

Narendra Kumar and ors. Vs. State and ors.

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Court : Delhi

Decided On : Jan-13-2004

Reported in : 2004CriLJ2594; 2004(72)DRJ620

Judge : J.D. Kapoor, J.

Acts : Indian Penal Code (IPC) - Sections 34, 186, 188, 189, 190, 295A, 298, 323, 451, 503, 505, 506 and 509; Criminal Law (Amendment) Act, 1932 - Sections 6 and 10; [Code of Criminal Procedure \(CrPC\) , 1898](#); Code of Criminal Procedure (CrPC) , 1882; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 484(2)

Appeal No. : CRLMM 3322/2003

Appellant : Narendra Kumar and ors.

Respondent : State and ors.

Advocate for Def. : Richa Kapoor, Adv. and ; R.S. Kunju, Adv. for respondents 2 to 4

Advocate for Pet/Ap. : R.N. Mittal and; Puneet Mittal, Advs

Judgement :

J.D. Kapoor, J.

1. This is a petition for quashing of the FIR no.272/2001 registered at P.S. R.K. Puram under Sections 451, 323, 506, 509, 34 IPC arising out of disputes between the two neighbours, staying in the same premises. The complainant lodged a report that his wife and daughter were coming out for some work and after they came out of the house, the respondent Ashish Gosain was standing outside along with his driver and on seeing his daughter and wife started passing obscene comments. On hearing the noise he came outside the house and tried to stop them but both of them started beating him. They then forcibly entered his house and manhandled him. On seeing this his son telephoned the Police who reached there and registered the case under Sections 451, 323, 506 509 read with 34 IPC.

2. Since they have now amicably settled the disputes as according to the complainant due to some misunderstanding and on hearing the noise from outside he got infuriated and confronted the petitioner ensuing in scuffle and lodged the report, now they want to live in peace being immediate neighbours. As is apparent no useful purpose will be served in continuing with the proceedings as it will not only further their enmity but also harm their future relations as they are living in the same premises and have to face each other everyday. Petition is allowed and the impugned FIR and the proceedings arising there from stand quashed.

3. However before parting I feel constrained to refer to the contentions raised by the counsel for the petitioner that the Notification no.232-Home dated 11.01.1933 issued under Section 10 of Criminal Amendment Act of 1932 by the then Chief Commissioner of Delhi, which made the offence punishable under Section 506 IPC "cognizable" and "non-bailable" though Code of Criminal Procedure 1898 categorized this offence "non-cognizable" and "bailable" has outlived its utility and is operating against the law legislated by the Parliament by way of Code of Criminal Procedure, 1973 repealing the old Code of 1898 as Code of 1973 has also categorized this offence as "non-cognizable" and "bailable" and, thereforee is liable to be quashed as in the instant case every other offence was bailable but petitioner was arrested and sent to jail because of the said notification making the offence under Section 506 IPC "cognizable" and "non-bailable".

4. Having had a vast and wide experience in administering criminal justice, this Court is in complete agreement with the counsel for the petitioner as it has come across hundreds of cases where the substantial offences are such which are "non-cognizable" and "bailable" that the police incorporates an offence under Section 506 IPC on bald statement of the complainant that he had been threatened by the accused without specifying whether it falls within part I or part II as part I prescribes two years' sentence or fine while part II prescribes seven years or fine. Having once registered the FIR for the offence under Section 506 IPC Police empowers itself to arrest the offender and send him to jail as in that case he cannot be released unless he approach the Court for seeking bail which at times is not allowed.

5. It was after about 45 years of the operation of the Cr PC of 1898 that Criminal Law Amendment Act of 1932 was brought on the statute book that empowered the State Government to make certain offences "cognizable" and "non-bailable" which were prescribed as "non-cognizable" and "bailable" by way of issuing notification in the Official Gazette. Most of these offences related to obstructing a public servant in the discharge of public functions, disobedience to order duly promulgated by public servant, a that of injury to public servant. Notification was issued mainly for the protection of public servants and to prevent participation of public at large in civil disobedience movement and punish those who dared defy the public servants Offence of "criminal intimidation" as envisaged under Section 506 IPC was also included. 6. Section 10 of Criminal Law Amendment Act reads as under:

"10. Power of State Government to make certain offences cognizable and non-bailable.

(1) The State Government may by notification in the Official Gazette, declare that any offence punishable under Sections 186, 189, 188, 190, 295A, 298, 505, 506 or 507 of the Indian Penal Code, when committed in any area specified in the notification shall notwithstanding anything contained in the Code of Criminal Procedure 1898, be cognizable, and thereupon the Code of Criminal Procedure, 1898 shall, while such notification remains in force, be deemed to be amended

accordingly.

(2) The State Government may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under Section 188 or Section 506 of the Indian Penal Code shall be non-bailable."

7. Acting under this provision, a notification was issued on 11th January 1933, that offences under Sections 186, 188, 189 and 506 of the Indian Penal Code would be cognizable and offences under Sections 188 and 506 would be non-bailable presumably because in cities, where there were large political activities, the prevention of certain offences against public servants required a different treatment and it was felt necessary to empower the police to arrest persons likely to commit such offences without warrant so that movement may not succeed. The said notification is as follows:

"Notification.

232-Home

Delhi the 11th January 1933.

In exercise of the powers conferred by Section 10 of the Criminal Law Amendment Act 1932, the Chief Commissioner of Delhi is pleased to declare.

(1) That any offence punishable under Sections 186, 188, 189 and 506 of the Indian Penal Code, when committed in The Delhi Province, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable, and

(2) That any offence punishable under Sections 188 or 506 of the Indian Penal Code shall be non-bailable.

Sd/- J.N.G. Johnson.

Chief Commissioner, Delhi,"

8. The difference between "cognizable" and "non-cognizable" offence is that in case of a cognizable offence, a police officer may arrest an offender without

warrant and that in case of a non-cognizable offence, a police officer has no authority to arrest an offender without warrant.

9. Ingredients of offence of "criminal intimidation" as defined in Section 503 IPC and punishable under Section 506 IPC are as under:-

1. Threatening a person with any injury;

(i) to his person, reputation or property; or

(ii) to the person or reputation of any one in whom that person is interested.

(2) Threatening a person with injury.

(a) to cause alarm to that person, or

(b) to cause the person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or

(c) to cause that person to omit to do any act which that person is legally entitled to do so as the means of avoiding the execution of such threat.

10. It is contended that under the garb of this notification which was issued about 70 years back by the then Chief Commissioner of Delhi, Mr. J.N.G. Johnson, an Englishman when British Raj was there which was presumably issued because of the situation prevailing in those days in the city of Delhi that liberty of citizens continues being abridged as once equipped with this notification Police has the authority to not only take cognizance but send a person to jail for an offence which as per law legislated by Parliament is even otherwise "non-cognizable" and "bailable".

11. It is further contended that since 1933 the authorities have neither reviewed the situation nor have given thought for cancelling the notification as if there has been no change in the condition even after more than half a century and this notification has been allowed to hold the field impinging upon the sanctity of liberty of citizens.

12. While tracing the history of Code of Criminal Procedure, one finds that uniform law of procedure for the whole of India was consolidated for the first time by the Code of Criminal Procedure of 1882. It was replaced by the Code of Criminal Procedure of 1898. To make the criminal procedure more comprehensive Code of 1898 was replaced by Code of Criminal Procedure of 1973. Since then various amendments have been made in various provisions from time to time.

13. It is pertinent to point out that the first schedule of this Code classifying the nature of offences under the Indian Penal Code has remained unamended so far offence under Section 506 IPC is concerned. Offence under Section 506 IPC has right from its inception in 1898 been classified as "non-cognizable" and "bailable".

14. Though the necessity of making an offence cognizable in a particular area depends upon the degree of need for such preventive measures but at the same time it is necessary to reasonably safeguard the liberty of the people without undue interference by the police. Seventy years have passed but notification remains in force as if the need and circumstances still continue to be the same as were in 1933.

15. Right from 1898 and even when new Code was enacted in 1973, the Legislature has not considered it imperative or necessary to convert the offence under Section 506 from "non-cognizable" and "bailable" to "cognizable" and "non-bailable" which itself shows that Section 10 of Criminal Law Amendment Act, 1932 was a sort of temporary measure empowering the State Government to declare this offence as cognizable and non-bailable having regard to the conditions prevailing in a particular area and at particular time. Had it not been so, the Parliament itself would have amended the schedule in 1973 categorizing this offence as "cognizable" and "non-bailable".

16. For instance some time in the year 1989 the State of Uttar Pradesh by way of notification no.777/VII-4(2)-87 dated 31.7.89 made the offence under Section 506 IPC cognizable and non-bailable as well as non-compoundable because of worsening law and order problem.

17. It is astonishing that the Delhi Government has continued to rely on the notification issued in 1933 and has never accorded any thought to see as to whether it has served the purpose or not and not even in 1973 when new Code of Criminal Procedure was enacted repealing the old Code of 1898 and has bartered the liberty of citizens for flimsy allegation of an oral threat without any overt or covert act.

18. Continuation of a notification for such a long period spanning for 70 long years without periodical review of the prevailing conditions amounts to denial of benefit of a law made by Parliament to the public at large and has practically nullified the original law enacted by the Parliament of India which even in 1973 had retained the character of offence under Section 506 IPC as "non-cognizable" and "bailable". This was neither the object of Criminal Law Amendment Act of 1932 nor the implication there of.

19. Section 10 of the Criminal Law Amendment Act empowers a State Government to meet out a particular situation and is a sort of curative measure to meet a particular situation and not a provision for subverting and nullifying the law enacted by the Parliament.

20. Division Bench of this Court has in Sant Ram Vs . Delhi State and others : 17(1980)DLT490 held that the effect of the passing of the Criminal Procedure Code, 1973 was not to terminate the effect of the said notification as all notifications and laws previously in force are continued by Section 484(2) of the new Code of 1973 and, therefore, in any case the notification issued under the Criminal Law Amendment Act 1932 is not at all affected by the repeal of the Criminal Procedure Code of 1898 in 1973.

21. Legal validity of a Notification under the provisions of ancillary law is one thing. Its justification and need is another thing particularly when the nature of notification as is in the instant case is such which is by way of temporary arrangement to meet out a particular situation. That is why this court does not propose to quash it but intends to recommend to the authorities for a review as to its necessity. This is a case where one has to see whether this notification has out-lived its life and is an archaic piece of legislation which has never received any thought or review or

reasons for its continuation and in effect, has obliterated the provision legislated by the Parliament as recently as in 1973 from the statute book.

22. The liberty of a citizen is highly sacrosanct and at no cost can be allowed to be curtailed or abridged in perpetuity. Even for those offences which are cognizable and non-bailable the Supreme Court has been impressing upon the police and the investigating agencies from time to time not to play with the liberty of citizens and not to arrest any person unless and until his arrest is very much essential and necessary for the purpose of investigation which means custodial investigation or for the purpose of recovering incriminating articles connecting the person with the commission of crime. In this regard I cannot resist the temptation of reproducing the observations made by the Supreme Court in one of such cases namely *Joginder Kumar Vs . State of U.P and others : 1994 CriLJ1981* which are pithy and have force of law. These are as under:-

"The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

23. In my view continuation of such a notification issued way back in the year 1933 without reviewing the situation from time to time is not only an affront to the liberty of the citizens at large but has the tendency to subvert the law enacted by the Parliament and, therefore, for ends of justice and to maintain the sanctity of the law enacted by the Parliament as well as the liberty of citizens this court orders that the notification no. 232-Home dated 11th January, 1933 issued by Mr. JNG Johnson, the then Chief Commissioner of Delhi declaring the offence punishable

under Section 506 IPC as "cognizable" and "non-bailable" which has continued for 70 long years without any review of the factors and conditions that necessitated it, shall cease to be in operation from 15th January, 2004 till the Government takes a review of the overall situation and decides as to the necessity of its continuation.

24. Since this order has wide ramifications for the society as a whole, the police and the Government as well as for the subordinate courts, copy of this judgment be sent to the following for information and necessary action:-

(i) Lt. Governor, National Capital Territory of Delhi.

(ii) Police Commissioner, Delhi with the direction to intimate all the DCPs/ACPs/SHOs of Delhi about this judgment.

(iii) All the Judicial Officers of Delhi.

(iv) Presidents of all the Bar Associations of Delhi for information of lawyers enrolled with them including the Supreme Court Bar Association.

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