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Virender Sharma Vs. State

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Court : Delhi

Decided On : Feb-28-2005

Reported in : 2005CriLJ2644; 120(2005)DLT249

Judge : Manju Goel, J.

Acts : Indian Penal Code (IPC) - Sections 34, 172 to 188, 186, 341, 353, 355 and 504; Code of Criminal Procedure (CrPC) - Sections 195, 309 and 357(3)

Appeal No. : Crl. Revision Petition No. 651/2004

Appellant : Virender Sharma

Respondent : State

Advocate for Def. : Sunil Sharma, Adv.

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv. and; M.L.Yadav, Adv

Disposition : Petition dismissed

Judgement :

Manju Goel, J.

1. The petitioner was convicted by the court of the Metropolitan Magistrate on 26.6.2004 in case FIR No.31/2002 police station Chandni Chowk under Sections 186/341/353/355/504 of Indian Penal Code. Vide an order dated 8.7.2004 he was

sentenced to RI for 18 months under Section 353 IPC and RI for one year under Section 355 IPC. Both sentences were ordered to run concurrently. Further a compensation of Rs.15,000/- under Section 357(3) Cr.P.C. was awarded for the victim of the crime, namely, S.P.Agarwal. No separate sentence was imposed for the offence punishable under Sections 186/34 of the IPC. The court of Additional Sessions Judge upheld the conviction and the sentence vide a judgment dated 6.11.2004. Hence the revision petition.

2. The facts of the case are as under:

On 4.2.2002 at around 12.05 p.m. the Commissioner of Municipal Corporation of Delhi (in short `MCD') accompanied by his PSO Constable Jai Kishan was passing through the varanda of Commissioner's office at Town Hall when the accused/petitioner, Virender Sharma, met him on the way and suddenly stopped the Commissioner and obstructed him from proceeding further and sprinkled black paint, which he was carrying in a small container, on his face and used abusive language against the him. The petitioner shouted that corruption had become rampant in the MCD during his tenure and consequently his face needed to be blackened. The petitioner was overpowered by the PSO. The statement of the PSO was recorded by the police and on his statement the case was registered. The petitioner was thereafter arrested, tried, convicted and sentenced.

3. The petitioner has been convicted by two courts. The trial court record has been received in this court and the evidence on record is perused. The evidence on record leads to a finding of guilt. Three points have been raised by the learned counsel for the revisionist for challenging the order. He says that the criminal case was not maintainable because of the bar under Section 195 Cr.P.C. which requires that for trying offences under Sections 172 to 188 of the IPC cognizance can be taken only on a complaint in writing by the public servant concerned or by a public servant who is superior to the public servant concerned. Secondly, it is submitted that although black paint was sprinkled on the face of the Commissioner of MCD, there was in fact no obstruction to the performance of his duty. In the third place it is submitted that the sentence of 18 months RI for the offence under Section 353 IPC is too harsh and, thereforee, should be reduced.

4. The courts below have examined the bar of Section 195 Cr.P.C. in this case. The Commissioner, MCD himself made a complaint in writing to the court which the trial court took into consideration, which is Ex.PW-7/A. In fact, the learned M.M. went into the question on 13.10.2003 much prior to the passing of the final judgment. The petitioner moved an application under Section 309 Cr.P.C. for stopping the proceedings taking the plea that cognizance could not have been taken because the FIR had been registered on the statement of the PSO. The Magistrate found that while the charge-sheet was filed by the police, the complainant -S.P.Agarwal- also filed a complaint under Section 195 Cr.P.C. before the court of learned Chief Metropolitan Magistrate over the same incident. The complaint was also assigned to the same Metropolitan Magistrate before whom the charge-sheet was filed. Cognizance was taken on 4.6.2002 for offence punishable under Sections 186/341/353/ 355/504 IPC on the basis of the charge-sheet as well as on the basis of the complaint. Both the complaint and charge-sheet were clubbed to be dealt with together.

5. The trial court observed that cognizance is taken when the court issues process. At the time the court issued process the complaint had been filed before the court. It was not necessary that the complainant was present when the FIR was registered. I agree with the learned trial court that the cognizance was rightly taken because before the court apart from the charge-sheet filed by the police, the complaint of Shri S.P.Agarwal, Commissioner, MCD was also present.

6. So far as the question of obstruction in performance of duty is concerned, there is hardly any scope for any controversy. The Commissioner was in his office, i.e., Town Hall, when the offence took place. He was not there for any purpose other than his duty. For causing obstruction to his duty it is not necessary that the Commissioner is physically obstructed. Such a view will be too pedantic. No public servant can discharge his duties if he is humiliated in the manner in which the petitioner humiliated the Commissioner. Such acts are direct obstructions to functioning of a public servant. Obstruction was caused not only at that moment when the offence was committed but the obstruction must deemed to have continued for a fairly long time not only for that day but also for days that followed. Mr.Sunil Sharma, learned counsel appearing for the state, says that the day of the

Commissioner was lost because the Commissioner could not work till his stained clothes were replaced. In my opinion, the act itself was sufficient obstruction and it is not necessary to see how long the Commissioner took to regain his poise. If such activities are deemed no obstruction to the performance of duty of a public servant, no public servant can be said to be safe in the place of his duty. If the offence committed is looked upon as a simple non-cognizable offence, there would be no way of keeping up the dignity of a public servant - which is so very essential for efficient functioning of the Government or a local body.

7. So far as the question of sentence is concerned, I am not of the opinion that the sentence is too harsh. It is to be noticed that the obstruction caused was not to a lower grade officer or official. The obstruction caused was to the Commissioner of MCD who was at the helm of the affairs of the local authority. The manner in which the obstruction is caused is highly humiliating resulting in conviction under Section 353 of the Indian Penal Code. The sprinkling of black paint was not a matter of accident. The petitioner had carried the paint in a container with the very intention of throwing it on the Commissioner. The offence was committed right inside the office premises (within the view of his colleagues and subordinates). The officer must have been thoroughly shaken by the incidents. This act was accompanied by words spoken against the Commissioner which were equally humiliating. If such offences are not visited with sufficient punishment, it will have a very demoralising effect on the public servants. The trial court has already shown sufficient leniency to the petitioner. In my opinion, the sentence does not call for any interference. The revision petition is accordingly dismissed.

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