

S.C. Chhabra Vs. State

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Court : Delhi

Decided On : Jul-19-1995

Reported in : 60(1995)DLT537; 1995RLR519

Judge : J.K. Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161

Appeal No. : Criminal Miscellaneous Appeal No. 454 of 1994

Appellant : S.C. Chhabra

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Amita Gupta and; H.J.S. Ahluwalia, Advs

Judgement :

J.K. Mehra, J.

(1) I have been taken through the petition. Paragraph 6 of the said petition sets out the following conclusions arrived at by the Sho from the report of investigation and on the basis whereof he had moved the Court for discharge of the petitioner and Shri Virender Kumar after completing the investigation:- (a) No. oral or documentary evidence came on file to establish that Complainant was provided with smack before or after removal of kidney; (b) The prison of Complainant that kidney was removed against his Will and consent was obtained by deception could

not be corroborated by any oral, documentary or circumstantial evidence; (e) That it had rather been established during investigation that Complainant wanted to secure more money and that is why he lodged the complaint; (d) The Complainant reported the matter to press only after coming in contact with Shri P.K. Chanalla, a political leader, to pressurise the doctors and recipient in order to extract more money from them; (e) Moreover, the incident took place in May, 1992, and he reported about the same in March, 1993.'

(2) The complete record was placed before the Trial Court Along with the report under Section 173 Cr.P.C., wherein it was stated that prima-facie case has been made out against the petitioner. The Magistrate on 2nd November, 1993, after perusing the said report and the statements under Section 161 Cr.P.C. has found as under:-

'After having gone through carefully the report under Section 173 Cr.P.C., statements under Section 161 Cr.P.C., confessions and case diaries; I am of the view that there are sufficient grounds to summon the accused persons namely Dr. Satish Chand Chhabra and Dr. S.K. Choker, Dr. Suresh Saroj, Dr. R.B. Yadav; all Doctors of Par marth Mission Hospital; and Shalender. Hence the application of permanently discharge the accused persons is rejected. Now the above-stated accused persons be summoned for 8.12.93 through Investigating Officer.'

(3) I have asked Mr. Mathur if there was any confession recorded by the police either under Section 161 Cr.P.C. or otherwise. His reply was in the negative. I then called upon Mr. Ahluwalia to show from the record the said confession on the part of the accused.

(4) Mr. Ahluwalia has drawn by attention to the case diary prepared in the course of police investigation. The 1.O. had recorded certain statements attributable to one of the Doctors, namely Dr. S.C. Chhabra. The statements under Section 161 of Cr.P.C. being inadmissible in evidence. I am afraid, cannot qualify as a confession. It is conceded that apart from these statements, there is no separate statement wherein any kind of allegation is admitted/confessed. In the report under Section 173 Cr.P.C., it is very clearly stated that no case is made out and the Police Authorities themselves have conceded that no oral or documentary

evidence came on the file to establish that the Complainant was provided with smack before or after the removal of the kidney and other allegations could not be corroborated. It is also pointed out that the incident took place in May 1992, but the report about the same was lodged only in March, 1993. The recording in the case diary or the statements under Section 161 Cr.P.C. are not admissible in evidence. It is not possible to ascertain in a short and cryptic way of the order of the Magistrate as to how he came to from the opinion to summon the petitioner. Mr. Ahluwalia states that in the exercise of his discretion, the Magistrate has summoned the petitioner. No doubt the Metropolitan Magistrate could differ from the Investigating Agency and order summoning of the accused if any offence is prima-facie made out. However, in such cases, the order must be a speaking order for an order of exercise of discretion by a Judicial Officer in a matter which is subject to judicial review. thereforee, the material on which the Judicial Officer comes to a conclusion other than what has been reached by the Investigating Agency must be reflected in the order so that it becomes clear that the discretion was exercised judiciously and not arbitrarily.

(5) From the impugned order, I am unable to ascertain the basis on which the Magistrate reached a conclusion different from the one which has been reached by the Investigating Agency.

(6) Mr. Ahluwalia has drawn my attention to two decisions in the case of : 1978 CriLJ1687 on the question whether the Magistrate can take cognizance of the offence, even contrary to the recommendations of the Investigating Agency. That proposition is not disputed. But the question is whenever such an action is resorted to by the Magistrate, the order should disclose the precise material on the basis whereof Magistrate has based his findings which persuaded him to differ from the conclusions reached by the Investigating Agency. That data, I am afraid, is totally lacking in the impugned order.

(7) Mr. Mathur has cited various authorities mentioned hereunder to negative the contentions of Mr. Ahluwalia that this Court should not interfere with the exercise of discretion of the Magistrate while exercising his powers under section 482 of the Code of Criminal Procedure. It is not necessary to discuss each separately. The

authorities are as under :- (i) State of Kamataka v. L. Muniswamy and Others, : 1977 CriLJ1125 which was followed in Asha Rawal v. Basant Lal and Another, : 27(1985)DLT428 . (ii) Amar Nath v. State, : 1977 CriLJ1891 (iii) Madhu Limaye v. State, : 1978 CriLJ165 (iv) : 1992 CriLJ2916 , Punjab National Bank and Others v. Surendra Prasad Sinha. (v) 1989 (4) DL 164 (vi) Sunil Wadhwani v. J.P. Sharma and Others : 26(1984)DLT104 . (vii) LT. Col. K.G. Sud v. S.C. Gudimani, : 20(1981)DLT302 (viii) Neelam Chaturvedi v. Mukul Kumar Chaturvedi and Others, : 25(1984)DLT177 (ix) : 1995 CriLJ2935 (x) : 55(1994)DLT483

(8) In Punjab National Bank v. Surinder Prasad Sinha (supra), Hon'ble Supreme Court observed as under:-

'Judicial process should not be an instrument of operation or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into account before issuing process lest it would be an instrument in the hands of private Complainant an vendetta to harass the person needlessly.'

(9) Applying the above test also, I find that the impugned order hopelessly fails this test.

(10) In State of Kamataka v. L. Muniswamy and Others (supra), after quoting the provisions of Section 561-A of the Code of 1898, Hon'ble Supreme Court observed 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 prosecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the 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 salient jurisdiction.'

(11) In *G.K. Ralhan v. State* reported as 1984 CrL. L.J. 1538 has been drawn wherein it was observed as under :-

'.....It has also never been in doubt that the inherent powers were not in conflict with specific powers conferred on the Court by the Cr.P.C. but were nevertheless to be sparingly used in exceptional cases to give effect to any order under the Code or to prevent the abuse of the process of the Court.....'

(12) . The jurisdiction under Section 482 Cr.P.C. has further been clarified by the Hon'ble Supreme Court in *Raj Kapoor v. State*, reported as : 1980 CriLJ202 as under:- 'The 1st question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradicts this contention because nothing in this Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482.....In short there is no total ban on the exercise of inherent powers where abuse of the process of the Court or other extraordinary situations excites the Court's jurisdiction. The limitation is self restraint, nothing more.'

(13) In the light of the above discussion and the cases cited at the Bar. I have no hesitation in holding that the impugned order cannot be sustained. Apart from other things, it also disclosed non-application of mind on the part of the learned Magistrate. The same is, therefore, quashed. No order as to costs.

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