

Vasudev Vs. State

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Court : Delhi

Decided On : Sep-14-1984

Reported in : 1984(2)Crimes599; 1984(7)DRJ248; 1984RLR689

Judge : D.R. Khanid, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 117 of 1982

Appellant : Vasudev

Respondent : State

Advocate for Pet/Ap. : Joginder Nath and; H.C. Gulati, Advs

Judgement :

D.R. Khanna, J.

(1) A challan was submitted by the S.H.O. Lahori Gate police station in the court of Ms. Aruna Suresh, Metropolitan Magistrate, Delhi, alleging that the investigation of the case had revealed that an offence under Section 186 Indian Penal Code was made out, and, therefore, the two accused mentioned in the challan, namely, Som Nath and Vasu Dev should be proceeded against and tried. The background of the facts given was that on 27-11-81, the S.D.M., Local Health Authority along

with an Inspector and some other staff went to Shradhanand Market for the purpose of taking samples of food-stuff. They wanted to ensure whether any adulterated stuff was being sold. As they approached three shops bearing Nos. D-2, D-4 and D-6, the owners of the first two shops did not allow them to take any sample, and rather put the shutters of their shops on. In this manner, they defeated the raiding party from taking any sample. The third shopkeeper of shop No. D-6, of course, complied.

(2) The S.D.M. then reported the matter to the S.H.O. police station Lahori Gate, in which it was mentioned that an offence under Section 186 Ipc of defiance of lawful authority of a public servant had been committed, and, therefore, the matter be investigated. It was as a result of this investigation that the S.H.O. filed the challan in the trial court. The two accused were then summoned.

(3) The present petition under Section 482 Cr. P.C. has been moved by Vasu Dev who happens to be the owner of shop No. D-4, Shradhanand Market. Three-fold objections have been raised by Mr. Joginder Nath. The first is that there could not be a joint trial of the owners of the two shops, No. D-2 and D-4 as the alleged offences committed by them, were separate and distinct, and did not arise out of the same transaction. Secondly, it is pointed out that the offence under Section 186 Indian Penal Code is non-cognizable, and, therefore, the police could not have investigated the same, and the proper course was to have referred the complainant to the Magistrate concerned. This was not done. In this regard, reference is made to Section 155 Cr. P.C. Thirdly it is contended that in terms of Section 195 Cr. P.C., cognizance of an offence under Section 186 Indian Penal Code could have been taken by the court on a complaint by the public servant alone, or an officer under whom he was working. No such complaint, it is pleaded, was filed by the S.D.M. who was heading the raiding party.

(4) I find force in each of these contentions. The investigation in the present case by the police was wholly incompetent and the law did not permit the S.H.O. to proceed with the same unless he had specifically obtained permission from the Magistrate having power to try such case, or commit the case for trial. Section 155 Cr. P.C. in this regard is quite explicit. In fact, Sub-section 2 prohibits the police

officer to investigate a non-cognizable case without the permission of the Magistrate concerned. When this is the position of law, the investigation and the filing of the challan in the present case must be struck down.

(5) It is note worthy in this regard that when the trial court admitted the case and directed the issue of summons to the accused, it was specifically mentioned that the challan had been filed, and it be registered. It was thus this challan which was being taken cognizance of and proceeded with.

(6) Proceedings for an offence under Section 186 Indian Penal Code could have been set into motion if there had been a formal complaint lodged with the court concerned by the public servant who had been obstructed in the discharge of his public duties, or against whom an offence had been committed. Without such complaint, the court could not have taken seisin of the case. In fact, there was an absolute bar in terms of the language used in Section 195 Cr. P.C (See in this reward Daulat Ram v. State of Punjab : AIR 1962 SC1206). Much has been sought to be made out from the side of the State to a writing attached with the challan signed by one Sh. S.K. Mehra, Joint Director (P.F.A.) It is mentioned as a complaint under Section 195 Cr. P.C. The name of the court of Ms. Aruna Suresh is also mentioned. After narration of the facts of the case, it has been stated in this writing that a written complaint was made to the S.H.O. Lahori Gate police station on which F.I.R. No. 789 was registered. It was next stated that the investigation had been completed, and the two accused out under arrest, and the case had been registered under Section 186 IPC. There was no specific prayer made in this writing except that the writer should be exempt from personal appearance being busy in his official duties. This writing though captioned as a complaint under Section 195 Cr. P.C., hardly fits in with the requirements of a complaint. From a public servant of the position of S.D.M., it could have been least expected that he would have looked into the provisions of the Code of Criminal Procedure and ensured that the requirements of a formal complaint were fulfilled and complied with. Moreover, such complaint should have been addressed to the court concerned. It could not have been handed over to the S.H.O., nor the S.H.O. just could have made it a part of the challan which he was submitting in the court. In fact, it was the challan on which he sought trial, and the trial court too has

commenced trial on the basis of that challan. At no stage the trial court is shown to have taken cognizance of this complaint.

(8) The alleged offence of not allowing the raiding party to take samples and putting the shutters on by the two shopkeepers, were distinct and separate. There was no commonality between them. When the raiding party went to one of the shops, and the owner declined to allow the sample to be taken, the offence so far as he was concerned, was complete. Similarly the offence by the other shopkeeper was independent and separate. It is not the mere going of a raiding party at a market place and seeing several persons committing certain offences, not jointly but independently and not in furtherance of any common intention which render the different offences as one transaction. The transaction as referred to in Section 223 Cr. P.C. has to be looked at from the point of view of offences committed, and not the complainant who had happened to proceed on an errand of general check- up. The joint trial of the two accused, therefore, was entirely misplaced.

(9) I, therefore, while allowing this revision, quash the proceedings pending in the trial court.

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