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Court : Punjab and Haryana

Decided On : Mar-26-2008

Reported in : (2008)151PLR510

Judge : Rajesh Bindal, J.

Appellant : Mander Singh and ors.

Respondent : Ladi

Judgement :

Rajesh Bindal, J.

1. The challenge in the present petition is to the order passed by the learned Additional Sessions Judge, Bathinda in revision filed by the respondent against the order passed by learned Judicial Magistrate, 1st Class, Bathinda, in Criminal Complaint No. 16 of 1999, R.T. No. 131 of 31.5.2000, whereby the petitioners were discharged as no prima facie case was made out against them for summoning to stand trial under Section 500 IPC.

2. Briefly, the facts are that the respondent filed a complaint against the petitioners under Sections 500/120B/148/149/506 IPC. The dispute as is stated in the complaint is on account of certain party faction in the Panchayat elections. Further basis for filing the complaint was that the petitioners had filed a complaint against the respondent before Senior Superintendent of Police, Bathinda on February 6,

1999 stating that the respondent is a lady of bad character. She was unmarried at the age of 40 years and was running prostitution business in the village. The complaint was enquired into by the S.S.P., Bathinda and the allegations contained therein were found to be false. The false allegations levelled by the petitioners had made the life of the respondent miserable as it had become difficult for her to live in the village and get married. The dignity, reputation and character of the respondent were badly damaged. After recording preliminary evidence, the learned Magistrate directed the summoning of the petitioners vide order dated November 2, 1999. After summoning of the petitioners, the trial Court proceeded with recording of evidence of the complainant. On a consideration of the application/complaint made by the petitioners before the police which was the sole basis for filing of the complaint by the respondent against the petitioners, the learned Magistrate found that the same does not contain any defamatory words against the respondent- complainant that she was running a prostitution business in the village or that she is a lady of bad character. The only allegation in the complaint was that the respondent, Arjan Singh and Kala Singh, are trouble makers who often levelled false allegations against the villagers. There is threat of breach of peace from these persons who always remain ready to enter into fight with co-villagers. Prayer was made for taking action against them. Keeping these facts in view, the learned Magistrate, vide order dated March 12, 2003, did not find sufficient material to frame charge against the petitioners and accordingly discharged them.

3. Aggrieved against the order of discharge, the respondent filed revision petition before the learned Additional Sessions Judge, Bathinda who, vide order dated September 23, 2003, accepted the revision and while setting aside the order passed by the Magistrate, directed for framing of charge against all the accused and to proceed further in accordance with law.

4. The only legal issue raised by learned Counsel for the petitioners is that the discharge of the petitioners by the learned Magistrate amounted to acquittal and against an order of acquittal, no revision was maintainable as the only remedy available to the respondent was by way of filing leave to appeal before this Court under Section 378 Cr.P.C. He has relied upon a judgment of Hon'ble the Supreme

Court in the case of Major General, A.S. Gauraya and Anr. v. S.N. Thakur and Anr. 1986 Criminal Law Journal 1074 and judgments of this Court in Municipal Committee v. Shri Labhu Ram and Ors. 1969 Current Law Journal 619; Arjan Dass v. Market Committee, Hissar (1980)82 P.L.R. 469; Bal Ram Suraj v. Dev Raj Dhiman 1987(1) Recent Criminal Reports 616; Ashok Kumar v. State of Haryana and Anr. 1987(2) Recent Criminal Reports 317; State of Haryana v. Ram Singh 1996(3) Recent Criminal Reports 134.

5. While considering the identical issue, a Division Bench of this Court in Municipal Committee v. Shri Labhu Ram's case (supra) opined as under:

The first point raised by learned Counsel for the Committee was that all the 14 cases fell within the category of summons cases in relation to which the Code of Criminal Procedure does not envisage an order of discharge in any event and that the impugned orders were liable to be set aside on that account alone. To the first part of this contention no exception can be taken as Chapter XX of the Code, which deals with the trial of summons-cases, does not talk of an order of discharge at all. On the other hand, it is clear from the provisions thereof that the proceedings against an accused person in a summons-case can end only two ways, i.e., either in his conviction or his acquittal. The second part of the contention, however, does not commend itself to us as it is well recognized that an order of 'discharge' passed in such circumstances would amount to one of acquittal and may be treated as such. The contention, therefore, does not help the Committee in any way.

(emphasis supplied)

6. In Arjan Dass's case (supra), a Single Bench of this Court considering a similar proposition and relying upon a judgment of Madras High Court in Palchmi v. Paramasiva Gounder : AIR1958 Mad197 , observed as under:

5. The main ground urged by the learned Counsel for the petitioner is that the orders passed by the learned Chief Judicial Magistrate, which were wrongly recorded as discharge, was as a matter of fact orders of acquittal.

The second argument is that no revision was competent against that order before the learned Sessions Judge and that the learned Sessions Judge was not competent to convert the revisions into appeals.

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7. Chapter XX which provides for the procedure for trial of summons cases, contains Sections 251 to 259. Section 251 provides that when an accused is brought before the Magistrate, the particulars of the offence of which he is accused of, shall be stated to him. After that, his plea of guilt has to be recorded and in case of examination of evidence under Section 255 of the Code, contained in this Chapter, shall acquit him if in his opinion the accused is not guilty of the offence. When a comparative study of Chapters XIX and XX is made, it makes it clear that charge has to be framed only in a warrant case and when the charge is not framed, the accused has necessarily to be discharged. This shows that the words 'charge' and 'discharged', are inter-linked and inter dependent and have been used only in that procedure where the charge has to be framed that is in warrant cases. Where the law does not provide for the framing of the charge there can be no question of discharge. In summons cases, there cannot be a question of discharge as the provisions do not contain such a word. The stage of acquittal comes after the framing of the charge. Under Section 251 of the Code only substance of accusation has to be stated. Technically, it might be taken akin to the framing of the charge, but when the question of discharge is to be considered relatively with this provision, it cannot be equated with the framing of the charge. I draw support from *Palchmi v. Paramasiva Gounder* in which it was held as under:

.In a summons case there is no question of discharge. It is either acquittal or dismissal under Section 203 Criminal Procedure Code. The trial court therefore could have only either passed an order of dismissal under Section 203 or an acquittal under Section 245 in a summons case. It cannot pass an order of discharge in a summons case. If it says that it discharges the accused in law it means acquittal. The word 'discharge' has been improperly used by the learned Chief Judicial Magistrate. In reality, the effect of this discharge in such cases is that of acquittal.

8. The next question which has been mooted between the parties is as to whether a revision was competent against an order of acquittal. Section 378(4) of the Code prohibits the filing of a revision where a right of appeal accrues to a party. The revisions therefore could not be filed by party which had a right of appeal.

7. In Bal Ram Suraj's case (supra), this Court relying upon earlier judgment of this Court in Raja Ram Trehan v. Principal, Sudarshan Singh Malva Khalsa Higher Secondary School, Ferozepur City 1981 Criminal Law Journal 1469, opined that the order of discharge has to be read as an order of acquittal deeming to have been passed under Section 255 of the Code and on that finding no revision was competent before the Additional Sessions Judge and thus the order was declared to be illegal.

8. Keeping in view the above consistent view of this Court and applying the same in the facts and circumstances of the present case where in a summons case, the petitioners were discharged by the learned Magistrate vide order dated 12.3.2003, in legal term, it amounted to acquittal of the petitioners. Against the order of acquittal, revision was not competent before the learned Additional Sessions Judge as the order could only be challenged before this Court by filing Special Leave to Appeal under Section 378 Cr.P.C. The impugned order dated 23.9.2003 passed by the learned Additional Sessions Judge is, thus, declared illegal and set aside.

The petition is disposed of accordingly.

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