

State Vs. Usman Gani

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Court : Rajasthan

Decided On : Jun-25-1963

Reported in : 1964CriLJ254

Judge : V.P. Iyagi, J.

Appellant : State

Respondent : Usman Gani

Judgement :

ORDER

V.P. Iyagi, J.

1. This is a reference made by the learned uistrict Magistrate, Bikaner, recommending that the order discharge recorded in favour of the accused on 29-5-62 Dy the Additional Munsitt-Magistrate, First class, Bikaner may. be quashed and a direction be issued that the trial of the accused may proceed after the framing of a charge Under Sections 332/353, Indian Penal Code.

2. Kanhaiyaiai complainant is a senior teacher in the Sadul Multi-Purpose Higher Secondary school, Bikaner. Accused Usman Griani was a student of 10th Class in 1962 in trial school. On 12th May, 1962 when the result of the Annual Examination was to be announced the accuse is alleged to have gone to the complainant and threatened him that if the accused failed in Hindi which was his subject then no

would be given a beating and he would not reach his home safely. The result was announced that very day at 5 P.M. and the accused was declared as an unsuccessful candidate at the examination, when the complainant Kanhaiyaiaai left the school premises for not home, it is said that he was caught by the accused and another person and that he was given a beating with sticks by both of them. A report of the occurrence was lodged by the Head Master to the police station and after investigation a challan Under Section 332/353 I.P.C. against the accused was submitted in the Court of the Sub-divisional Magistrate, Bikaner City. Owing to the partial separation of the Judiciary from the executive the case was eventually transferred to the file of the Additional Munsiff-Magistrate First Class, Bikaner, who by his order dated 26th of September, 1952, discharged the accused of offences Under Section 332 353, Indian Penal Code, and ordered that the trial Under Section 323, Indian Penal Code may start. It is against this order of the learned Additional Munsiff-Magistrate First Class Bikaner that a revision was preferred by the complainant in the Court of the District Magistrate, Bikaner, who, after giving hearing to both the parties, has made me present reference.

3. The learned Deputy Government Advocate has supported the reference and it has been opposed by Mr. Ahmed Bux on behalf of Usman Giani.

4. The learned Munsiff-Magistrate recorded the discharge order on the ground that the Investigation Officer did not place on record any document or information to establish prima facie that at the time when the complainant was belaboured by the accused he was acting in the discharge of his official duty either as an Examiner or as an Announcer of the result, nor was there any circumstance placed by the prosecution to suggest that it was as a consequence of such an act of the complainant that the accused got enraged and inflicted injuries to the complainant any therefore in his opinion he could not find prima facie case to proceed with the trial for charges Under Section 332 I.P.C. In my opinion the learned Magistrate has fallen into error in arriving at the aforesaid conclusion. The learned Deputy Government Advocate has drawn my attention to certain documents produced by the prosecution before the trial Court, the copies whereof are alleged to have been supplied to the accused also, from the perusal of which it is quite clear that the complainant acted as an examiner of Hindi papers of the accused, and also

he acted as an-Announcer of the result, in view of the presence of such documents it was not open for the learned Magistrate to have felt that there was no information on the remora to warrant the prosecution of the accused Under Sections 332 and 353 I.P.C. These two documents are (1) Application of the complainant submitted to the Court of the Sub-Divisionar Magistrate City, Bikaner, on 14-5-62 alleging that Usman Utiani being son of a rich contractor is being sneaked by the police, and it is in this application that the fact of this announcing the result on 12th of May, 1962 was mentioned, (2) A letter from the Head Master, Government Multi-purpose Higher Secondary school, Bikaner to the Station House Officer, police Station, Kotgate, Bikaner, dated 16th May, 1962 in which it has been clearly mentioned that the examiner of the compulsory subject of Hindi in 10th Class in which the accused obtained only 10 marks out of 100, was the complainant Kannaiya Lal Upadhyaya. It so appears that while looking to the papers produced by the prosecution before the Court the learned Magistrate lost sight of these two documents which furnish information on the subject to fulfil the requirements of Sections 332 and 353 I.P.C.

At this stage, it may be noted, that the duty of the Court was to see whether there was a prima facie case made out by the prosecution to proceed with the trial or not, and it was not a stage where the Court could sit over the judgment to find out if the accused could be convicted Under Section 332/353 I.P.C. If the Court discovered any lacuna in the investigation which could be filled in at a later stage of the trial if the law permitted the prosecution to do so then it was not open to the Magistrate to record the order of discharge. The learned Counsel for the accused could not however point out to me any provision of the law to show that there is a bar for the prosecution to bring on record at a late stage of the trial this fact that the complainant was the examiner of the Hindi paper. In this aspect of the question, some how escaped the notice of the Investigating officer during investigation stage, which in this case cannot be said to be missing then it does not provide a ground to the Court to discharge the accused at the initial stage of the trial. I may add that the reasons given by the learned Additional Magistrate to record the order of discharge in favour of the accused at this stage is ex facie erroneous, and I am sure, if proper care had been taken by the learned Magistrate to carefully scrutinize the record, it could not have fallen in that error.

5. It may also be pointed out that the learned Magistrate has also erred in thinking that the complainant was not acting in the discharge of his duties as a public servant at the time when he was given a beating by the accused. Because he was going to his home from the school after completing his official duty. It may be noted that when framing a charge under Section 332 I.P.C. it is not essential that hurt should be caused to the public servant when he is actually discharging his official duty. If the hurt is given as a consequence of anything done by him in the discharge of his duties as a public servant then it was sufficient to attract the application of Section 332 I.P.C. My attention has been drawn to an authority of the Allahabad High Court in *Jageshwar Dayal v. State* AIR 1952 All 171 where it has been held that the offence under Section 332 I.P.C. can be committed not only when a person is assaulted while he is discharging public duty but also when he is assaulted in consequence of the discharge of his duty. The expression 'in consequence' as used in Section 332 I.P.C. and Section 353 I.P.C., in my opinion, includes the motive which actuates the accused to cause voluntary hurt or assault to a public servant. In the instant case, the prosecution has placed enough material to show that the motive for giving the beating to the complainant was that he tends to carry out the wishes of the accused and aid not given to the accused pass marks in the compulsory subject of Hindi in such circumstances, when there was sufficient material before the Court to find out a prima facie case against the accused under Section 332/353 I.P.C., the learned Magistrate should not have shut the trial under Section 332/353 I.P.C. at that stage. I am of the opinion that the facts of this case did not warrant the discharge order as made by the learned Magistrate at that stage.

6. I would, however, like to mention that the court should have taken greater degree of care to scrutinize the material placed before it by the prosecution and should not try to dispose of the matter in the light manner it has been done in this case.

7. The reference is allowed. The order of discharge recorded by the learned Additional Magistrate at Bikaner City dated 29-12-62 is quashed. The case is sent back to the file of the Additional Magistrate, Bikaner with a direction to take such further action in the matter as in law requires.

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