

Chandrika Vs. Rajaram

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Court : Madhya Pradesh

Decided On : Feb-02-1995

Reported in : 1995CriLJ2587

Judge : N.P. Singh, J.

Acts : Arms Act - Sections 25 and 27; Indian Penal Code (IPC) - Sections 34, 147, 148, 149, 307, 323 and 325; Code of Criminal Procedure (CrPC) , 1974 - Sections 227, 228 and 435

Appeal No. : Criminal Revision No. 73 of 1990

Appellant : Chandrika

Respondent : Rajaram

Advocate for Def. : Umesh Shrivastava, Adv.

Advocate for Pet/Ap. : Ajit Singh, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.P. Singh, J.

1. This application, in revision is directed against the Order dated 16-11-89 discharging the non-applicants Nos. 1 and 2, from the liability of the offences punishable under Section 307/34 of the IPC and Section 25/27 of the Arms Act. passed by the IInd Addl. Judge, to the Court of Sessions Judge, Satna in Sessions Trial No. 142/88.

2. On, 1-8-88 at about mid day, when the complainant Chandrika Prasad, had gone to his field to lay out the foundation of his farm house, the non-applicants along with their associates, variously armed with fire-arms, went there and non-applicant No. 1 shot at the complainant, causing various firearm injuries to him.

3. On a report, lodged by the complainant, at the Police Station, a case under Sections 147, 148, 149, 323 and 307/34 of the IPC was registered and chargesheet under Sections 147, 148, 149, 325 and 307/34 of the IPC was submitted against the non-applicants Nos. 1 and 2.

4. After, the cognizance, and commitment, the case came up for trial before the IInd Addl. Sessions Judge.

5. The learned trial Judge at the stage of Sections 227 and 228 of the Code of Criminal Procedure, considering the alibi defence of the non-applicant Nos. 1 and 2 that non-applicant No. 1 was present in the meeting elsewhere, on the alleged date and time of the occurrence, and the non-applicant No. 2 Shrikrishna was admitted and operated upon in the hospital, discharged the non-applicants Nos. 1 and 2 of the liability of the offence.

6. Shri Ajit Singh, counsel for the applicant/ complainant has contended that a meticulous consideration of the evidence and materials are not required by the Court at the stage of Sections 227 and 228 of the Code of Criminal Procedure. The order of discharge of the non-applicants Nos. 1 and 2 is bad in law. Reliance was placed in the case of Mohd. Akbardhar v. State of Jammu and Kashmir : 1981 CriLJ1135 as also, in the case of Radhey Shyam v. Kunj Bihari, : 1990 CriLJ669 .

7. Shri Umesh Shrivastava, counsel for the non-applicants, on the other hand has contended that, revision by the private complainant is not maintainable, and he

placed reliance in the case of Thakur Ram v. State of Bihar, : 1966 CriLJ700 .

8. The ratio of the case relied upon by Shri Shrivastava has no relevance in the present case. In the case of Thakur Ram's case (supra), the complainant had preferred revision against the acquittal after the full dress trial of the accused and the Apex Court held in that case, which has proceeded on a police report:

'No doubt, the terms of Section 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take steps necessary for bringing the person who has acted against the social interests of the community to book.'

9. The instant case stands on a different footing. In this case the trial court has discharged the non-applicants 1 and 2 without testing the truth or otherwise of the alibi evidence, at the trial.

10. In Mohd. Akbardhar v. State of Jammu and Kashmir, : 1981 CriLJ1135 the apex court has observed that meticulous consideration of evidence and material by the Court is not required at the time of framing of the charge. This ratio in Mohd. Akbardhar's case (supra) has been further reiterated by the Apex Court in the case of Radhey Shyam v. Kunj Bihari, : 1990 CriLJ669 .

11. In State of Bihar v. Ramesh Singh : 1977 CriLJ1606 the Apex Court has held that alibi defence cannot be considered and accepted at the stage of Sections 227/228 of the Code of Criminal Procedure, unless it is tested by the, Court on evidence at the trial.

12. In my view, a revision preferred, by the complainant before the conclusion of the trial against an apparently illegal order, cannot be dismissed', without

consideration, when the prosecutor-State is not vigilant in prosecuting the case.

13. The impugned order of discharge of the non-applicants 1 and 2, on the plea of their alibi defence, at the stage of Sections 227/228 of the Code of Criminal Procedure, is premature assessment of the evidence which is not only against the canon of justice but is also against the rule of prudence.

14. For the reasons mentioned above, the revision application succeeds and is allowed. The trial Court is directed to proceed in the matter in accordance with law. The records of the trial Court be transmitted forthwith.

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