

Kulbhushan Sharma Vs. State

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Court : Delhi

Decided On : Aug-04-2005

Reported in : 122(2005)DLT609; 2005(83)DRJ609

Judge : R.S. Sodhi, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 173 and 173(8); Indian Penal Code (IPC) - Sections 304A

Appeal No. : Crl.Rev. P. 160/2000 and Crl. M.A. 1256/2000

Appellant : Kulbhushan Sharma

Respondent : State

Advocate for Def. : M.N. Dudeja, APP

Advocate for Pet/Ap. : Dhanbir Singh and; Amardeep Singh, Advs

Judgement :

R.S. Sodhi, J.

1. This Revision Petition is directed against the Order of the Additional Sessions Judge dated 16th November, 1999, whereby the learned Judge has reversed the order dated 25th February, 1995, of the Metropolitan Magistrate, whereby the learned Magistrate has discharged the accused.

2. The case of the prosecution, as is evident from the report under Section 173 Cr.P.C., is that the Petitioner was the owner of the plot in question over which the construction was entrusted to Buta Ram, who in turn engaged a sub-contractor Raj Kumar. It was Raj Kumar who engaged labourers while Buta Ram arranged for the building material as also the electric connection, etc. It was during the course of construction that one labourer accidentally got electrocuted and died. On the basis of this incident, an FIR was registered being FIR No. 43/1992 dated 3rd February, 1992 under Section 304A IPC. The learned Magistrate before whom the case appeared for framing of charge came to the conclusion that there was absolutely no material on record to show that the accused was in any manner responsible for any negligence that resulted in the death of the deceased. He also returned a finding that there was nothing on record to show that it was accused who had applied for the electric connection. Consequently, he discharged the accused. However, he went on to direct the Police to investigate the matter further under Section 173(8) Cr.P.C. as also directed the police to file a fresh charge-sheet. He also took strong note of the dereliction on the part of the prosecution. Being aggrieved of this order on the grounds of jurisdiction, the State went up before the Additional Sessions Judge by way of a revision petition challenging the authority of the Magistrate to direct further investigation under Section 173(8) Cr.P.C. after having taken cognizance of the offence. The State has also challenged the discharge stating that there was material on record to show that the accused was the owner of the premises in question and was supervising the work during which he deceased was electrocuted. The Revisional Court on a re-appraisal of the material on record returned a finding that the accused was the owner of the plot in question and was also supervising the work which is being carried out by the contractor and therefore, was duty bound to take care and ensure that no harm was caused to those, who were working on the plot.

3. Counsel for the Petitioner has taken me through the statement of Raj Kumar which is the basis of the FIR and is the only material witness on record for the purpose of consideration whether a charge can be framed. Counsel submits that there is no material on record to show that the Petitioner, who is otherwise a General Power of Attorney holder of the plot in question, was in any manner supervising the construction work. There is also nothing on record to show that it

was the accused who had arranged or any pump or for any electric connection to the hand pump or even arranged for the electric connection. In that view of the matter, he submits that no charge under Section 304A IPC could have been framed.

4. I have gone through the material on record with the aid of Counsel for the parties. It appears to me that in the supplementary statement, which also forms part of the record, Raj Kumar has clearly stated that :

'...Sharma ji entrusted the construction work to Buta Ram, contractor, and it was decided that all the building material would be arranged by Buta Ram and he would give money only. Thereupon on the same day, Buta Ram, Contractor, told me to arrange labourers. I have earlier worked with Buta Ram many times. Buta Ram gave me the contract for labour at the rate of Rs.24/- per sq.feet. On the day this occurrence took place it was Buta Ram only who was getting all the material for building of the house. Electricity etc. was also got arranged through Buta Ram.'

From this statement, it is evident that the Petitioner had got into an agreement with Buta Ram for the construction of premises on turn key basis and that it was Buta Ram who was responsible to make available the material as also the electric connections. The Petitioner had no hand much less supervision over the construction work. In that view of the matter, I find there is no material on record to justify framing of charge under Section 304A IPC. However, the Revisional Court is right in recording that the Magistrate has no power to order a further investigation under Section 173(8) Cr.P.C., after he had taken cognizance of the offence and proceeded with the matter. In that view of the matter, I uphold the Order dated 25th February, 1995, of the metropolitan Magistrate to the effect that there is no material to frame charge and therefore, the accused stand discharged. I also uphold the order of the Additional Sessions Judge dated 16th November, 1999, to the effect that the Magistrate had no power to order further investigation under Section 173(8) Cr.P.C., after having taken cognizance of the offence and proceeded with it.

5. With this, CrI.Rev.P. 160/2000 stands disposed of. CrI.M.A.1256/2000 also stands disposed of.

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