

Dalpat Singh and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-06-2003

Reported in : 2004CriLJ1013; RLW2004(1)Raj241; 2003(4)WLC750

Judge : Sunil Kumar Garg, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 227 and 228; Indian Penal Code (IPC) - Sections 323, 341, 342, 366 and 511

Appeal No. : S.B. Criminal Revision Petition No. 154 of 1991

Appellant : Dalpat Singh and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : Shashi Shekhar Sharma, Adv.

Advocate for Pet/Ap. : Pradeep Shah, Adv.

Disposition : Revision dismissed

Judgement :

Garg, J.

1. This revision petition has been filed by the accused petitioner against the order dated 3.8.91 passed by the learned Sessions Judge, Sirohi in Sessions case No. 14/89 whereby the learned Sessions Judge had ordered framing of charges

against the accused petitioners for offence under Sections 366/511 and 341 I.P.C. and charges were framed against the accused petitioners accordingly.

2. It arises in the following circumstances:

i) The complainant Smt. Gaumti Amma lodged a written report before the Superintendent of Police, Sirohi on 25.10.88 stating that on 21.10.88 when she was returning to her home from the hospital at about 7-8 p.m. in the evening, a car No. RSN 4992 was standing near the School and accused petitioners Dalpat Singh, Mahesh Kumar, Jagdish and Laxman Meghwal were also standing there. The accused petitioner Dalpat Singh told other accused petitioners to put the complainant in the car and she was put in the car, but at that time, Chhatar Singh came there and he intervened in the matter, on which Dalpat gave a slap to Chhatar Singh and the prosecutrix tried to save herself from the clutches of the accused petitioners. In the meantime, her husband also came there and parked his motor-cycle before the car and saved herself and Chhatar Singh. In case, Chhatar Singh and her husband would not have come there, the accused petitioners would have first taken her in the car and thereafter would have committed rape with her.

ii) On that report, police registered a FIR No. 177/88 at the Police Station Sheoganj for offences under Sections 342 and 323 I.P.C.

iii) That the police after usual investigation submitted FR No. 40/88, but the learned Magistrate after giving notice to the complainant Smt. Gaumti through order dtd. 20.1.89 did not accept the FR and on the basis of material produced by the Police, the learned Magistrate took cognizance against the accused petitioners for offences under Sections 366/511, 341 and 323 I.P.C. Thereafter the case was committed to the court of Session and the learned Session Judge after hearing both the parties through order dtd. 3.8.91 found that a prima facie case for offences under Sections 366/511 and 341 I.P.C, was made out against the accused petitioners inter alia holding that the statement of prosecutrix Smt. Gaumti Amma was corroborated by the statements of her husband Dalpat Singh and Chhatar Singh and thus directed framing of charges against the accused petitioners for the offences under Sections 366/511 and 341 I.P.C. and thereafter

charges were framed against the accused petitioners accordingly.

3. Aggrieved from the order dated 3.8.91 passed by the learned Sessions Judge, Sirohi, this revision petition has been filed by the accused petitioners.

4. In this revision petition, following submissions have been raised by the learned counsel for the petitioners:

i) That prior to lodging of the FIR by Smt. Gaumti Amma on 25.10.88, the petitioners had lodged another report and hence, the present FIR was lodged by Smt. Gaumti Amma and her husband Dalpat Singh as a counter blast to the report lodged by the petitioners and on the report lodged by the petitioners, a case under Sections 107 and 116(3) Cr.P.C. was registered against the prosecutrix (Smt. Gaumti Amma) and her husband and, therefore present case lodged by the prosecutrix was false one and, therefore, framing of charges against the petitioners for the aforesaid offences is perse illegal.

ii) That even on merit, no prima facie for offence under Sections 366/511 I.P.C. is disclosed against the petitioners and from this point of view also, the impugned order dtd. 3.8.91 passed by the learned Sessions Judge Sirohi by which the charges for the aforesaid offences were ordered to be framed against the accused petitioners should be quashed and set aside.

5. On the other hand, the learned P.P. appearing for the State has submitted that the order dtd. 3.8.91 passed by the learned Sessions Judge, Sirohi is in accordance with law and no interference is called for in the impugned order dtd. 3.8.91 passed by the learned Sessions Judge, Sirohi.

6. I have heard both.

7. It may be stated here that there is no doubt that the police submitted FR No. 40/88 on the report of the prosecutrix Gaumti Amma and further more, there is also no doubt on the point that the FR No. 40/88 submitted by the police was not accepted by the learned Magistrate and through order dtd. 20.1.89, the learned Magistrate took cognizance against the petitioners for offences under Sections 366/511, 341 and 323 I.P.C.

8. There is also no dispute on the point that the accused petitioners did not prefer any revision against the order dtd. 20.1.89 by which the learned Magistrate did not accept the FR submitted by the police and took cognizance against the petitioners for offences under Sections 366/511, 341 and 323 I.P.C.

9. There is also no dispute on the point that thereafter the case was committed to the court of Sessions for the aforesaid offences.

10. There is also no dispute on the point that through order dtd. 3.8.91 passed by the learned Sessions Judge, Sirohi, learned Sessions Judge came to the conclusion that on the basis of evidence available on record, especially the statement of prosecutrix Smt. Gaumati Amma a prima facie case for offences under Sections 366/511 and 341 I.P.C. was made out against the accused petitioners and thus, he ordered framing of charges against the accused petitioners for offences under Sections 366/511 and 341 I.P.C.

11. There is also no dispute on the point that this Court through order dtd. 3.9.91 stayed the proceedings in the trial Court and therefore, the proceedings in the trial Court remained stayed since 3.9.91.

12. Before proceeding further, legal position as to when the accused can be discharged in Sessions case may be discussed here. In the sessions case, the accused can only be discharged as per provisions of Section 227 Cr.P.C. For convenience Section 227 Cr.P.C. is quoted hereunder:

'Discharge

227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing,'

13. Thus, the accused can be discharged only when there is no sufficient ground for proceeding against the accused.

14. All that is required at the stage of framing charge is to see whether a prima facie case regarding the commission of certain offences is made out or not. The question whether the charges will eventually stand proved or not can be determined only after evidence is recorded in the case by the trial Court.

15. Apart from this, the Hon'ble Supreme Court in a plethora of decisions has laid down guidelines for the lower court as well as for the High Court in what manner the orders of framing charges should be scrutinized and some of the decisions are as under:-

(1) State of Bihar v. Ramesh Singh (1)

(2) Supdt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja(2)

(3) Union of India v. Prafulla Kumar Samal (3)

(4) Radhey Shyam v. Kunj Behari (4)

(5) State of MP v. S.B. Johari and Ors. (5)

(6) State of Delhi v. Gaun Devi and Ors. (6)

(7) Smt. Om Wati v. State (7)

(8) Ram Kumar Laharia v. State of Madhya Pradesh (8)

16. The gist of the above cases may be summarised in the following manner:-

(1) That at the beginning and initial stage of the trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor is any weight to be attached to the probable defence of the accused.

(2) That the Judge is not obliged at that stage of the trial, to consider in any detail and weight in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

(3) That at that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in conviction.

(4) That presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not.

(5) That the standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing charges.

(6) That at that stage, the Court is to see whether there is prima facie case against the accused petitioner or not and evidence has to be looked into for a very limited purpose.

(7) That at the stage of framing charges, meticulous consideration of evidence is not required.

(8) That at that stage, Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused.

(9) The High Court's power to quash the charge should not be exercised except for strong reasons to hold that in the interest of justice and in order to avoid the abuse of the process of the court, the charge needed to be quashed.

(10) That High Court should not interfere at initial stage of framing of charges merely on hypothesis, imagination and far fetched reasons.

(11) That at the stage of charge, evidence could not be weighed.

17. Thus, if the above principles of law as laid down by the Hon'ble Supreme Court in catena of judgments are minutely observed, the submissions which have been raised by the learned counsel appearing for the accused petitioners are not at all to be appreciated at this stage because of the simple reason that at the stage of framing charges, only prima facie case has to be seen and from perusing the papers available on record, it cannot be said that at this stage, there is no

sufficient ground for proceeding against the accused petitioners.

18. In the present case, the prosecutrix Smt. Gaumti Amma has clearly stated in her report as well as in her statement recorded under Section 161 Cr.P.C. by the police that the accused petitioners put her in the car and had her husband and Chhatar Singh would not have come there, she would have been taken by the accused petitioners to the Farm with the intention of committing rape with her. This aspect of the statement of the prosecutrix Smt. Gaumti Amma cannot be doubted at this stage and for the purpose of seeing the prima facie case for offence under Section 366/511 I.P.C. the statement of prosecutrix Smt. Gaumati Amma which is corroborated by the statements of Chhatar Singh and her husband Dalpat Singh is sufficient. Therefore, the argument raised by the learned counsel for the petitioners that there is no merit for framing charges against the accused petitioners for offence under Section 366/511 I.P.C. stands rejected.

19. Not only this, it may be stated here that the accused petitioners had not challenged the order dtd. 20.1.89, by which the learned Magistrate did not accept the FR No. 40/88 submitted by the Police and the learned Magistrate took cognizance against the petitioners on the FR No. 40/88 of the Police Station Sheoganj for the offences under Sections 366/511, 341 and 323 I.P.C., meaning thereby that prima facie for proceeding against the accused petitioners for the aforesaid offences existed and the order dtd. 20.1.89 taking cognizance against the accused petitioners had attained finality. The scope of Section 227 and 228 Cr.P.C. is very limited on the point of framing of charges or discharging the accused petitioners and from this point of view the impugned order dtd. 3.8.91 passed by the learned Sessions Judge, Sirohi does not require any interference by this Court.

20. The argument of the learned counsel for the petitioners that since there was a cross case and, therefore, the accused petitioners should have been discharged only on that basis, cannot be accepted. This argument raised by the learned counsel for the petitioners can be said to be a defence of the accused, but it does not at all negative the statements of the prosecutrix and other witnesses at the stage of framing of charge.

21. Apart from this, revisional powers of the High Court should not be exercised unless there exists manifest illegality in the order or there is grave miscarriage of justice or there is glaring defect in the procedure or there is manifest error on the point of law etc. From, perusing the impugned order dated 3.8.91 passed by the learned Sessions Judge, Sirohi it appears that it does not suffer from any infirmity or irregularity. The learned Sessions Judge, Sirohi has assigned valid reasons in coming to the conclusion that a prima facie case for framing charges for offences under Sections 366/511 and 341 I.P.C. existed against the accused petitioners. In these circumstances, this Court does not want to interfere with the discretion exercised by the trial Court in passing the impugned order in revisional jurisdiction.

22. It may also be stated here that no doubt this Court through order dtd. 3.9.91 stayed the proceedings in the trial Court but the accused petitioners have succeeded in protracting commencements of trial against them for over a decade.

23. For the reasons mentioned above, no interference is called for in the order dtd. 3.8.91 passed by the learned Sessions Judge, Sirohi and this revision petition is liable to be dismissed.

Accordingly, this revision petition is dismissed and the order dated 3.8.91 passed by the learned Sessions Judge, Sirohi in Sessions case No. 14/89 is affirmed.

The stay order granted by this Court on 3.9.91 stands vacated.

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