

Rajesh Kapoor Vs. State

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Court : Delhi

Decided On : Jan-04-2002

Reported in : 2002IIIAD(Delhi)377; 96(2002)DLT381; 2002(62)DRJ47

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 195, 195(1) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 186

Appeal No. : Crl. M.(M) No. 1358 of 2001

Appellant : Rajesh Kapoor

Respondent : State

Advocate for Def. : Richa Kapur, Adv.

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

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. By this petition under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C.'), petitioner has prayed for quashing of the proceedings in the case (State v. Rajesh Kapoor), FIR No. 81/97 dated 12.3.1997, under Section

186/333/353/307, IPC, P.S. Delhi Cantt, pending trial in the Court of Additional Sessions Judge, Delhi.

2. Briefly stated the facts are that on 12.3.1997, Inspector Ved Prakash, SHO Jaffar Pur Kalan lodged a report that he along with the other staff were on V. VIP duty in Sector No. 6, From Mehram Nagar Chambery to Air force Technical Gate. At about 12:35 hrs. V.VIP was enroute and he alerted the force. The police stopped the traffic coming from the direction of the route, PCR van was stationed at Air Force Officers ' Mess Thamaiya Marg, after putting the staff vehicle for stoppage of traffic, they got down from the PCR Van and stopped the traffic opposite the gate on the road coming from Gopi Nath Bazaar towards Airport. At about 12:37 hrs. Maruti Car No. DNA-1792 white Colour, being driven by petitioner-Rakesh Kapoor, came from Gopi Nath Bazaar side towards Thamaiya Marg. The police signalled the driver to stop the car but the petitioner deliberately accelerated the speed of his car and hit the police gunman on duty standing in front of the PCR Van with the intention to kill him. After hitting the police gunman petitioner drove the car towards the Airport. However, when the car hit the central divider its front right tyre got burst and the car stopped at a distance of about 20 yards. After being hit, the police-gunman Satvavir Singh was injured and he fell down at a distance. He was sent to the hospital by the same PCR Van. The driver of the car was overpowered with the help of staff. The car on casual inspection was found to contain four bags of illicit liquor. On this report, above noted case and a separate case for possessing illicit liquor was registered against driver-Rakesh Kapoor. After investigation charge-sheet was filed on 1.12.1998. A complaint filed by ACP, Police Control Room, South West Zone, Delhi under Section 195, Cr.P.C. was put up with the challan. The case was committed for trial to the Court of Session. By order dated 29.8.2000, learned Trial Court framed the charges under Section 186/353/33, IPC against the petitioner. This order is under challenge.

3. Learned Counsel for the petitioner Mr. O.P. Wadhwa argued that the Magistrate could not take cognizance for the offence under Section 186, IPC except on a complaint in writing of the public servant concerned of some other public servant to whom he was administratively subordinate under Section 195, Cr. P.C. He

argued that offences under Section 307/333/353, IPC are inter-linked and dependent upon the offence under Section 186, IPC, therefore, all the charges against the petitioner are liable to be quashed. In support of his arguments reliance was placed on two decisions of this Court in Gurinder Singh and Anr. v. State, 3 (1996) CCR 257=1996 (2) CCC 396 and Vasudev v. State : 1984(7)DRJ248 . Reliance was also placed on Ashok and Ors. v. The State and Ramji Bhikha Koli and Ors. v. State of Gujarat, 1999 (2) CCJ 804. Learned APP for State argued to the contrary and placed reliance on the recent decision of the Apex Court in Pankaj Aggarwal and Ors. v. State of Delhi and Anr., 2 (2001) CCR 318=2001 (3) Crimes 361 (SC), wherein the Supreme Court after referring to its earlier decision in Durga Charan Naik v. State of Orissa, : 1966 CriLJ1491 , wherein after analysing various provisions it was authoritatively held that the offence under Section 186/353 or 332, IPC are two distinct offences and that the absence of the complaint under Section 195, Cr. P.C. for the offences under Section 186, IPC does not bar the trial for the other offences. 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.'

4. In view of the above authoritative pronouncement by the Apex Court, learned Counsel for petitioner argued that he would only press for dropping of the charge under Section 186, IPC, and pray for remanding back the matter for trial of the petitioner in respect of the other offences. Learned Counsel for State opposing the same argued that in this case Assistant Commissioner of Police had filed a complaint under Section 195, Cr.P.C. on 5.8.1998, Additional Chief Metropolitan Magistrate directed the complaint to be put up before the concerned Court. By order dated 28.8.1998, the learned Magistrate ordered that complaint be checked and registered and it was to be put up with the challan. Learned Counsel for the petitioner then argued that it was not a proper complaint and the only prayer was

for exemption, thereforee, no valid cognizance on such a complaint for the offence under Section 186, IPC could be taken. In order to appreciate the argument, relevant portion of the complaint is reproduced herein;

'During the course of investigation, it is established that accused Rajesh Kapoor, s/o Mewa Ram, r/o. 1488/12, Gali No.9, Arjun Nagar, Gurgaon (Haryana) has attempted to kill the Const. and obstructed him from discharging his lawful duties. Thereby he was committed offences punishable. under Section 353/333/307/186, IPC List of witness is enclosed.

It is, thereforee, requested that I may be exempted from personal appearance in the Court in view of my pre-occupation with Law and Order and other official duties in my capacity as Assistant Commissioner of Police, Police Control Room/South West Zone, New Delhi.'

5. Section 2(d) of Cr.P.C. defines the complaint to mean any allegations made orally or in writing to a magistrate, for taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. No particular format of the complaint is prescribed. It is sufficient if the complainant lays before the Magistrate a matter, which if proved, would constitute an offence. The substance of the complaint is to be read. Thus, the heading of the complaint or the use of the wrong section is immaterial. It is not necessary that the complaint should categorise the elements of the offence to be charged against the accused. It is enough if the facts alleged constitute the offence for which the accused is charged.

6. The question that arises for consideration whether the cognizance was taken on the basis of the complaint. As noticed above, in this case, complaint was separately filed by the ACP before the Court of ACMM on 5.8.1998. It was referred to the concerned Court and on 28.8.1998 the Magistrate ordered that the complaint be checked and registered and be put up with the challan. It is thus clear that cognizance of the offence under Section 186, IPC was also taken on the basis of complaint filed under Section 195(1) of Cr.P.C.

7. For the foregoing reasons, there is no merit in the petition and the same is dismissed. Trial Court record be sent back forthwith.

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