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Court : Rajasthan

Decided On : Jul-26-1988

Reported in : 1988WLN(UC)356

Judge : J.R. Chopra, J.

Appeal No. : S.B. Cr. Revision Petition No. 310 of 1987

Appellant : Mool Chand

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

J.R. Chopra, J.

1.This revision petition has been filed against the order of the learned Sessions Judge, Balotra dated September 11, 1987 whereby the learned Sessions Judge has allowed the application of the accused non-petitioners to take certain documents on record and to consider them before charge and thereafter, by the same order, he has refused to frame the charge under Section 390 IPC. How ever, he has held that the charges can be framed about all other offences but they are not exclusively triable by the Court of Sessions.

2. The facts necessary to be noticed for the disposal of this revision briefly stated are: that the petitioner Moolchand filed a complaint at Police Station Balotra on 2-7-1987 at about 4.40 a.m. to this effect that the western portion of Khasra No. 616 which belonged to Baddrudin has been sold to one Khinvraj son of Dhingarmal Oswal resident of Balotra. It is alleged that Khinvraj constructed one Godown and two rooms on this land and thereafter he let them out to complainant Moolchand on 18-6-1986 on monthly payment of rent Rs. 250/-. It is alleged that the complainant Moolchand started Readymade Garment business in that apartment under the name and style of 'Maya Garments'. He purchased three sewing machines, employed certain persons to perform the job of preparation of garments. It is alleged that the complainant purchased certain clothes and 1500 peticoats were prepared by the Tailors and some cloth worth Rs. 30,000/- was lying in the apartment. It is further alleged that on 2-7-1986 at about 4 a.m. the accused-non-petitioners Nos. 2 to 7 came there in a Jonga Jeep in order to evict the complainant from that premises as also to remove of the goods lying in that apartment. They forcibly entered into these premises, pushed out all the persons who were sleeping there and took into possession the entire goods lying there, put all these goods in the Jonga jeep and threw the remaining goods which could not be taken away in the Jonga outside the boundary of that plot. It is alleged that accused non-petitioners Satish Kumar and Mahendra Kumar inflicted sharp weapon injuries to Hiraram. They also tried to snatch his golden Gokharu but they could not be successful and so, they snatched his H.M.T watch and took it away with them.

3. On the basis of this report, the police registered a case against the accused-non-petitioners for the offences under Sections 147, 148, 149, 323, 458, and 390 IPC and after investigation, the challan under Sections 395, 458, 147, 148, 149 and 323, IPC was filed against the accused persons in the court of the learned Addl. Chief Judicial Magistrate, Balotra, who committed the case for trial to the court of learned Sessions Judge, Balotra.

4. Before the learned Sessions.Judge, an application was moved that certain documents which the accused-persons have filed before the Investigating Officer have not been taken on record because they have not been submitted with the

challan. It was, therefore, prayed that these documents which go at the root of the matter may be taken on record and it may then be considered whether a charge under Section 390, IPC is made out against the accused-petitioners or not? The learned Sessions Judge, relying on a decision of this Court in L.K. Sharma v. The State of Rajasthan 1987 Raj. Criminal Cases 311 accepted that application and considered those documents before framing of the charge. It has been held by a learned Single Judge of this Court in L.K. Sharma's case (supra) that a document filed by one of the parties can be used at the time of hearing arguments for framing charge. It was further held that the learned trial court wrongly interpreted Sections 227 and 228, Cr. PC and has wrongly held that the document can be got admitted only after framing of the charges.

5. Mr. R.K. Mirdha, the learned Counsel appearing for the petitioner has drawn my attention to a decision of the Bombay High Court in S.N. Hadke v. State of Maharashtra (1985 Cr. LJ 1642] where in it has been observed:

It is in the context of this situation that the terminology in Sections 227 and 228 is to be examined. In other words, when it is mentioned in those provisions that the Sessions Court has to consider the record of the case and the document submitted therewith, it is referable only to that record and documents which is first lodged by the police to the Magistrate and then transmitted by the Magistrate to the court of Sessions forming a record of the case with the documents accompanying the said record. In other words, the documents referred to in Section 227 be hors the word 'Record' have got to be a restricted meaning referable only to those document which find mention in Sections 173, 207 and 209 of the Code.

Mr. Mirdha has submitted that the observations of the Bombay High Court in S.N. Hadke's case (supra) are very pertinent and more convincing and, there fore,the learned lower court ought to have overlooked the observations of this Court in L.K. Sharma's case (supra) and if it could not do so, this should be done by this Court. In deciding a revision petition, this Court is only required to find out whether the learned lower court has acted illegally or with material irregularity. It is pertinent to note that all the subordinate courts of Rajasthan are bound by the decision given

by this Court in a given case and they can safely overlook the decisions of all other High Courts as they have to and are duty bound to follow the decision of this Court. Looking to the facts and circumstances of the case, I can safely say that is not the stage where this Court should embark upon an enquiry whether the ratio of the decision in L. K. Sharma's case (supra) is direct or not? In this case, I am only required to see whether the learned lower court has committed any illegality in admitting the documents before he framed the charges. In the facts and circumstances of this case and in view of the decision of this Court in L. K. Shatma's case (supra). I feel that the learned lower court has not committed any illegality in admitting the documents before framing the charge.

6 It was next contended by Mr. R.K. Mirdha, the learned Counsel appearing for the petitioner that even if it is held that the documents could have been taken on record before framing the charge, the learned lower court is required to see whether there is sufficient material on record for framing a particular charge. The court is not required to examine the case with a view as to whether the conviction is possible or probable but it is required to examine the case with an angle as to whether from the material on record, prima facie, charge is made out against the accused or not? In this respect, reliance was placed on the State of Rajasthan v. Jagmal and Ors. 1983: RCC 400; Yusuf Ali v. State 1987 Cr. LR Raj 145 and Joseph v. State of Kerala 1988 Cr. LJ (Kerala) 491. In all these authorities, it has been held that a detailed consideration of various items of evidence on which the prosecution relies is not necessary at the time of framing charge. If the acts attributed to the accused can be comprehended within the ambit of a particular section, the Court will be perfectly justified in framing a charge against the accused under that section. I entirely agree with Mr. Mirdha that it is not, the duty of the Court at the time of framing charge to embark upon a detailed enquiry about the fact as to whether the conviction on a particular charge will be possible or not but the Court is only required to find out whether from the material on record and further looking to the allegations levelled against the accused, the charge of a particular offence can be framed against the accused or not? At this stage, I must observe that at the time of framing of charge against the accused, the learned lower Court has considered the material on record and has kept in view the ingredients of the offence. The offence of 'Robbery' has been defined in Section

390 IPC as under:

Section 390--Robbery--In all robbery there is either theft or extortion.

When theft is robbery--Theft is 'robbery' if, in order to the committing of the theft, or in committing the theft or in carrying away or attempting to carry away property obtained by the theft, the offender, for that and, voluntarily causes or attempts to cause to any person death or hurt, or, wrongful restrain, or fear of instant death or of instant hurt or of instant wrongful restraint;

When extortion is robbery--Extortion is 'robbery' if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death or instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear induces the person so put in fear then and there to deliver up the thing extorted;

Explanation: The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, or instant hurt or of instant wrongful restraint.

In this case, the allegation against the accused persons is that they went to the apartment of the complainant firstly in order to evict him from that premises and secondly in order to commit theft of the property, lying there in. I have gone through the statements of the witnesses recorded in this case. It is true that certain injuries have been received by Hiraram which are simple in nature but none of the witnesses examined by the prosecution have stated that they offered any resistance to the accused party when they were trying to commit theft of the property lying in that apartment or when they were taking away the property lying there. It is nobody's case that he was beaten by the accused-party when he resisted their attempt to commit theft. Rather their statements are that they were frightened and so, they were pushed out of the premises and accused persons took away the property in their Janga and when it was filled to its capacity, the remaining goods were left outside the disputed area, which was sold to Khinvraj. If some body has tried to snatch the ear-rings of Hiraram or has inflicted any injury to him while snatching his watch, charge under Section 392 IPC can be framed

against that particular person. In the facts and circumstances of this case, it is nowhere borne out from the record of the case that force was used by the accused-persons at the time of committing theft or taking away the property lying in the premises and obtained by committing its theft. Rather, it appears that the intention of the accused persons was to evict the complainant from that premises because their case is that they have purchased this property from Badruddin and Moolchand has been wrongly put into the possession of this property under the garb that Badrudin has sold this property to Shri Khinv Raj. It is true that a civil suit has been filed by Deendayal against Khinvraj but that hardly matters. From the evidence on record, it is prima facie established that this particular property was in possession of complainant Moolchand and it was his property (goods) which was taken away from that place in order to evict him. Mohanlal and Tulchha Ram have categorically stated that this land has been wrongly purchased by Khinvraj and, therefore, they have come to evict him. If the intention of the accused-persons was to commit robbery or theft they would not have left certain property outside the area of the disputed property and the property which was carried in the Jonga could not have been found lying in the hutment of Gordhan Purohit unattended. I, therefore, feel that the learned lower court was perfectly justified in holding that the intention of the accused-persons was not to commit robbery but their intention was to evict the complainant from that premises and removing the property of the complainant lying in those premises without his consent. Thus, the accused-non-petitioners have rightly been discharged of the offence under Section 390 IPC by the learned lower court.

7. Mr. R.K. Mirdha, the learned Counsel appearing for the petitioner has drawn my attention to certain authorities to show that in case of discharge, the complainant has right to file a revision. I need not discuss those authorities as I have already considered his submissions made against the discharge order and I am of the view that this revision is not fit to be accepted.

8. In the result, I find no force in this revision petition and it is hereby, dismissed summarily.