

V.K. Tulsian Vs. State

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Court : Delhi

Decided On : Jul-25-2000

Reported in : 2000CriLJ4307

Judge : Dalveer Bhandari, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : CrI. Misc. (M). No. 1956 of 1999

Appellant : V.K. Tulsian

Respondent : State

Advocate for Def. : Mr. K.K. Sareen, Adv.

Advocate for Pet/Ap. : Mr. K.K. Sud, Sr. Adv. and; Mr. Jayant K. Sud Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. This petition has been filed under section 482 of the Code of Criminal Procedure for quashing of the order dated 16.3.1998 passed by the Metropolitan Magistrate declining to accept the final police report and taking cognizance of the

offence under section 376 IPC. The petitioner has also prayed that FIR No. 1421/97 registered under section 376 IPC may be quashed. The brief facts which are necessary to dispose of this petition are recapitulated as under:

2. The complainant, Saraswati Thakur, aged about 26 years, wife of Arvind Thakur, having one child, lodged an FIR under section 376 IPC against the petitioner in which she mentioned that after working with the petitioner for three months when she demanded money for the work done, the petitioner started avoiding her. On her persistent request, the petitioner told her to come on Friday, i.e., 28.11.1997. On that date, she remained there in the cabin for the whole day and at 6:00 p.m., the petitioner committed rape on her and consequentially she also received some injuries on her body. On 1st December, 1997, after three days of the incident, an FIR was lodged against the petitioner. In which she had mentioned that rape was committed with her by the petitioner. She was medically examined at the Ram Manohar Lohia Hospital. No injury was found on her abdomen, breasts and thighs. Her general condition regarding pulse and blood pressure was found normal. There was an old scratch mark over her chin.

3. On 9.12.1997, she moved an application before the Metropolitan Magistrate requesting him to record her statement under section 164 Cr.P.C.

4. The learned Metropolitan Magistrate recorded her statement on 9th December, 1997. The Metropolitan Magistrate asserted that the statement given by her was voluntary. In the statement she has mentioned that she has done M.Sc. and LL.B. and she wanted to practice law and, therefore, she started working in the office of the petitioner who specializes in Income Tax laws. She worked in the office of the petitioner from September, 1997 to 16.11.1997. She further mentioned that she was not paid for the work done by her despite six-seven reminders. On 28th November, 1997, she waited for the whole day in the office of the petitioner but the petitioner did not meet her and at 6:00 p.m. she left the office for her residence. She also stated in her statement that on Monday, out of frustration, she lodged a false complaint against the petitioner. She in fact received no injuries on her body.

5. The petitioner has filed a petition under section 482 of the Code of Criminal Procedure for quashing the order of the Metropolitan Magistrate declining to

accept final police report.

6. The petitioner is a practicing Chartered Accountant. His office is located at Business Centre, UB-4, Indra Prakash Building, 12 Bara Khamba Road, New Delhi.

7. It is mentioned that one married lady, Saraswati Thakur, aged about 26 years approached the petitioner in order to join him as his assistant. The petitioner did not have a vacancy but she insisted that her work may be seen by him. After a few days the petitioner told her that he was not fully convinced by her qualifications, proficiency and mental acumen and therefore, she should stop coming to the office which hardly has sufficient accommodation even to accommodate the third Assistant, as the space was already tight for two persons. The petitioner in the office cabin has got his one table and five chairs, the height of the cabin is hardly six feet and the total area of the cabin occupied by the petitioner is only forty square feet while the total area of the business centre consisting of six chambers is approximately 340 sq.ft. The window of the cabin opens on the road side and the premises are, in fact, a part of mezzanine floor. This description is given for the purpose whether in a place like that 6 p.m. in the evening an offence under section 376 IPC can be committed.

8. It is mentioned in the petition that the petitioner never suspected that the complainant would blackmail him in this manner. The complaint was found to be false on investigation. During the course of investigation, the petitioner along with his peon and two assistants were interrogated and their statements under Section 161 Cr.P.C. were recorded.

9. It is also mentioned that the statements of the neighbouring occupants were also recorded. Even according to their statements the allegations contained in the FIR are incredible and false. The police filed a final report under section 173 Cr.P.C. before the Magistrate praying that the case be cancelled as there were no substance in the allegations contained in the FIR. The learned Metropolitan Magistrate instead of accepting report, mentioned that in his opinion an offence under section 376 IPC is made out and consequently the accused was summoned. The petitioner, aggrieved by the said order, has filed this petition. This

Court while issuing notice has stayed further proceedings.

10. The learned counsel appearing for the State fairly submitted that Smt. Saraswati Thakur has lodged similar FIRs under Section 376 IPC on previous occasions against other persons. She lodged FIR No. 660/99 on 16.11.1999 in which she leveled similar allegations against Sanjay Kumar that he Along with his friends has raped her. The learned counsel for the respondent has also mentioned about another FIR No. 611/00 which was lodged by her in the Police Station R.K. Puram, New Delhi which was registered on 12.5.2000. On scrutiny it is revealed that these FIRs have been lodged on extraneous considerations.

11. The learned counsel for the petitioner, Mr. K.K. Sud submitted that the impugned order is entirely illegal, baseless and is total abuse of process of law. He supported his submissions by various decided cases of the Supreme Court and of this Court. He placed reliance on judgments of Supreme Court, i.e., State of Karnataka Vs . L. Muniswamy and others; : 1977 CriLJ1125 . The relevant portion is reproduced as under :

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the valid object behind a lame prosecution, the very nature of the material on which the structure of prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that silent jurisdiction.'

12. Mr. Sud also placed reliance on the judgment of the Supreme Court, i.e., Punjab National Bank and others Vs . Surendra Prasad Sinha; : 1992 CriLJ2916 . In this case the Court observe that judicial process should not be an instrument of oppression or needless harassment. The Court observed that there lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons imp leaded then only process would be issued. The Court further observed that at the time of issuing process, the Court would be circumspect and judicious in exercising discretion. Unless it exercises discretion with great care and caution, issuing the process can be an instrument in the hands of private complaint as a vendetta to harass the persons needlessly.

13. The learned counsel for the petitioner also relied on Nirmaljit Singh Hoon Vs . The State of West Bengal & Others; : [1973]2SCR66 . The apex Court in this case held that if the evidence led and material placed before the Magistrate is intrinsically, untrustworthy and self-contradictory then process cannot be refused.

14. Learned counsel for the petitioner has relied upon the judgment of the Supreme Court in Nagawwa Vs . Veeranna Shivalingappa Konjalgi : 1976 CriLJ1533 . The Apex Court in this case has given following categories in which an order of the Magistrate issuing process against the accused can be quashed :-

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

15. Learned counsel for the petitioner relied upon the Supreme Court judgment in *M/s Pepsi Foods Ltd. and another Vs . Special Judicial Magistrate and others* : 1998 CriLJ1 . In this case their Lordships of the Supreme Court held that in case where there is an abuse of the process of law and the Courts, the High Court should not shied away in exercising its jurisdiction. The provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it.

16. Learned counsel for the petitioner has cited all these judgments to demonstrate that it is the bounden duty of the Court to see that there is no abuse of the process of the Court. It must be the endeavor of the Court to pass suitable orders to advance justice and not to frustrate it. When the settled principles of law as crystallised in the aforesaid judgments of the Apex Court are applied to the facts of the instant case, the conclusion becomes irresistible that the order passed by the learned trial court has to be set aside. In the instant case by subsequent statement the prosecutrix herself clearly and categorically admitted that she has lodged a false complaint against the petitioner.

17. In this view of the matter, the order of the learned Metropolitan Magistrate dated 16.3.1998 declining to accept the final police report and taking cognizance of the offence under Section 376 of the IPC is quashed against the petitioner.

18. This petition is accordingly allowed and disposed of.