

Gian Devi Vs. State (Nct of Delhi) and ors.

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Court : Delhi

Decided On : Jul-20-2001

Reported in : 96(2002)DLT817

Judge : R.S. Sodhi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 308 and 323; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 228(1)

Appeal No. : Crl. R. No. 224 of 2001

Appellant : Gian Devi

Respondent : State (Nct of Delhi) and ors.

Advocate for Def. : Reecha Kapur and Sudhir Nandrajog, Advs.

Advocate for Pet/Ap. : Rajpal Singh, Adv

Judgement :

ORDER

R.S. Sodhi, J.

1. This criminal revision has been filed with a prayer that order dated 8.2.1995 passed by the Additional Sessions Judge, Delhi, discharging the accused is bad, on the ground that the Additional Sessions Judge has held that the offence is not

made out under Sections 308/34, IPC, but that the offence committed is under Section 323, IPC. He could not have discharged the accused but have followed the procedure under Section 228-A, IPC.

2. Learned Counsel for respondent Nos. 2-3 submits that this is an order of 1995, which is sought to be challenged at this late stage and that too without even a prayer of condensation of delay. Be that as it may, I am of the view that once illegality is brought to the notice of the Court, it is the duty of the Court to set right the illegality and it can act suo motu thereon. There appears to be procedural irregularity, inasmuch as once the Additional Sessions Judge has held that a charge under Section 308, IPC cannot be made out but a charge under Section 323 could be made out. In that event the procedure as prescribed under Section 228(1)(a), IPC ought to have been followed. That having not being done, I set aside the order of the Additional Sessions Judge dated 8.2.1995 and remand the case to the learned Judge to proceed in accordance with law. The entire question is left open to the Judge to adjudicate, in accordance with law.

Criminal M. No. 1007/2001 in Crl. Rev. No. 224/2001

Criminal Misc. No. 1007/2001 seeks an correction to be made in order dated 20th July, 2001 to the effect that where Section 228-A, IPC has been mentioned, it ought to be Section 228(1)(a), Cr.P.C. Since the error is typographical error, the same may be corrected by inserting Section 228(1)(a) of the Code of Criminal Procedure instead of Section 228-A, IPC wherever this mistake has arisen in the judgment.

The application stands disposed of.

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