

Mohammed Umar and ors. Vs. Mohammed Nisar

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Court : Rajasthan

Decided On : Jul-12-1982

Reported in : 1982WLN(UC)228

Judge : Kalyan Dutta Sharma, C.J.

Appeal No. : S.B. Criminal Revision No. 224 of 1982

Appellant : Mohammed Umar and ors.

Respondent : Mohammed Nisar

Disposition : Petition dismissed

Judgement :

Kalyan Dutta Sharma, C.J.

1. This is an application in revision filed by Mohammed Umar and 9 other petitioners against an order of the Judicial Magistrate No. 4, Jodhpur, dated March 6, 1982, by which process has been issued against all the petitioners for offences under Sections 452, 454, 428, 440, 147, 148 149 and 323, IPC in criminal complaint case No. 292 of 1982, and it was directed that their personal attendance in the court be enforced by issuingailable warrants in the amount of Rs. 1000/-.

2. The relevant facts giving rise to this revision petition may be briefly stated as follows: Mohammed Nisar, non-petitioner, filed a complaint against Mohammed

Umar and 9 other petitioners under Sections 452, 454, 428, 440 147, 148, 149 and 323, IPC. in the court of the Judicial Magistrate, No. 4, Jodhpur. it was alleged in the complaint that on January 11, 1982, at about 5 or 5 30 p. m. Mohammed Nishar complainant's son Swaleh, aged about 7 years, was playing outside his house. At that time a quarrel ensued between Swaleh and the son of Mohammed Umar petitioner. In the course of quarrel the son of Mohammed Umar, petitioner, beat the son of the complainant with fists and slaps As a result of the beating, the complainant's son began to weep. On hearing his cries, the complainant, who was sitting in a room of his house, came out and saw his son being beaten by the son of Mohammed Umar. The complainant, thereafter, approached Mohammed Umar and lodged a complaint with him about the incident of beating. Mohammed Umar, thereupon, exchanged hot words with the complainant, who, after some time, came back to his house. After a short while, when the complainant and his grand uncle were talking to each other, all the petitioners, having armed themselves with hockey-sticks and iron bars, came to the house of the complainant with an unlawful object to kill him and his grand uncle. The petitioners entered the house of the complaint and made a concerted attack on him. Mohammed Farook petitioner struck a blow on the head of the complainant with his hockey-stick, while Mohammed Yusuf, petitioner, inflicted a blow on his right hand. The other petitioners also began to beat the complainant with iron bars, slaps and fist blows. As a result of the beating, the complainant sustained multiple injuries on his body. While beating the complainant, the petitioners were saying that the former should be done away with. The complainant raised an outcry which attracted Abdul Hamid, Abdul Shakoor, Abdul Hakim Abdul Waheed & Abdul Sattar to the place of occurrence. These persons rescued the complainant. Mohammed Ramzan Patel, grand-uncle of the complainant, also intervened but he was beaten by the petitioners. The complainant & his grand-uncle were then taken to the upper storey of their house but the accused petitioners followed them and began to throw out goods and furniture of the complainant from his courtyard. Apprehending imminent danger to the life and limb of the complainant, and other members of the family, Ramzan Patel went to the rescue of the complainant and informed the police on telephone. Upon receiving information, the Flying Squad of police reached the spot without any delay and asked the complainant and his grand-

uncle to accompany them to the police for making a first information report about the incident. The complainant and his grand uncle reached police station, Sadar Bazar City in the vehicle of the Flying Squad and reported the matter to the police but the Station House Officer asked them to first go to the Medical Officer for examination of their injuries. The complainant and his grand-uncle were then taken to the Mahatma Gandhi Hospital, Jodhpur, for medical examination. The Doctor examined the injuries of the complainant and advised admission of the latter into the hospital. The complainant, accordingly, was admitted to the hospital and remained there from January 11 to January 22, 1982, both days inclusive. The Doctor X-rayed the head injury of the complainant also and advised the latter to get himself admitted into the Mental Hospital. The complainant was admitted into the Mental Hospital where he was treated for some time.

3. Thereafter, the complainant was arrested in a criminal case instituted against him on the report of Mohammed Umar and was later on sent to judicial lock-up. As the police did not register a criminal case against the petitioners, the complainant filed the present complaint against them.

4. The learned Judicial Magistrate No. 4, upon receiving the complaint, took cognizance, examined the complainant on March 6, 1982 and thereafter recorded the evidence of complainant's witness Mohammed Ramzan the very day under Section 202, Cr. P.C. After examining the complainant and his witness, the learned Judicial Magistrate considered the sufficiency of the grounds for proceeding and formed an opinion based on the evidence in the case that there was sufficient ground for issuing process within the meaning of Section 204, Cr. P.C. He accordingly issued process against all the petitioners under the aforesaid Sections of the Penal Code, as stated above.

5. Aggrieved by this order, the petitioners have come up in revision to this Court. I have carefully perused the complaint, the statement of the complainant and his witness and other relevant papers produced by the learned Counsel for the petitioners along with the revision petition and heard Mr. M.M. Singhvi, learned Counsel appearing on behalf of the petitioners and Mr. S.L. Mardia, who has put in appearance on behalf of the non-petitioners of his own accord. It has been

contended on behalf of the petitioners that the Judicial Magistrate committed an error in forming an opinion from the petition of complainant, sworn statement of the complainant and his witness that there was sufficient ground for proceeding in this case. It was further urged that the Judicial Magistrate did not consider the inordinate and unexplained delay in filing the complaint According to the learned Counsel for the petitioners, a false complaint was filed in this case by the complainant in order to escape from legal consequences of his act of causing serious injuries to Mohammad Umar petitioner and others, the very day, i.e. January 11, 1982. Mr. S.L. Mardia, on the other hand, contended that the acts as alleged in the complaint filed by Mohammed Nisar did disclose offences under Sections 452, 454, 440, 147, 148, 149 & 323, I. P. C. It was the duty of the learned Judicial Magistrate to proceed with the matter and to issue process against the petitioners and, therefore, the Judicial Magistrate was Justified in passing the order under revision.

6. I have considered the rival contentions mentioned above. At the outset, it may be observed that although the High Court has ample revisional powers to interfere with the proceeding under Section 204, Cr. P.C. and quash the same, yet it will exercise its powers only in cases of exceptional nature, e.g. where neither the complainant, nor statements of complainant and his witnesses disclose a prima-facie case against the accused. Where a Judicial Magistrate having followed the procedure laid down has exercised his discretion in a judicial manner in issuing a process, no interference by the High Court is justified merely because the Magistrate has failed to record reasons in his order for issuing process. In the present case I need not express any definite opinion on the Merits and demerits of the complaint case, suffice it would be to say that the acts imputed to all the petitioners in the complaint and in the statement of the complainant and his witness Mohammed Ramzan Patel do disclose sufficient grounds for issuing process against the petitioners Upon perusal of the complaint and the statement's of the complainant and his witness Mohammed Ramzan Patel, I have no hesitation in observing that opinion of the learned Judicial Magistrate that there is sufficient ground for issuing process within the meaning of Section 204, Cr. P.C. was based on evidence in the case. Hence, the contention of the learned Counsel for the petitioners before me that the learned Judicial Magistrate did not exercise

his discretion in a judicial manner in issuing process against all the petitioners under the aforesaid Sections of the Penal Code is not acceptable. Process is ordinarily issued against all the accused who are prima facie shown to have committed an offence. At this stage, the Judicial Magistrate, has formed an opinion from the petition of the complainant and the sworn statements of the complainant and his witness about the sufficiency of the grounds for proceeding. The learned Judicial Magistrate considered the sufficiency of the grounds for proceeding in a judicious manner and I may say correctly formed an opinion on the materials on the record that from the facts alleged in complaint and in the statements of the complainant and his witness prima-facie case is made out.

7. Consequently, I find no substantial grounds for interference with the impugned order and for quashing the same in exercise of the revisional powers. The revision petition has no force and is hereby dismissed.

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