

Vijay Kumar Bansal Vs. the State

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Court : Delhi

Decided On : May-20-2002

Reported in : 98(2002)DLT651; 2003(66)DRJ277

Judge : S.K. Agarwal, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 195, 251, 256, 340, 345, 346, 346(2), 395, 440 and 482; Indian Penal Code (IPC) - Sections 175, 178, 179, 180 and 251

Appeal No. : Crl. M. (M) No. 751/2002

Appellant : Vijay Kumar Bansal

Respondent : The State

Advocate for Def. : Richa Kapur, Adv.

Advocate for Pet/Ap. : M.T. Siddiqui and; Krishan N. Rana, Advs

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. This petition under Articles 226/227 of the [Constitution of India](#) read with Section 482 of Cr.P.C. was initially filed as a Writ Petition and by order dated 6th

December, 2001, Registry was directed to register it as Criminal Misc. (Main). Thereafter the matter was listed before this Court. By this petition, petitioner is seeking quashing of order dated 19th November, 1999 passed by the Court of Shri R.K. Gauba, CMM, Delhi declining the prayer of the petitioner to dismiss the complaint on account of absence of the complainant Shri S.N. Dhingra, Addl. District & Sessions Judge, Delhi, under Section 256 Cr.P.C.

2. Facts in brief are that a civil suit was listed for hearing before the Court of Shri S.N. Dhingra, Addl. District Judge; statement of DW-1 was being recorded; in the course of cross-examination, petitioner alleged to have raised slogans in the Court, at a high pitch against the Presiding Officer; his conduct was noticed in the deposition sheet and the accused was taken in custody under directions of Addl. District Judge. Learned court after enquiry concluded that the petitioner had deliberately misconducted himself in such manner with intention to stall the proceedings, create a scene in the court, thereby to cause hindrance in the proceedings and to insult/humiliate the Presiding Officer. Consequently a complaint under Section 228 IPC was filed against the petitioner; cognizance was taken on 23rd October, 1998. The petitioner was released on bail; and notice under Section 251 Cr.P.C. was framed against him. The case was listed for prosecution stating that since it is a complaint case, that there is no order for grant of exemption of the complainant, therefore, the complaint deserved to be dismissed under Section 256 Cr.P.C. and the petitioner is entitled to be acquitted. He further raised a plea that the non-following of the procedure prescribed under Sections 195, 340, 395, 440 Cr.P.C., complaint is liable to be dismissed. Learned trial court vide impugned order dated 19th November, 1999 declined the prayer observing:-

'Section 256 Cr.P.C. pertains to the consequences of non-appearance or death of the complainant in a case being proceeded with as a complaint case tried under summons trial procedure. The offence under Sections 228 IPC attracts the provisions of Section 195 and 340 Cr.P.C. which have to be read together. The provisions of Section 195 prohibit cognizance being taken of such an offence except on a complaint being made in writing by the court in the presence of which the said offences had been committed. Section 340 Cr.P.C. prescribing the

procedure for enquiry prior to filing of a complaint as is envisaged in Section 195 Cr.P.C. Section 345 Cr.P.C. does enable such a court to try the person committing such an offence on its own, though with the rider that such trial has to be conducted and completed before such court rises on the same day. But such procedure is not required to be compulsorily followed in every case involving offence under Section 228 Cr.P.C. Provisions of Section 346 enable such a court to instead resort to a regular complaint which necessarily will have to be under Section 340 Cr.P.C. read with Section 195 Cr.P.C. This exception is provided through specific provisions of Section 346 Cr.P.C. The Id. defense counsel while relying upon the judgment of Allahabad and J & K High Courts has conveniently forgotten the provisions of Section 346(2) Cr.P.C. to which there is no parallel provision in the old Cr.P.C. Section 346(2) Cr.P.C. 1973 clearly mandates that a case of this nature has to be dealt with as if it were instituted on a police report. There is no choice or discretion left in the court to which such complaint is sent. The provision is mandatory and must be followed. The provision leaves no scope or opportunity/occasion for a specific order to be passed for the complaint to be treated as a state case. The law itself takes care of the situation and mandates that every such case shall be treated as a state case. The judgments being referred to were rendered when this provision was non-existent and therefore the courts then trying such cases took a view that complainant's presence must be secured. Since the provision of Section 346(2) Cr.P.C. mandatorily provides and regulates this case as a state case, the law being referred to has no application. The case is being rightly treated as a state case. Merely because the office of this court on its own styled the index sheet as a case 'courts on its own motion' it would not give a procedure a different colour. This applications are, therefore, misconceived.'

3. I have heard learned counsel for the petitioner. Learned counsel repeated the submissions that the procedure has to be the same for all summons trial cases as the complainant was absent, the complaint ought to have been dismissed under Section 256 Cr.P.C. There was no other choice. Reliance was placed upon the Supreme Court decisions reported in *Sugarbai M. Siddiq and Ors. v. Ramesh S. Hankare (D) by Lrs.*, 2001 (7) S 337, *Paramananda Mohapatra v. The State*, : AIR1968 Ori144 , and *State v. Reva Chand*, : AIR1961 All352 . Learned APP for

State argued to the contrary.

4. I have considered the rival contentions. There can be no dispute about the law laid down by the Supreme Court in *Sugarbai M. Siddiq (supra)* that the court has to see whether the lower courts/tribunal has jurisdiction to deal with the matter and if so whether the impugned order is violated by procedural irregularity. However in this case, I find that there is no such procedural irregularity. At this stage it is necessary to refer to Sub-section (2) of Section 346 Cr.P.C. It reads:

'346. Procedure where Court considers that case should not be dealt with under Section 345.

(1) xxx xxx xxx

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.'

5. Section 345 of the Code provides procedure in certain cases of contempt. It requires that when any offence as described in Sections 175, 178, 179, 180 or in Section 228 IPC is committed within its view, the court may either sentence the offender itself after giving him a reasonable opportunity of showing cause as to why he should not be punished or in the alternative, the court may forward the complaint for the offence under Section 228 IPC to the concerned Magistrate for trial of the accused in accordance with law. Section 346 Cr.P.C. provides procedure where the court considers that the case should not be dealt with under Section 345 Cr.P.C. and a complaint should be filed.

6. The bare perusal of the above Sub-section (2) of Section 346 shows that the Magistrate is required to deal with such complaints as if it was instituted on a 'police report'. While rejecting almost similar contention Mr. Justice M.L. Jain (as his Lordship then was), of this court in *Bansi Lal v. State and Anr. (1981) 1 Del 715* held as under:

'Section 346 Cr.P.C. (New) has provided that the court shall as far as may be deal with the case as if instituted on a police report. The procedure appears to dispense with the appearance of the complainant and that provision cannot be frustrated by

allowing the accused to call the complainant court as his witness.

7. The ratio of the judgments cited by the learned counsel for the petitioner is not applicable to the facts of this case. There is no illegality or impropriety in the impugned order to warrant interference.

For the foregoing reasons, I find no merits in the petition and the same is accordingly dismissed. Any observations made herein shall not affect the merits of the case during the trial.

Petition stands disposed.

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