

Naresh Kumar Vs. State

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Court : Delhi

Decided On : Dec-13-1984

Reported in : 27(1985)DLT240

Judge : J.D. Jain, J.

Acts : [Delhi Police Act, 1978](#) -Sections 93; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 970 of 1984

Appellant : Naresh Kumar

Respondent : State

Advocate for Pet/Ap. : K.K. Sud and; P.P. Lao, Advs

Judgement :

J.D. Jain, J.

(1) This revision petition is directed against notice dated 18th July, 1984 of a Metropolitan Magistrate whereunder he read out the substance of accusation to the petitioner requiring him to show-cause why he should not be tried for an offence under Section 93 read with Section 97 of the Delhi Police Act (for short 'the Act').

(2) The facts leading to this revision petition in brief are that on 28th June, 1984, Si Arvind Kumar of Police Station Kingsway Camp recorded in the daily diary 'A' at Serial No. 10 that while he was present on patrol in his Illaqa at about 3-30 P.M. on that day, Smt. Shanti Devi r/o. B-38, Vijay Nagar, accosted him and told him that her younger son Naresh Kumar, viz. the present petitioner, was misbehaving with her and he did not permit her to boil milk in the kitchen on that morning. She further complained that the petitioner was using threatening language towards her some litigation was already pending between them regarding the property bequeathed by her husband. Upon this, the Si Arvind Kumar went to his misbehavior. Finding that public peace was being disturbed by the petitioner, he arrested the petitioner under Section 93/97 of the Act.

(3) A Kalendra was put in against the petitioner on the aforesaid allegations and substance of accusation was read out to the petitioner on its basis.

(4) The submission of the learned counsel for the petitioner in brief is that the provisions of Section 93 of the Act are not attracted to the facts of the instant case. The said Section reads as under :

'NO person shall use in any street or public place any threatening, abusive or insulting words or behavior with intent to provoke a breach, of the peace or whereby a breach of the peace may be occasioned.'

(5) On a plain reading of this Section it is manifest that two essential conditions must be satisfied before it can be invoked, namely, that the misbehavior or use of abusive language etc. must be in a street or a public place and secondly, that the misbehavior or the insulting words must have been used with intent to provoke breach of peace or should be such that a breach of the peace may be occasioned.

(6) I have perused the record. The daily diary report made by the Si mentions about his visiting the house of the petitioner, viz. B-38, Vijay Nagar, However, he has-not specified the actual place where the petitioner indulged in abusive language and threatened to turn out his mother. No site plan of the venue of occurrence has either been filed in court. Under the circumstances, it is difficult to infer that the alleged misbehavior on the part of the petitioner took place in a public

place like a street. The learned counsel for the State submits that the houses in Vijay Nagar abut on streets and, therefore, the alleged incident must have taken place in the street. However, no such presumption can be drawn at this stage when the complaint itself is silent and even the daily diary report does not refer to the actual venue of occurrence being a public place. That apart, the facts clearly indicate that the intention of the petitioner in using abusive language or hurling threats could not be to cause breach of the peace because his conduct if at all smacked, of insolence to and disobedience of the police rather than provoking breach of public peace. As for the second part, that the breach of the peace could be occasioned, it is highly doubtful because the threatening language was used towards the police officer himself who was custodian of law and order. The obvious inference which can be drawn in the present circumstance is that the petitioner being a hot-headed person could not restrain his emotions and be burst out in an undignified manner and embarked upon abusive language etc. least Realizing that it was not advisable to do so in the presence of a police officer. It is quite understandable that the concerned Si must have felt humiliated and insulted on that account but this is hardly a ground to justify invocation of Section 93 of the Act.

(7) To sum up, therefore, no case under Section 93 of the Act, even assuming the allegations contained in the daily diary to be correct, is made out. This revision petition is, therefore, allowed and the proceedings are quashed.