

Raj Nath Gupta and Others Vs. State and Another

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Court : Delhi

Decided On : Sep-06-1999

Reported in : 1999VAD(Delhi)719; 81(1999)DLT805; 1999(51)DRJ301; ILR1999Delhi503

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

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 13, 195 and 259; [Indian Penal Code \(IPC\), 1860](#) - Sections 186 and 187

Appeal No. : Crl. M. (M) No. 179/93 & Crl. M. No. 165/93 and Crl. M.(M) No. 194/93 & Crl. M. No. 179/93

Appellant : Raj Nath Gupta and Others

Respondent : State and Another

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Ms. Asha Tewari, Adv

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. By this petition under Section 482 Cr. P.C. [(CrI.M(M) 179/93] petitioner's seek quashing of the order dated 9.9.1992 passed by Shri Sukhdev Singh Metropolitan Magistrate, New Delhi directing issuance of summons against them under Section 448/506/108/182/183 of the IPC. The petitioner Arif Mohd. Khan has also filed a petition under Section 482 Cr. P.C. [CrI. M(M) 194/93] for the same relief. I propose to dispose of both the petitions by this common order.

2. Briefly stated the facts giving rise to these petitions are that in an eviction suit E-752/1989, the respondent No. 2 obtained a decree against M/s. Shawl Arts for recovery of possession of the first and second floor of the premises No. A-415 defense Colony, New Delhi. On 4.8.1990, at about 9 a.m. the respondent Smt. Amar Kaur, accompanied by the Court bailiff came to the spot to take delivery of possession of the said premises. According to the first information report lodged by the petitioner Rajnath Gupta, at that time respondent Smt. Amar Kaur, accompanied by her son brother-in-law Amar Kaur, Sarbjeet Singh, Kartar Singh and some 4-5 persons, came to the spot and attempted to take forcible possession of the said premises by throwing away the goods belonging to him and Kartar Singh and his companions also assaulted him. On this complaint, the case FIR No. 448/427/323/34 IPC was registered at the Police Station defense Colony Investigation pursuant to the said FIR culminating into submission of a charge sheet under Sections 448/427/323/34 IPC against the accused persons, namely Smt. Amar Kaur & Ors.

3. The respondent Smt. Amar Kaur also filed a criminal complaint under Sections 442/448/186/427/506/108/120-B/34 IPC against the petitioners (except the petitioner Arif Mohd. Khan) regarding the same incident. The graven of the allegations in the said complaint is that on the day in question at about 9.15 A.M., the Court bailiff delivered possession of the second floor to the respondent in execution of the warrant of possession issued in the execution proceedings. While the Court bailiff was completing the formalities for delivery of possession of the remaining portion of the premises. i.e. first floor of the premises, the petitioner Rajnath Gupta called the police. After arrival of the police the petitioner Arif Mohd. Khan also came to the spot and obstructed the Court bailiff from executing the warrant. It is also alleged that after giving necessary instructions to the police the

petitioner Arif Mohd. Khan left the spot. After departure of the petitioner Arif Mohd. Khan, the remaining petitioners forcibly took possession of the 2nd floor of the premises in question and wrongfully prevented the Court bailiff from executing the warrant of possession in respect of the remaining portion thereof.

4. After entering an appearance in the police case, the respondent Amar Kaur and Ors. filed an application before the learned Metropolitan Magistrate seeking their discharge from the case. By the impugned order dated 9.9.1999, the learned Magistrate discharged the respondent Amar Kaur and others and took cognizance of the offences punishable under Section 448/506/108/182/183 IPC on the basis of the complaint filed by the respondent Amar Kaur and directed issuance of summons against the petitioners. Aggrieved by the said order, the petitioners have come up before this Court under Section 482 Cr.P.C.

5. At the outset I must make it clear that both the cases, one instituted on a police report, under Section 173 Cr. P.C. and the other instituted on a criminal complaint filed by the respondent Smt. Amar Kaur arose out of the same transaction. Thus both the cases are cross cases. It needs to be highlighted that the respondent Smt. Amar Kaur had not arraigned Arif Mohd. Kahn as an accused in the criminal complaint filed by her. In this view of the matter, the learned Metropolitan Magistrate has committed a grave jurisdictional error in taking cognizance of the offences under Sections 448/506/108/182/183 IPC against the petitioner Arif Mohd, Khan.

6. That apart the only allegation made against the petitioner Arif Mohd. Khan is that he obstructed the Court bailiff from executing the warrant. There is not even a whisper on record to show or suggest that at the relevant time the petitioner Arif Mohd. Khan committed house trespass or threatened anybody present on the spot. Obviously, no case has been made out for proceeding against the petitioner Arif Mohd. Khan for the offences under Sections 448/506 IPC. As regards the offences under Section 182/183 IPC, there is no complaint in writing of the public servant concerned yet the learned Metropolitan Magistrate took cognizance of the said offences on the basis of the complaint filed by the respondent Smt. Amar Kaur. I am constrained to observe that the learned Magistrate appears to be

blissfully ignorant about the provisions of Section 195 Cr. P.C. However, the bar created by Section 195 Cr.P.C. is applicable to the case in hand and the learned Magistrate has committed a grave jurisdictional error in taking cognizance of the offences under Sections 182/183 IPC on the complaint filed by the respondent Smt. Amar Kaur. For the foregoing reasons, the impugned order directing issuance of summons against the petitioner Arif Mohd. Khan is unsustainable in law.

7. As noticed earlier, both the cases, one instituted on a police report under Section 173 Cr. P.C. against respondent Smt. Amar Kaur & Ors., and the other instituted on criminal complaint filed by the respondent Amar Kaur against the petitioners, arose out of the same transaction. The police case was filed under Sections 448/427/323/34 IPC against respondent Amar Kaur and Ors. This the said police case was to be tried in accordance with the procedure laid down in Chapter XX of the Code of Criminal Procedure. Section 251 Cr.P.C. provides that when in a summons case the accused appears or is brought before the Magistrate, the particulars of offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defense to make. In the instant case the learned Magistrate adopted a peculiar procedure by discharging the accused persons on the ground that charges against hem are groundless. The learned Metropolitan Magistrate has committed a manifest illegality in discharging the accused persons in a summons case as there is no provision in Chapter XX of the Code for discharge of the accused. The only provision in the said Chapter is Section 259 which empowers the Magistrate to stop the proceedings in a very special and compelling circumstances. In the instant case, the order of discharge does not fall within the ambit of Section 259 Cr. P.C. The other illegality which the learned Metropolitan Magistrate has committed is that he has used the evidence recorded under Sections 200/202 Cr. P.C. in the complaint filed by Smt. Amar Kaur for discharging the respondent and Ors. in the case instituted on the police report filed under Section 173 Cr.P.C., which is wholly impermissible in law. The High Court of Bombay in *Banappa Kallappa Ajawan and Others v. Emperor* AIR (31) 1944 Bom 146 has indicated the appropriate procedure to be adopted for trial of counter or cross cases. It was held that the most appropriate procedure in such cases would be that both the cases should be tried by the same Judge. The first

case should be tried to a conclusion and the judgment should be postponed till the hearing of the second case to a conclusion and then judgments should be pronounced in each case. It was also held that the Judge should confine his judgment in each case to the evidence led in that particular case and would not be at liberty to use the evidence in one case for the purpose of the judgment in the other case and to allow his findings in one case to be influenced in any manner to the prejudice of the accused by the views which he may have formed in the other case. This judgment has been cited with approval by the Apex Court in *Kewal Krishan Vs . Suraj Bhan and another* : 1980 CriLJ1271 . The learned Metropolitan Magistrate has lost sight of the fact that the story set up by the respondent Smt. Amar Kaur in her complaint in regard to the alleged offences was likely to be her defense version in the police case filed against her and her companions. As regards the offences under Sections 182/183 IPC, I have already held that the bar created by Section 195 Cr.P.C. is applicable to the case in hand. In this view of the matter, the impugned order directing issuance of summons against the petitioners cannot be allowed to stand as it has resulted in miscarriage of justice.

8. For the foregoing reasons, both the petitions are allowed and the impugned order dated 9.9.1992 directing issuance of summons against the petitioner is quashed. The petitioners are discharged and their bail bonds are cancelled.