

Mam Chand and Others Vs. State

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SooperKanoon Citation : sooperkanoon.com/682487

Court : Delhi

Decided On : Dec-01-1998

Reported in : 1999IIAD(Delhi)197; 1999CriLJ1512; 78(1999)DLT2

Judge : D.K. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 155(1), 397 and 482;
[Indian Penal Code \(IPC\), 1860](#) - Sections 323 and 324

Appeal No. : Crl. Revision No. 275/96

Appellant : Mam Chand and Others

Respondent : State

Advocate for Def. : Mr. Pawan Behl, Adv.

Advocate for Pet/Ap. : Mr. B.K. Sharma, Adv

Judgement :

ORDER

D.K. Jain, J.

1. By this criminal revision petition under section 397 read with section 482 of the Code of Criminal Procedure (for short the Code), the petitioners seek quashing of order dated 27 August 1996, by the learned Additional Sessions Judge directing

framing of charge against them under section 323 read with section 34 IPC.

2. On 28 May, 1994 a fight is alleged to have taken place between the petitioners on the one hand and one Raghubar Dayal and his associates on the other. Raghubar Dayal was got medical examined by the police and on his complaint the police registered a case under Section 324 read with section 34 IPC. Simultaneously, a case was also registered against Raghubar Dayal and some other persons under section 308 read with section 34 IPC. On the completion of investigations, challans were filed in both the FIRs. As per the MLC of Raghubar Dayal, he had abrasions on right hand, left knee and two linear scratches (superficial) on the left thigh, not requiring stitches. The injuries were opined as 'simple' in nature. On consideration of material placed before it the learned trial court found a prima facie case against the petitioners under section 323 read with section 34 IPC and framed a charge against them accordingly. It is this order which is impugned in this petition.

3. I have heard Mr. B.K. Sharma, learned counsel for the petitioners and Mr. Pawan Behl, learned counsel for the State.

4. It is submitted by Mr. Sharma that it is evident from the MLC that the nature of the injuries sustained by the injured person namely, Raghubar Dayal, being simple, at best only an offence under section 323 IPC could be made out against the petitioners, which is a noncognizable offence; the investigations carried out by the police without obtaining an order of a Magistrate under section 155(2) of the Code are null and void; there was no material before the police to register the FIR against the petitioners under section 324 IPC but the said provisions were invoked with a mala fide intention in order to make it a cognizable offence. Relying on a decision of the Supreme Court in Keshav Lal Thakur v. State of Bihar 1996 (2) SC 639, and of this court in Brahmdudd & Ors. v. State and Ors 1996 JCC 183 it is pleaded that the investigations in the instant case being illegal the criminal proceedings emanating there from are liable to be quashed. I find force in the contention.

5. Section 155(1) of the Code provides that when an information is given to an officer in-charge of a police station of the commission within the limits of such

station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate. Sub-section 2 of the said section creates a legal bar for the police to investigate into a non-cognizable offence without obtaining an order from a competent Magistrate. It is a mandatory provision and investigation carried out in violation thereof is illegal.

6. A perusal of the MLC dated 28 May, 1994 of Raghubar Dayal shows that when he was taken for medical examination, he was fully conscious and had abrasions on three parts of the body, namely, left hand, left knee and left thigh. Though as per the MLC the weapon allegedly used was blunt and sharp but the place where the nature of injuries has been mentioned, the Doctor has opined the injuries as 'Simple' and the victim did not require even hospitalisation, which shows that at the time of registration of the FIR at the instance of the victim, Raghubar Dayal, the police was fully aware of the fact that at best the petitioner could be booked under section 323 read with section 34 IPC but with a view to assume jurisdiction to investigate, a case under section 324 IPC was registered.

7. Section 323 IPC is a general section providing punishment for voluntarily causing hurt whereas section 324 deals with the same offence but committed under certain aggravating circumstances.

8. One of the essential ingredients to attract section 324 IPC is that the act must be shown to have been committed with the intention and knowledge that it is likely to cause death.

9. As noted, above, according to the opinion of the Doctor on the MLC, the injuries found on the body of the complainant were simple in nature, which clearly shows that the alleged injuries inflicted by the petitioners were neither sufficient in the ordinary course of nature to cause death nor were likely to cause death and, therefore, a case under section 324 IPC could not be made out against the petitioners. Thus, at best it was a case only for an offence under section 323 read with section 34 IPC for which the petitioners have been charged. Admittedly, no order as contemplated under section 155(2) of the Code was obtained by the

police before under-taking investigation in the case. In Rupan Deol Bajaj Vs . Kanwar Pal Singh Gill : 1996 CriLJ381 and Keshav Lal Thakur's case (supra), the Supreme Court observed that where the allegations in the FIR do not constitute a cognizable offence but constitute a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code and such investigations, if carried out, would not be validated even by an order of the Magistrate obtained subsequently.

10. I do not find much substance in the contention urged on behalf of the State that since the FIR was registered under section 324 IPC and the said offence being cognizable, there was no bar in the police investigating the case. Once, on the circumstances prevalent at the time of registration of the case, it is evident that a non-cognizable offence, is not made out, permitting the police to first register a cognizable offence, carry out investigations and ultimately if it is found that a cognizable offence was not made out, would be giving a long rope to the police. The nature of the offence is to be gathered from the facts available at the relevant time and if there is a doubt as to whether a cognizable offence is made out or not, the police can report to the Magistrate concerned and obtain appropriate orders. On the one hand, no prejudice will be caused to the prosecution by adopting a safer course and on the other it will eliminate the possibility of misuse of power by the police. This approach will also be in consonance with the spirit and intention of section 155 of the Code.

11. For the foregoing reasons I am constrained to hold that the investigations commenced by the police in FIR No. 292/94 lodged by Raghubar Dayal for a non-cognizable offence is without jurisdiction and in view of the decision of the Supreme Court in Rupan Deol Bajaj's case (supra) and Keshav Lal Thakur's case (supra), the Magistrate could not take cognizance upon the submission of the challan by the police after investigations.

12. Accordingly, the petition is allowed and the charge framed against the petitioners is hereby quashed.

13. The record of the Trial Court shall be sent back forthwith.

