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Court : Delhi

Decided On : May-16-2000

Reported in : 2000IVAD(Delhi)495; 86(2000)DLT609; 2000(54)DRJ112

Judge : M.S.A. Siddiqui, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 141, 147, 149, 323, 354 and 506; Code of Criminal Procedure (CrPC) , 1973 - Sections 155(2) and 482

Appeal No. : Crl. M (M) 921/2000

Appellant : Kanshi Ram

Respondent : State

Advocate for Def. : Mr. Mukta Gupta, Adv.

Advocate for Pet/Ap. : Mr. D.D. Thakur, Sr. Adv. and; Mr. O.P. Khadaria, Adv

Judgement :
ORDER

M.S.A. Siddiqui, J.

1. By this petition under Section 482 Cr.P.C. the petitioner seeks quashing of the criminal proceedings emanating from the FIR No. 248/96 under Sections 147/149/323/354/506 IPC registered at the Police Station Tughlak Road.

2. Petitioner is the President of the Bahujan Samaj Party (for short the BSP). In 1996, the Govt. had provided security cover to the petitioner and he was placed in 'Z' category. Petitioner's official residence had a security picket at its entrance. On 25.10.96, Ms. Mayawati (since discharged) and other BSP leader's had assembled at the petitioner's residence to deliberate on the issue of Government formation in Uttar Pradesh. On that day, some 50/60 journalists, hoping to get a quote or a photograph of these leaders, had positioned themselves in front of the petitioner's residence. Petitioner's security personnel asked the media persons to leave the area and a heated verbal exchanged ensued. The petitioner then emerged from the house. As per prosecution case, the petitioner, having abused the media persons, exhorted his security personnel to thrash them. Thereafter, the security personnel started hitting the journalists and the petitioner himself assaulted the complainant Isran Ahmed. The complainant Isran Ahmed lodged the FIR No. 248/96 at the P.S. Tughlak Road. Investigation pursuant thereto culminated in submission of a charge sheet under Sections 147/149/323/506/354 IPC against the petitioner and Ms. Mayawati. The petitioner and Ms. Mayawati, filed an application before the learned Magistrate seeking discharge from the proceedings. By the order dated 31.3.1999 the learned Magistrate discharged the co-accused Ms. Mayawati but he rejected the petitioner's prayer on the ground that materials collected by the prosecuting agency make out a prima facie case under Sections 147/149/323/506/354 IPC against the petitioner. Aggrieved by the said order, the petitioner filed a revision petition before this Court, which was dismissed as withdrawn vide order dated 9.9.1999. Thereafter, the petitioner challenged the said order by filing the SLP (Cr.) Nos. 3654-3655/1999 before the Supreme Court. On 10.12.1999, the said SLP was disposed of by the following order :

'The learned counsel for the petitioner states that even though the petitioner had made an application under Section 482 of the Criminal Procedure Code after withdrawing Crl.R. No. 137/99 for enabling to made an application for quashing the criminal proceedings, a wrong prayer was made for recalling the order passed in that revision application. Learned counsel further states that the petitioner will now file a proper application for quashing the proceedings before the High Court, and thereforee, he does not want to press this petition. The special leave petition is dismissed as not pressed.'

3. Mr. D.D.Thakur, learned Senior Counsel for the petitioner contended that the impugned order has not only resulted in manifest injustice meted out to the petitioner but the same is patently illegal, improper and unjustified in as much as the materials collected by the prosecuting agency do not make out any case against the petitioner. It is significant to mention that the power of quashing an FIR or criminal prosecution has to be sparingly exercised by the Court with due regard to the guide-lines laid down in this behalf. In State of Haryana Vs . Bhajan Lal : 1992 CriLJ527 , certain categories of cases have been laid down by way of illustrations wherein the extraordinary power under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

4. The charge-sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter. Necessarily, thereforee, the court has to look into the law and the allegations made in the charge-sheet and then consider whether or not there is a ground for presuming the commission of the offence by the accused. It is well settled that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court cannot act as a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the documents produced before the court, any basic infirmities appearing in the case and so on. In Satish Mehra Vs . Delhi Administration, : (1996)9SCC766 , it was held that if the court is almost certain that there is no prospect of the case ending in conviction and the trial would be an exercise in futility or sheer wastage of time, it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself. Bearing in mind the said principles of law, I shall proceed to consider the facts and circumstances of the case and examine them on the scale of law.

5. It is significant to mention that only two persons, namely, Ms. Mayawati (since discharged) and the petitioner were charge-sheeted for the offences punishable under Sections 147/149 IPC. By the impugned order, learned Magistrate has discharged the accused Ms. Mayawati holding that she was not the member of the

alleged unlawful assembly. Learned Senior counsel appearing on behalf of the petitioner contended that petitioner alone cannot be charged for committing the offence of rioting punishable under Section 147 IPC or for the offence punishable under Section 149 IPC.

It is well settled that Section 149 IPC create a specific offence and deals with the punishment of that offence. To constitute an 'unlawful assembly' there must be:-

(a) an assembly of five or more persons.

(b) they must have a common object; and

(c) the common object must be one of the five specified in Section 141 IPC.

6. Thus, before there can be an unlawful assembly and rioting, there must be five persons who have a common object and that object is one of those set out in Sec. 141 IPC. The object should be common to the persons who composed the assembly, that is to say, they should all be aware of it and concur in it. The word 'assemble' implies the meeting of persons animated by the same purpose with the intention of furthering it. It is the combination of five or more persons for a common unlawful purpose, the law discourages for it regards such combination as conducive to rioting and disorder. But the more combination or assemblage or five or more men does not render their meeting unlawful, unless the meeting was in pursuance of a common unlawful object.

7. In the instant case, the scene of the alleged occurrence is the official residence of the petitioner. It is undisputed that in 1996, the Government had provided security cover to the petitioner and his official residence had a security picket at its entrance. On 25.10.1996, Ms. Mayawati and some BSP leaders had assembled at the petitioner's residence to deliberate on the issue of Government formation in Uttar Pradesh. That being so, such an assembly cannot be branded as an unlawful assembly. It is also undisputed that on that day, some 50/60 journalists, hoping to get a quote or a photograph of these leaders, had positioned themselves in front of the petitioner's residence. It appears that on that day, the petitioner wanted to avoid the media persons and the security personnel posted are at the

petitioner's residence, thereforee, asked them to leave the area and this inevitably led to a heated verbal exchange amongst the security personnel and the journalists. The petitioner then emerged from the house and the situation worsened after his arrival at the spot. As per prosecution case, the petitioner, having abused the media persons, exhorted his security personnel to thrash them as a result whereof the security personnel started hitting the journalists. It is alleged that the petitioner himself assaulted the complainant Isran Ahmed causing simple injuries to him. In this context, a reference to the FIR lodged by the petitioner's security-incharge, Padam Singh is indispensable. It is an admitted position that on the same day, Padam Singh had also lodged a report at the P.S. Tuglak Road regarding the alleged incident and investigation pursuant there to had culminated in submission of a charge sheet under Section 451/323/147/353/332/149/186 IPC against some of the journalists assembled at the spot.

8. According to the FIR lodged by the security-in-charge Padam Singh, on 25.10.1996, some 30/40 anti-social elements along with media persons had assembled at the official residence of the petitioner. At about 4.15 p.m. while the petitioner and Ms. Mayawati were going to attend an urgent meeting, the persons assembled there broke the security carbon and herald them for their statements but they declined to make any press statement saying that they had not invited media persons for a press conference. Incensed by this, the persons assembled there used filthy language and raised slogans against the petitions and Ms. Mayawati. When the security personnel tried to reinforce the security carbon, they were assaulted by these persons. However, the security personnel succeeded in pushing the unruly mob out of the official residence of the petitioner. It is not the case of the prosecution that the security personnel posted at the residence of the petitioner had formed themselves into an unlawful assembly. On the contrary, it is the case of the prosecution that they were there to provide security cover to the petitioner. As noticed earlier, on that day some 50/60 journalists had assembled at the official residence of the petitioner and the security personnel had asked them to leave the area and this inevitably resulted in a heated verbal exchange amongst them. It worsened after arrival of the petitioner. This situation must have caused alarm to the security personnel about security of the petitioner and thus the action

of the security personnel in pushing the media persons out of the official residence of the petitioner does not amount to an offence. It seems inconceivable that at that time, the petitioner and his security personnel had assembled there for the purpose of using criminal force against media persons. I was the duty of the security personnel to provide effective security cover to the petitioner and in doing so they were entitled to use even force should the need arise. It is also significant to mention that the charge sheet does not indicate that some unnamed persons were also members of the alleged unlawful assembly. Thus, there is no evidence to show formation of any unlawful assembly at any time with the common object of using criminal at any time with the common object of using criminal force against the complainant Isran Ahmed or other media persons. From the more fact of the petitioner along with the security personnel being found at the scene of occurrence at the time when the complainant Isran Ahmed was assaulted, it cannot be inferred that they were members of an unlawful assembly within the meaning of Section 141 IPC. Consequently, I have no hesitation in coming to the conclusion that the charges under Sections 147/149 IPC leveled against the petitioner are groundless. It is significant to mention that on completion of investigation in respect of the FIR lodged the petitioner's security in charge Padam Singh, some journalists were also charge sheeted for committing the offence of rioting but, according to learned Senior counsel, they have been discharged by the learned Magistrate.

9. Coming to the individual acts of the petitioner, the learned Magistrate opined that there is sufficient material on record for presuming that the petitioner has also committed the offences punishable under Sections 506/354/323 IPC. As regards the offence under Section 354 IPC, Ms. Renuka Puri has nowhere stated in her statement that the petitioner had assaulted or used criminal force to her intending to outrage her modesty. That being so, the charge under Section 354 IPC leveled against the petitioner falls to the ground.

10. So far as the offence under Section 506 IPC is concerned, the complainant Isran Ahmed stated in his case diary statement that at the relevant time the petitioner had exhorted his security personnel to thrash the journalists. According to Isran Ahmed, the exact words used by the petitioner were 'Maro Salon

Ko'.Strangely enough, Isran Ahmed has nowhere stated in his statement that the alleged threat had caused an alarm to him. On the contrary the circumstances of the case clearly go to show that even after the alleged threat, the complainant or other media persons did not retrace their steps. It is well settled that more threat is no offence. That being so the threat alleged to have been given by the petitioner does not fall within the mischief of Section 506 IPC. Consequently, no charge under Section 506 IPC can be framed against the petitioner on the basis of the said evidence.

11. As regards the offence punishable under Section 323 IPC, it has come in the statements of Isran Ahmed, Anil Sharma and other witnesses that the petitioner had assaulted the complainant Isran Ahmed causing simple injuries to him. Learned Senior Counsel for the petitioner contended that the offence punishable under Section 323 IPC is a non cognizable offence and the police investigated the offence without obtaining the prior permission of the Magistrate concerned and so the investigation conducted by the police is vocative of the provisions of sub section (2) of Section 155 Cr.P.C. In my opinion, this argument of the learned counsel so far as it goes, is correct. It is worth mentioning that the FIR lodged by the complainant Isran Ahmed does not disclose the commission of any cognizable offence. On the contrary, it discloses the commission of a non-cognizable offence, i.e., an offence punishable under Section 323 I.P.C. Sub-Section (2) of Section 155 Cr.P.C. debars a police officer from investigating a non-cognizable offence without the order of a Magistrate having power to try such case. Where the FIR discloses a cognizable as well as non-cognizable offence, the police is not debarred from investigating any non-cognizable offence which may arise on the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. But if the information discloses only a non-cognizable offence, the police officer cannot investigate the offence without the requisite sanction under sub-Section (2) of Section 155 Cr.P.C. Admittedly, no permission had been taken by the police to investigate into the offence punishable under Section 323 I.P.C. In the instant case, it appears that in order to circumvent the mandatory provision of sub-Section (2) of Section 155 Cr.P.C., the case was registered under Sections 147/149/506/323 IPC at the police station. In this view of the matter, the police cannot be allowed to flout the mandatory provision of sub-

Section (2) of Section 155 Cr.P.C. That being so, the investigation conducted in violation of the mandatory provision of sub section (2) of Section 155 Cr.P.C. bore the stamp of illegality. Consequently, the petitioner's prosecution for the offence punishable under Section 323 IPC is liable to be quashed.

12. For the foregoing reasons, I find and hold that the allegations in the FIR No. 248/96 lodged by the complainant. Isran Ahmed and the evidence collected by the prosecuting agency in support thereof do not disclose the commission of any cognizable offence and make out a case against the petitioner.

13. In the result, the petition is allowed and the criminal proceedings emanating from the FIR No. 248/96 under Sections 147/149/323/506/354 IPC and pending on the file of the Metropolitan Magistrate, New Delhi are quashed. The petitioner is discharged and his bail bonds are also discharged.

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