

Gurcharan Singh Arora and anr. Vs. the State

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Court : Delhi

Decided On : Jan-04-2002

Reported in : 2002IIIAD(Delhi)445; 2002CriLJ2130; 96(2002)DLT181; 2002(62)DRJ249

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 173, 195 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 186, 332, 353 and 506; Motor Vehicles Act - Sections 39, 185 and 192

Appeal No. : Crl. M.(M) No. 2858/98

Appellant : Gurcharan Singh Arora and anr.

Respondent : The State

Advocate for Def. : Richa Kapur, Adv.

Advocate for Pet/Ap. : O.P. Wadhwa, Adv

Disposition : Revision petition partly accepted

Judgement :

S.K. Agarwal, J.

1. By this petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C. '), petitioners are seeking quashing of the case FIR No.557/93, under Sections 186/332/353/506/34 IPC and Sections 39/192 of Motor Vehicles Act, P.S. Patel Nagar pending the court of Metropolitan Magistrate, Delhi.

2. Briefly stated the facts are that on 25th August, 1993, Constable Sukhbir Singh, lodged the report stating that he along with Constable Gopal Dutt were on official duty at DHG near Kachha Rasta, East Patel Nagar, Delhi; they had instructions to check vehicles; at 2.00 a.m. (night) one Maruti car DI. 2CD 5231 came from the side of Lal Mandir. It was being driven by petitioner Gaurav Arora, at a fast speed, under the influence of liquor. On suspicion Home Guard Gopal Dutt, No. 9305/DHG signalled the driver to stop. The car driver evaded the signal and Gopal Dutt had a narrow escape. The car could be stopped at a distance of about 10 paces. After stopping the car petitioner Gaurav Arora stated abusing and assaulted Home Guard Gopal Dutt, his name plate was removed and he was held from his collar. In the meantime another person G.S. Arora, reached there, who slapped Gopal Dutt and his cap fell down. When the complainant tried to intervene he was also assaulted. Several persons gathered there, who saved Gopal Dutt. On this report, case was registered. Petitioners Gaurav Arora and Gurcharan Singh Arora were sent for medical examination. They were found under the influence of liquor. Police completed the investigation and filed the charge-sheet under Section 173 Cr.P.C. Along with the charge-sheet a complaint under Section 195 Cr.P.C. by the SHO of P.S. Patel Nagar was also filed. On 29th March, 1994, the Magistrate took cognizance for the offence under Sections 186/332/353/506/34 IPC and Sections 185 and 39/192 of Motor Vehicles Act. On 2nd August, 1996 charge was framed under the aforesaid Sections against the petitioners. On 12th December, 1997, petitioners moved an application before the Court for dropping the charges. Learned Metropolitan Magistrate dismissed the application 5th March, 1998. This order is under challenge. I have heard learned counsel for parties and have been taken through the record.

3. Learned counsel for the petitioners argued that cognizance of the offence under Section 186 IPC could not be taken except on the complaint in writing of the public servant concerned or by some other public servant to whom he is subordinate

under Section 195 Cr. P.C. and that in the absence of such complaint, the trial for the other offences under Sections 332/353/506 IPC is also not permissible. In support of his contention reliance was placed on the decisions of this Court in Gurinder Singh and Anr. v. State, 1996(2) C.C. Case 396 (HC) and Vasudev v. State, 1984 (2) Crim 599 Reliance was also placed on Ashok and Ors. v. The State, 1987 CrL. L.J. 1758 Ramji Bhikha Koli and Ors. v. State of Gujarat, 1999 (2) CCJ 804

4. Learned App for State argued to the contrary and placed reliance on the recent Supreme Court decision in Pankaj Aggarwal and Ors. v. State of Delhi and Anr. 2001(3) Crime 361 (SC) wherein their Lordships of the Supreme Court after referring to the earlier decision in Durga Charan Naik v. State of Orissa, : 1966 CriLJ1491 held that the offences under Sections 186, and 353 or 332 IPC are distinct and in the absence of a complaint under Section 195 Cr.P.C. regarding the offence under Section 186 IPC, trial for the offence under Section 353 or 332 IPC is not barred. It was held:-

'But in view of the judgment of this Court in : 1966 CriLJ1491 , where the Court has analysed the provisions of Section 353, IPC and Section 186, IPC and held that the two are distinct offences and the quality of the offence is also different, we are of the opinion that judgment of the Punjab High Court is not correct in law and has taken a view contrary to the law laid down by this Court. What has been stated earlier in the aforesaid case in relation to the provisions of Section 353, IPC would equally apply to the provisions of Section 332 of the IPC.'

5. In view of the above decision, learned counsel for petitioners confined his prayer to dropping of the charge under Section 186 IPC and for directions to the trial court for proceeding with the trial, for the remaining offences under Sections 332/353/506/34 IPC read with Sections 185 and 39/192 of Motor Vehicles Act. Learned APP for State argued that on 2nd October, 1993 along with the report under Section 173 Cr.P.C., SHO of Police Station Patel Nagar had also filed a complaint under Section 195 Cr.P.C. for trial of the petitioner for the offence under Section 186 IPC. It is thus argued that charge under Section 186 is sustainable. In order to appreciate the rival contentions, it would be appropriate to quote relevant

portion of complaint. It reads:-

'I Sh. G.L. Mehta, Inspector, SHO, P.S. Patel Nagar, Delhi in pursuance of Section 195 Cr.P.C. hereby give consent to prosecution (1) Gurcharan Singh Arora S/o Jagaj Nath Arora R/o G-29, BaliNagar, Delhi, FIR No. 557/93, under Section.186/332/353/506/34 IPC and 185 & 39/192M.V. Act, P.S. Patel Nagar, Delhi & (2)Gaurav Arora S/o gurcharan Singh Arorar/o G-29, Gali Nagar, Delhi under Section186/332/353/506/34 IPC vide case FIRNo. 557/93, P.S. Patel Nagar, Delhi.'

6. Section 2(d) of Cr.P.C. defines the complaint to mean any allegation made orally or in writing to a magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. It is true that no particular form is prescribed in which the complaint should be made and the substance of the complaint that is to be read. It is not necessary that it should categorise elements of the offence to be charged. It is enough that the facts alleged should constitute an offence for which the accused is charged. It does not matter even if the complainant quotes wrong Sections. The complaint is meant to put the machinery of law in motion. Whether allegations were made with a view to take action against the accused would depend upon the facts and circumstances of each case.

7. In this case, there was nothing in the complaint quoted above to indicate that the complaint was made to the Magistrate for taking action under Section 186 IPC. Mere consent of the SHO for prosecution of the accused cannot be construed as the complaint. Further, there is nothing on record to indicate that the cognizance was taken by the Magistrate on the basis of the complaint under Section 195 Cr.P.C. Therefore, the charge under Section 186 IPC against the petitioner is not sustainable. It is needless to observe that in all such cases, the complaint should be filed by the concerned public servant with a prayer to take action against the accused and whenever such complaint under Section 195 Cr.P.C. is filed along with charge-sheet under Section 173 Cr.P.C., the Courts while taking cognizance, should also take note of such complaint, to avoid any technical objection at a later stage.

8. For the foregoing reasons, revision petition is partly accepted. Charge under Section 186 IPC against the petitioners is hereby quashed. Trial court is directed to proceed with the trial for the remaining offences expeditiously. Trial court record be sent back forthwith. Any observations made herein shall not affect merits of the case.

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