

**Vijay Kumar Vs. State of Delhi**

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**Court :** Delhi

**Decided On :** Sep-14-1998

**Reported in :** 1998VIAD(Delhi)812; 75(1998)DLT661; II(1998)DMC529; 1998(47)DRJ434

**Judge :** A.K. Srivastava, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 329 and 401

**Appeal No. :** Crl. R. No. 440 of 1997 & Crl. M. No. 5703 of 1997

**Appellant :** Vijay Kumar

**Respondent :** State of Delhi

**Advocate for Def. :** Mr. Akshay Bipin, Adv.

**Advocate for Pet/Ap. :** Mr. Bhuvnesh Saini, Adv

**Judgement :**

Held:

In the impugned order though the learned Additional Sessions Judge while stating the facts of the case mentioned about the aforesaid averments in the complaint but while discussing the arguments advanced on behalf of the revisionist accused and while making his own discussion about forming prima facie opinion about the

commission of offence under Section 329, IPC did not discuss whether the statement given by the complainant to the police appeared to be voluntarily or involuntarily. In her own complaint dated 22.3.2989 Smt. Manju Khullar admits that she had given a statement to the police that she had got bums due to stove when she was boiling the milk. Thus it was to be considered whether that statement was voluntary or forced.

Secondly, the records of the case do not appear to substantiate that Smt, Manju Khul-lar remained in hospital for a period of one and 3/4 months in February/March, 2982 and that the complainant received bum injuries. Neither hospital records about admission in and discharge from the Hospital are there nor the injury report is there. The concerned police station could have been directed to procure the records from the concerned hospital and could also be directed to produce police file relating to the alleged incident of burning in February, 2981. Since police had registered a case under Section 406, IPC only it appears that the police did not bother to have relevant documentary records relating to the alleged offence under Section 329, IPC.

In my opinion, before committing the case to Sessions, the learned Magistrate ought to have made enquiry about the relevant records relating to the alleged offence under Section 329, IPC, However, if it was not done, the learned Additional Sessions Judge could have made such necessary directions before framing of charge.

Moreover, the learned Additional Sessions Judge relied on personal observations of learned Magistrate in relation to the bum marks on the person of the complainant. In the committal order only this much is said that 'it may also be added that the complainant is having marks of bum which are visible'. The order does not speak as to on which part of the body bum marks were observed. In the complaint dated 21.3.1989 only this much was stated that the complainant got bums. Which part of the body was burnt was not mentioned. In her statement given before the learned Magistrate on 22.1.1996 as well only that much was stated that the accused had burnt her. The statement is silent about the part of the body which got bums. From the cross-examination as well it is not clear as to

which part of the body of the complainant was burnt in the alleged incident of burning dated 11.2.1981.

## **JUDGMENT**

**A.K. Srivastava, J.**

1. This criminal revisions petition under Sections 397/401 of the Code of Criminal Procedure is against order dated 1.9.1997 passed by Shri R.K. Yadav, Additional Sessions Judge, Karkardooma, Delhi.

2. By the impugned order, the learned Judge formed an opinion that a prima facie case to frame a charge for an offence punishable under Section 329 of the Indian Penal Code was made out against Vijay Kumar, the revisionist and thereafter framed charge against him on that very day. The charge reads as follows:

'That on 11.2.1981 at H.No. D-77, Kalkaji, New Delhi, you Along with your associates namely Smt. Bimla Rani and Smt. Sushma Ahuja poured kerosene oil on Smt. Manju Khullar your wife and put her to fire, as a result of which she sustained grievous injuries and remained admitted in Mool Chand Hospital up to the end of March, 1981, which grievous hurt was caused by you to Smt. Manju for the purpose of extorting from her or her parents the property and in fact you extorted a sum of Rs. 10,000/- from her parents during the period of her admission in Mool Chand Hospital, New Delhi and hereby committed an offence punishable under Section 329 IPC within my cognizance. And I hereby direct that you be tried by me for the aforesaid charge.'

3. On perusal of the records it transpires that Smt. Manju Khullar, the complainant was married to revisionist accused. She had some strained relations with her husband and in-laws and was thus staying separate since April, 1981. The relevant complaint was made to the DCP (Dowry cell) on 21.3.1989, that is to say, almost eight years after the complainant left/made to leave the company of her husband. In the complaint two grievances were made. The first related to dowry articles and the second related to an incident on 11.2.1981. The averments relating to the incident are as follows:

'3. My hopes were, however, belied when on 11.2.1981 the sister of Sh. Vijay Kumar Khullar as well as his mother and my husband also poured Kerosene oil on me in order to burn me. Luckily, I was saved by one Mr. Sachdeva, our tenant, living on the first floor and I was taken to Mool Chand Hospital, Delhi, where I remained up to the end of March, 1981.

4. That the police was kind enough and they came to me in the hospital, but unfortunately due to the threats of my in-laws just gave a statement that I got burns due to stove when I was boiling the milk. By burning, all my figures have become disfigured. I was threatened, that if I gave a statement that Kerosene oil was poured on me by my sister-in-law, mother-in-law and husband, my husband would throw me out from the house and my son would not be given to me. The entire expenses in the hospital were borne by my brothers. Not only that, during the period of one and 3/4 months that I was in the hospital, my husband took another Rs. 10,000/- from my brother on different intervals on different pretexts.'

4. In respect to the aforesaid complaint, a criminal case was enquired into by Ms. Sarita Birbal, Metropolitan Magistrate, Shahdara on the basis of FIR No. 188/89, Police Station Krishna Nagar under Section 406, IPC. The learned Magistrate by her order dated 17.3.1997 committed the case to the Court of Sessions on coming to a conclusion that, prima facie, a criminal case under Section 329, IPC was made out against the accused and the same being exclusively triable by the Court of Sessions, was to be committed to the Court of Sessions. From the committal order, it transpires that the learned Magistrate had seen the marks of burns on the person of complainant. She also relied on the statement of complainant that on 11.2.1981, the accused had burnt the complainant and that the complainant stayed in the hospital for about one and 3/4 months. Taking into consideration the contents of the complaint and the statement of the complainant, the learned Magistrate formed a view that the essential ingredients of Section 329, IPC read with the definition of grievous hurt given in Section 320 of IPC were present in the case and, therefore, prima facie, a case under Section 329, IPC was made out against the accused.

5. In the complaint dated 21.3.1989 under consideration, in para 4, it is mentioned that 'the police was kind enough and they came to me in the hospital but unfortunately due to the threats of my in-laws I just gave a statement that I got burns due to stove when I was boiling the milk. By burning all my figures have become disfigured. I was threatened that if I gave a statement that Kerosene oil was poured on me by my sister-in-law, mother-in-law and husband, my husband would throw me out from the house and my son would not be given to me. The entire expenses in the hospital were borne by my brothers. Not only that, during the period of one and 3/4 months that I was in the hospital, my husband took another Rs. 10,000/- from my brother on different intervals on different pretexts'.

6. In the impugned order though the learned Additional Sessions Judge while stating the facts of the case mentioned about the aforesaid averments in the complaint but while discussing the arguments advanced on behalf of the revisionist accused and while making his own discussion about forming prima facie opinion about the commission of offence under Section 329, IPC did not discuss whether the statement given by the complainant to the police appeared to be voluntarily or involuntarily. In her own complaint dated 21.3.1989 Smt. Manju Khullar admits that she had given a statement to the police that she had got burns due to stove when she was boiling the milk. Thus it was to be considered whether that statement was voluntary or forced.

7. Secondly, the records of the case do not appear to substantiate that Smt. Manju Khullar remained in hospital for a period of one and 3/4 months in February/March, 1981 and that the complainant received burn injuries. Neither hospital records about admission in and discharge from the Hospital are there nor the injury report is there. The concerned police station could have been directed to procure the records from the concerned hospital and could also be directed to produce police file relating to the alleged incident of burning in February, 1981. Since police had registered a case under Section 406, IPC only it appears that the police did not bother to have relevant documentary records relating to the alleged offence under Section 329, IPC.

8. In my opinion, before committing the case to Sessions, the learned Magistrate ought to have made enquiry about the relevant records relating to the alleged offence under Section 329, IPC. However, if it was not done, the learned Additional Sessions Judge could have made such necessary directions before framing of charge.

9. Moreover, the learned Additional Sessions Judge relied on personal observations of learned Magistrate in relation to the burn marks on the person of the complainant. In the committal order only this much is said that 'it may also be added that the complainant is having marks of burn which are visible'. The order does not speak as to on which part of the body burn marks were observed. In the complaint dated 21.3.1989 only this much was stated that the complainant got burns. Which part of the body was burnt was not mentioned. In her statement given before the learned Magistrate on 22.1.1996 as well only that much was stated that the accused had burnt her. The statement is silent about the part of the body which got burns. From the cross-examination as well it is not clear as to which part of the body of the complainant was burnt in the alleged incident of burning dated 11.2.1981.

10. In the complaint dated 21.3.1989, in para 3, it was stated that 'on 11.2.1981, the sister of Shri Vijay Kumar Khullar as well as his mother and my husband also poured kerosene oil on me in order to burn me. Luckily I was saved by one Mr. Sachdeva our tenant living on the first floor and I was taken to Mool Chand Hospital, Delhi where I remained up to the end of March, 1991'. If the story now being given by the complainant that under threat she had deposed to the police that she got burns due to stove when she was boiling the milk is to be prima facie accepted then offence under Section 329, IPC should be considered to have been prima facie committed by the sister and the mother of Vijay Kumar Khullar, the revisionist accused as well. Learned Additional Sessions Judge while framing charge ought to have considered this point as well.

11. Considering all the facts and circumstances of the case mentioned above, in my opinion, it would be appropriate to direct the learned Additional Sessions Judge to give his careful consideration on the aforesaid before coming to any

conclusion whether prima facie any criminal case is made out and, if so, against whom and only thereafter pass the necessary order.

12. In view of above, the impugned order is set aside and the matter is remanded to the learned Additional Sessions Judge to consider afresh in the light of the aforesaid observations and to pass orders in accordance with law.

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