Penal Code. They were forcing him to an illegal act if facts stated in the charge sheet are true. Consequently,

charge under Section 329, IPC was rightly framed against the applicants. The case cited by the learned counsel for the applicants reported in AIR 1951 Sau 40 (Jorubha Anandsang v. State) has no application.

There is no force in this revision. It is accordingly dismissed.

M.Cr.P. No. 2676/2000 is dismissed as it has become infructuous.

7. Criminal Revision dismissed.

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