

Gurinder Singh Vs. State

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Court : Delhi

Decided On : May-23-1996

Reported in : 1996IIIAD(Delhi)96; 63(1996)DLT104; 1996(37)DRJ598; 1996RLR351

Judge : Usha Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 190

Appeal No. : Criminal Revision Appeal No. 133 of 1996

Appellant : Gurinder Singh

Respondent : State

Advocate for Pet/Ap. : K.B. Andley and; R.D. Jolly, Advs

Judgement :

Usha Mehra, J.

(1) Petitioners have assailed their being implicated for offences punishable under Section 186/506/323/353/34, Indian Penal Code (In short IPC). The circumstances leading to their implication are that at Bhairon Road-Mathura.Road T'Pouit Constable Hukam Singh was assaulted and criminal force was used and other police officials who arrived at the spot were insulted. Constable Hukam Singh's statement was recorded which ultimately became the FIR. Challan was filed. The

learned Metropolitan Magistrate (in short 'MM') took cognizance. It is against the order of summoning and charge that the present petition has been filed. The order of taking cognizance by the learned M.M. has been assailed primarily on the ground that there is a complete bar under Section 195 of the Code of Criminal Procedure (In short the Cr.P.C.) for taking cognizance of an offence punishable under Section 186, Indian Penal Code by the Court. The grievance of the petitioners is that no written complaint as envisaged under Section 195, Criminal Procedure Code . was submitted by Constable Hukam Singh. His statement was under Section 161 Criminal Procedure Code . and not a written complaint. The said statement under Section 161 Criminal Procedure Code . cannot be equated or treated at par to a written complaint stipulated under Section 195 Criminal Procedure Code . No cognizance under Section 195 Criminal Procedure Code . could be taken in the absence of proper written complaint. Hence any action by the Trial Court is bad and liable to be set aside.

(2) To appreciate the challenge we must have quick glance to the material and necessary facts of this case which are relevant for;the determination of the points raised by Mr.K.B.Andley, Advocate for the petitioner. According to the prosecution, on 14th July,1994 at about 6.20 p.m.two Maruti Cars bearing NO.DL- 2CA-6745 and DL-2CB-9998 stopped at the T-Point of Mathura Road, Bhairon Road. From Maruti Car No.DL-2CB-9998 two persons i.e. present petitioners came out and attacked two boys whose name subsequently came to know as Yogender and Gyanender. They were sitting in Car No.DL-2CA- 6745. Petitioners started beating those boys with kicks and fists. Those boys Yogender and Gyanender came towards Constable Hukam Singh who was regulating the traffic at the T-Point as on that day there was Congress Rally. While those boys of Car No.DL-2CA-6745 were coming towards the Constable, the present petitioners followed them and gave them beatings in the presence of Constable Hukam Singh who tried to intervene in order to prevent petitioners from giving beatings. But the petitioners caught his collar and with a jerk tore his uniform shirt and two top buttons of his shirt also broke. Petitioner No.2 threatened Constable Hukam Singh not to intervene otherwise he would be taught a lesson. He would be thrown on the road and would be torn apart. Receiving report that Constable Hukam Singh had been assaulted, Asi Hardeep Singh, Zonal Officer arrived at the spot. He also tried to

intervene but petitioner No.2 lifted his hand which hit the spectacles of the Asi and the same fell down and broke. Two more constables patrolling on the motor cycles also arrived there and intervened in the matter. To them petitioners insulted by abusing. It is in this background that the statement of Constable Hukam Singh was recorded under Section 161 Criminal Procedure Code .. On these facts the petitioners were challaned and the Fir was registered.

(3) A perusal of the above facts show that petitioners had no intention to prevent or deter either Constable Hukam Singh or other police officials from discharging their duties as public servants. These facts point out that petitioners in fact were fighting with Gyanender and Yogender when Constable Hukam Singh intervened and consequently his shirt was torn. It is an admitted fact on record that petitioners were not armed nor intended to assault or use criminal force against the public servants. They were following Yogender and Gyanender Kumar when Constable Hukam Singh tried to intervene. It is in that fight. Constable Hukam Singh was assaulted by the petitioners and the other police officials were abused by the petitioners. From these facts no intention on the part of the petitioners can be inferred that they wanted to prevent or deter Constable Hukam Singh or for that matter Asi in discharge of their official duties. Mr.R.DJoBy, counsel for the State when confronted with these facts fairly conceded that public servant were not prevented or deterred in discharge of their public duties. therefore, prima facie no case under Section 353 as such can be said to have been made out from the facts of this case.

(4) As regards a written complaint, it is a pre-condition for registering a case under Section 186 Indian Penal Code and it is so envisaged under Section 195 Criminal Procedure Code .. Section 195 Criminal Procedure Code . is reproduced as under:-

195.(1)No Court shall take cognizance-

(A)(I)of any offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (II)of any abetment of or attempt to commit, such offence, or

(III)of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(B)(I)of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

II)of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence, in a proceeding in any Court, or

(III)of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub clause (i) or sub clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(5) A bare reading of Section 195, Criminal Procedure Code . would show that for a Court to take cognizance of an offence punishable under Section 186, Indian Penal Code, the pre-condition is a written complaint to be filed by the public servant. Admittedly, no such written complaint had been filed by Constable Hukam Singh: In the absence of such a complaint, I am in agreement with the contention of Mr.Andley, that the learned M.M. could not have taken cognizance of the offence punishable under Section 186, Indian Penal Code Statement made by Constable Hukam Singh and as recorded under Section 161, Criminal Procedure Code . or for that matter under Section 164, Criminal Procedure Code . cannot and would not constitute a written complaint as required under the provisions of Section 195, Criminal Procedure Code . The contention of,Mr.Jolly that the statement of Constable Hukam Singh recorded under Section 161/164 Criminal Procedure Code . should be treated at par with a written complaint as envisaged under Section 195 Cr.P.C., is without force. Statement under Section 161 or 164 Criminal Procedure Code . cannot be equated as a special complaint in writing stipulated under Section 195 Criminal Procedure Code .

(6) Now reverting to the second limb of Mr.Andley's argument that since learned Trial court could not have taken cognizance under Section 186 Indian Penal Code in the absence of a written complaint, hence the case as a whole must go. I find force in this submission of Mr.Andley. In similar circumstances the Madras High Court in the case of P-Btiraj v. K-Muniyandi 1995 Criminal Rullings 219 held that if complainant ignored the provisions of Section 195 Criminal Procedure Code . then the entire complaint must go and Court cannot take cognizance. In that eventuality the proceedings as a whole has to be quashed. In P-Btiraj's case complaint was filed consisting of two offences under Section 166 & 186, IPC. In the absence of a written complaint the Court opined that proceedings as a whole are liable to be quashed. Reference can also be made to the decision of Punjab & Haryana High Court in the case of Bhagat Ram V. Sum of Punjab 1991 (1) Cri.LJ. 246, where it has been observed that jurisdiction of the Court to take cognizance of an offence under Section 186, Indian Penal Code, is barred except on a complaint in writing of the public officer concerned. Simple lodging of Fir at the Police Station which resulted in the prosecution of petitioner ultimately and framing of charge for the offences would not amount to filing of complaint in writing by public servant as stipulated under Section 195 Criminal Procedure Code . are liable to be quashed. To the same extent are the observations of Madhya Pradesh High Court in the case of Ashok And Anr. V. The State 1987 Cri. L.J. 1750 where the Court after analysing various provisions of the Code and in particular Section 195 and 461(k) held that the trial for the offences under Sections 186/353, Indian Penal Code, without a special complaint as required under Section 195(l)(a)(i) of Cr.P.C. is illegal. When Magistrate acts in contravention of bar under Section 195 Cr.P.C. the proceedings deserve to be quashed. Relying on these judgments Mr.Andley contended and to my mind, rightly so that since the precondition and mandatory requirement of a written complaint is missing in this case, therefore, the trial court could not have taken cognizance of the offences punishable under Section 186 & 353, Indian Penal Code Such cognizance under Section 186 could not have been taken then the Fir as a Whole must be quashed.

(7) MR.R.D.JOLLY on the other hand laid stress that even if no cognizance could be taken under Section 186 Indian Penal Code yet there is no bar to take cognizance of the other substantive offences with which these petitioners are

charger. According to him offences under Section 353/306 Indian Penal Code are substantive offences, hence the proceedings as a whole cannot be quashed. To support his arguments he placed reliance on the decision of Supreme Court in the case of Durgacharan Naik & Ors. V. State of Orissa : 1966 CriLJ1491 , where the Apex Court while considering the ingredients of Section 353 & 186, Indian Penal Code, held that these are two distinct offences. The quality of the two offences is also different. There cannot be any quarrel with this proposition, but at the same time the Apex Court in this very case sounded a note of caution when it observed that:-

'THE provision of Section 195, Criminal Procedure Code . cannot be evaded by the .device of charging a person with an offence to which that Section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character or by describing the offence as one punishable under some other Section of the Penal Code, though in truth and substance the offence falls in the category of Sections mentioned in Section 195 Criminal Procedure Code . Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195, prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.

(8) I think these observations and caution note spell out by the Supreme Court squarely apply to the facts of this case. Can the facts of this case it would hardly be possible to separate the element of insult on the so called assault because the two are so interwoven in the episode, that they become merged one with the other. Hence by adopting and resorting to the device of Section 353 which is a camouflage the prosecution could not evade the provisions of Section 195 Criminal Procedure Code . in this case. The facts have to be considered as a whole. There cannot be splitting up of the facts. Considering the acts as a whole if these disclose an offence for which a special complaint is necessary under the provision of Section 195, Criminal Procedure Code . the Court cannot take cognizance of the case at all unless that special complaint had been filed. In the instant case the very act of obstruction lies in the alleged assault and use of criminal force. In substance the offence in question would fall in the category of

Section 195, Criminal Procedure Code . and it was not open to by-pass its provisions even by choosing to prosecute under Section 353/506 Indian Penal Code Mr.R.D.Jolly as pointed above had conceded that charge on the facts of this case under Section 353 Indian Penal Code is not made out because the public servant was not prevented or deterred in the discharge of his official duties.

(9) The Magistrate in this case, to my mind, was not empowered by law in this behalf to take cognizance. Hence proceedings initiated by him in the absence of special complaint as required under Section 195 Criminal Procedure Code . are bad in law and without jurisdiction. When Magistrate acts in contravention of bar under Section 195 Criminal Procedure Code ., such proceeding as a whole are required to be quashed.

(10) In the light of the view taken above the cognizance taken by the Magistrate has to be held to be without jurisdiction and proceedings liable to be quashed. Those are quashed accordingly.

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