

State Vs. Surindar Mohan

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Court : Delhi

Decided On : Jan-11-1974

Reported in : 1974RLR109

Judge : P.S. Safer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 251

Appeal No. : Criminal Revision Appeal No. 254 of 1973

Appellant : State

Respondent : Surindar Mohan

Advocate for Pet/Ap. : R.N. Dixit and; D.C. Mathur, Advs

Judgement :

P.S. Safer, J.

(1) This petition preferred by the State which raises the grievance that Surinder Mohan respondent should also have been charged U/S. 224 of the I. P. C. discloses an exceptional aspect and I am exercising the powers suo motu provided by section 439 of the Criminal Procedure Code, hereafter called the 'Code'.

(2) The allegations against Surinder Mohan, respondent Sudhir Kumar and Rajeev Kumar were that while Surinder Mohan was in hand-cuffs on the 13th of September, 1971 Sudhir Kumar and Rajeev Kumar approached the constable in whose custody Surinder Mohan was and interfered in order to rescue him. It was alleged that Surinder Mohan also attempted to escape. In order to decide whether the charge was to be framed or not, the learned Magistrate was to act in accordance with section 251-A of the Code. He passed an order on the 22nd of August, 1972 by which he discharged Surinder Mohan and decided that charges be framed against Sudhir Kumar and Rajeev Kumar under sections 332 and 225 read with section 34 of the Indian Penal Code.

(3) The charges actually framed disclose negligence on the part of the Magistrate. He did not frame the charge against Sudhir Kumar and Rajeev Kumar for the offence covered by section 225 of the Indian Penal Code, The charge against them mentions section 224 of the said Code. That provision would not implicate anyone who attempts to rescue another who may be in police custody. Section 224 of the said code would have been applicable to the case of a person who may himself be in custody.

(4) In the order in terms whereof the charges were framed does not fulfill the obligations of section 251-A of the Code. All that is said regarding Surinder Mohan is that he was already in hand-cuffs and in police custody. No reason is given for coming to the conclusion that Surinder Mohan deserved to be discharged. While acting in accordance with section 251-A the trial Court has to disclose the reasons for framing the charge or for discharging the accused. There may be many persons accused of several offences. Taking into consideration the documents referred to in section 173 of the Criminal Procedure Code and after hearing the parties the Court may come to the conclusion that some of the accused are liable to be charged for particular offences. The Court will have to be precise in its order which will be open to scrutiny by the Superior Courts exercising revisional jurisdiction.

(5) The order by which it was decided by the trial Magistrate that the charges be framed, being illegal, is set aside. The proceedings are relegated to the stage

prevailing at the time when the order dated the 22nd of August, 1972 was passed. Surinder Mohan, Rajeev Kumar and Sudbir Kumar will be heard once again and after taking into consideration all the contentions that may be raised on their behalf the Court, dealing with the case, will pass a speaking order.

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