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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 wouiu. 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 Kanhaiyaiai left the school premises for not home, it is said that he was caught by the accused and on other person and that he was given a beating With sticks Dy 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-ufvlsionai 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 Munsitt-Magistrate nrsi 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 Munsiu-Magistrate First Class Bikaner that a revision -was preferred By their complainant In the Court of the District Magistrate, BiKaner, who, after giving hearing to both the parties, has made me present reference.

3. The learned1 Deputy Government Advocate has supported the reference and it has been opposed by Mr. Ahmed Bux on behalf of Usman Griani.

4. The learned Munsitt-Magistrate recorded the discharge order on the ground that the Investigation Officer did not apiece 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 hisopinion he could notfind prima faciecaseto proceed with the trial for charges Under Section 332 I.P.C. In my opinion the learned Magistrate has fallen In-to 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 txammer of Hindi papers1 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 or the complainant submitted to the Court of the Sub-Divisionar Magistrate City, Bikaner, on 14-5-B2 alleging mat accuses. Usman Utiani being son of a rich contractor is being sneaked by the police, and it is in this application that We taci 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, omaner to the Station Mouse Officer, police Station, Kotgate, Bmaner, dated lath 16th May, 1962 in which it has been clearly mentioned that the examiner of the compulsory subject of Hindi tori 10th Class in which the accused obtained only a marks out of 1UU, was the complainant Kannaiyaial Upaanaya. It so appears that while looking to the papers produced by the prosecution before the Court the learned Magistrate lost sighit 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 De 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 conviction Under Section 332/353 I.P.C. If the Court discovered any lacuna in the investigation which could be filled in at a later- state of the trial if the law permitted the prosecution to to so them it was not open to the Magistrate to record the order of discharge. learned Counsel for me accused could not however point out to me any provision of the law to snow that there is a bar for the prosecution to bring on record at a late stage of the trial this tact that me complainant was the examiner of the Hindi paper. It tutus 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 a the initial stage of the trial. I may add that the reasons given by the learned Additional Munsitt-Magistraie to record the order of discharge in favour of the accused at this stage is ex facie erroneous, and lam sure, if proper care had been taken by the learned Magistrate to carefully scrutinized me record, to could not have fallen in mat error.

5. it may also fie pointed out that the learned Magistrate has also erred in tninkmg that the complainant was not acting in the discharge of his duties as a public servant at the timer when he was given a beating by the accusea, Because he was going to his home from the school anger completing his official duty. It may De noted mat when framing a charge Under Section 332 I.P.C. it is not essential that We hurt should be caused to the public servant when he is actually discharging his official duty. It the outage Is given as a consequence of anything done by him in the discharge of his duties as public servant then it was succulent to attract the application of Section 332 I.P.C. my attention)' has been drawn to an authority of the Allanabau High court In Jageshwar Dayal v. State AIR 1952 Ail y' where it i 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 the a public servant. In the Instant case, the prosecution has placed enough material to show that the motive tor giving the beating to the complainant was that he tend to carry out the wishes of the accused and aid not giving to the accused pass marks in the compulsory subject of Hindi habit 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 l.p.c. at that stage. I am of the opinion that the facts of this case did not warrant the oiscnaige order as made by the learned - Moonset imagism rate at toss stage.

6. I would, however, like to mention that the usury should have taken greater degree of car to scrutinize me-material placed before it by the prosecution and snowier 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 Munsin-Magistrate it rate, biitaner City dated Z9-B-62 is quashed. The case is sent back to the tile of the Additional Munsitt-Magistrate, Bikaner won a direction to take such further action in the matter as in law requires.

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