

Ramesh Kumar Vs. State

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Court : Delhi

Decided On : Jan-30-1987

Reported in : 32(1987)DLT49; 1987RLR228

Judge : M.K. Chawla, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 412

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1375 of 1986

Appellant : Ramesh Kumar

Respondent : State

Advocate for Pet/Ap. : Kamlesh Dutt and; B.T. Singh, Advs

Judgement :

M.K. Chawla, J.

(1) On 8.9-1986, the S.H.O. P.S. Mehrauli, filed a Kalandara u/s. 412/109 Cr.P.C. in the Court of Shri Ravi Malik, S.D M. (South), New Delhi alleging therein that Head Constable Balbir Sigh along with Constable Karam Chand were present at the bus terminal Mehrauli at about 12.15 P.M. At that time, one boy came out of the bus and started running. The people present there shouted 'chor chor pakdo pakdo'. The Police persons who were present at the bus terminal in connection with the patrolling duty immediately followed the accused and apprehended him, at

about 15-20 paces. On interrogation, he disclosed his name as Ramesh Kumar, but could not explain as to in what connection he was present there. By that time some of the people shouted that the person apprehended is a bad character and has tried to pick the pocket of a passenger. Under these circumstances, the accused was produced before the S.H.O. who directed his arrest u/s. 412/109 Cr.P C. His personal search was conducted which yielded the recovery of Rs. 250.00 in cash, one wrist watch, one handkerchief, one purse and a bunch of keys. The property was deposited in the Malkhana. Later on by the order of S.D.M. South, the accused was sent to judicial custody.

(2) The petitioner-accused has moved the present petition for the quashing of the proceedings pending against him before the S.D.M. South, on the short ground that he and his father Jug Lal and his brother Kishan Lal are the prosecution witnesses in a murder case-Slate v. Sohan Lal, which is pending in the court of Shri V.B.Bansal, Addl. Sessions Judge, New Delhi. The local police were not investigating the case properly and on their representation, the investigation was transferred to the Crime Branch. On this account, the local police had become inimical to the whole of the family. On 10-7-76, while the petitioner was filling pits with malba (debris), with the use of his vehicle Dil 8156 in his land, the learned S D.M. Shri Ravi Kumar came there and took away the registration papers of the vehicle. These papers were not returned in spite of his repeated visits to the office of the S.D.M. as well as the Police Station. On 15-7-86. the learned S.D.M. got registered a case u/s 447 Indian Penal Code against the father of the petitioner on the allegation that he had encroached upon the gaon sabha land. Thereafter, the petitioner sent numerous representations to the higher authorities for the return of the registration papers of his vehicle as well as bringing to their notice the treatment being meted out to his family members by the Police. The petitioner has been falsely implicated in the present proceedings inasmuch as there is no evidence worth the name to connect him with the offence.

(3) The petition is opposed by the State and the learned counsel has tried to distinguish the present proceedings initiated on the basis of the kalandara and the alleged seizure of the documents concerning the petitioner's vehicle by the S.D.M. According to learned counsel, truth of the matter cannot be ascertained unless and

until the proceedings under Section 109 Cr.P.C. are allowed to go on.

(4) I have carefully perused the kalandara and have considered the arguments advanced in support of their respective contention by the learned counsel for the parties. It is no doubt true that Section 109 Cr.P.C. deals with proceedings against persons who in the normal course would be classed as rogues and vagabonds. In order that the Section might apply, the person proceeded against must be shown to have taken precautions to conceal his presence. Certainly, the concealing of man's presence is not identical with bids concealing himself inasmuch as a man may not conceal his presence at a place and yet may conceal his identity. The giving out to a false name by a man in conjunction with other circumstances may amount to concealing his presence. None of these ingredients of Section 109 are attracted even if the kalandara is taken on its face value. The petitioner is the resident of village Rajokadi since his birth. He is living with his father and other family members in the jurisdiction of police station Mehrauli, and are gainfully employed.

(5) It is not disputed that on the complaints of Shri Jug Lal, father of the present petitioner, the investigation of a murder case was transferred from the local police to the Crime Branch. It was on account to the allegations that the local police was trying to side with the accused party in that case. The second incident is also not denied by the respondents. Shri Ravi Kumar, S.D.M. South, took away the registration papers of the vehicle Dil 8156, for what purpose, it is not known. During the pendency of the present petition, the petitioner moved an application Cr.M. 17/86 for the issuance of directions to the S.D.M. (South) for the return the registration documents. In spite of the opposition from the State, the S.D.M. was directed to hand over the registration papers of the vehicle to the petitioner against receipt vide order dated 1-10-86. This order was passed after the petitioner had approached the higher authorities for illegal and uncalled for actions of the S. D.M. (South). All these facts go to show that the petitioner was very well known to the local police as well as S D.M.-in-charge of the area. His identity was not in dispute.

(6) As per the averments in the kalandara, the police officers of police station Mehrauli were on patrol duty at the bus terminal when at about 1215 P.M. they

noticed a boy running and being followed by the people who were shouting 'chor chor pakdo pakdo'. They were able to apprehend the said boy after following him for 15 to 20 paces. It is alleged in the kalandara that on an enquiry the said boy gave his name as Ramesh and disclosed his address. It is not alleged that Ramesh either tried to conceal himself or failed to disclose his identity. In order to verify the correctness of the averments of kalandara, the records from the court of A.C.P. Mehrauli were summoned. The records have since been produced which consist of the brief facts of the case, the kalandara u/s. 412/109 Cr.P.C. and the report of the incident entered in the daily diary maintained at Police Station Mehrauli, New Delhi. It appears that the Police has not moved in the matter any further. They have neither recorded the statements of persons in whose presence the petitioner was apprehended nor the statements of the person whose pocket the accused intended to pick while traveling in the bus. No further inquiry appears to have been made as to in which bus, the accused was traveling. The mere filing of the kalandara appears to be the end of the matter.

(7) Learned counsel for the State has not been able to point out any material or a circumstance bringing the case of the petitioner within the narrow compass of the provisions of Sections 412/109 of Cr.P.C. None of the ingredients appears to have been complied with. The proceedings against the petitioner to my mind have been initiated with a view to forestall any action which may or may not be taken by the higher authorities against the local police on their complaints.

(8) As a result of the above discussion, I hereby accept the petition and quash the proceedings pending against the present petitioner before the learned S.D.M. (South).