

Anu Chaudhary Vs. State and ors.

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Court : Delhi

Decided On : Apr-21-1999

Reported in : 2000(53)DRJ385

Judge : S.N. Kapoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 210 and 482

Appeal No. : Criminal Misc. (Main) No. 348 of 1999

Appellant : Anu Chaudhary

Respondent : State and ors.

Advocate for Def. : Ms. Mukta Gupta, ;Ms. Manjula Gandhi Advs.

Advocate for Pet/Ap. : Rajesh Manchanda and;Mr. Sanjay Kataria Adv

Judgement :

S.N. Kapoor, J.

1. Heard. Ld. counsel for respondents Nos. 2 to 5 concedes that the complaint case as well as the police report both shall form the basis for prosecuting the accused and leading evidence. If that is so, no much dispute remains in between the parties, excepting the representation of the complainant.

2. I have considered the judgment in Harjinder Singh Vs . State of Punjab & Ors., : 1986 CriLJ831 and it appears that it is not applicable to the facts of the present case.

3. Ld. counsel for the respondents Nos. 2 to 5 relies upon B.B. Mitra's Code of Criminal Procedure, 16th Edn. page 1257 where the learned author has observed as under :

'Though the word 'amalgamation' of the complaint case and the police case is not used in Section 210(2), but the use of the expression 'that two cases will be inquired or tried together' connotes the same meaning. Once there is the order of the two cases being inquired into or tried together as if both of them had been instituted on a police report, the complaint case lost its identity and separate existence and it merge with the police case which retained its identity. The result is that the paper in the complaint case became part and parcel of the case instituted on police report and the papers of the complaint case can be read and considered by the Court. The provision in Sub-section (2) for trial together of the two cases if the cognizance happens to be taken twice on private complaint and police report is only to avoid anomalies arising of taking cognizance on same offence more than once.'

4. It may be mentioned that all the accused named in the complaint case are mentioned in the police report. There is no dispute in between the parties that the cognizance was taken on the police report and in respect of the same report for which the petitioner claimed to prosecute the accused person. Consequently, Sub-section (3) is not attracted. However, the point of difference is as to whether the counsel for the complainant shall be able to assist the APP or not. In the peculiar circumstances, I feel that the interest of justice will be well served in case the counsel for the complainant is allowed to assist the APP in prosecuting the case. The Ld. Trial Court, I am sure, would iron out if there is any difference of perception between the Ld. counsel for the petitioner and the Public Prosecutor. With these observations, the petition is dismissed.

5. Copy of the Order be given dusty to both the parties.

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