

State of Karnataka Vs. K. Ganapathi Bhat

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Court : Karnataka

Decided On : Dec-20-2005

Judge : N.S. Veerabhadraiah, J.

Acts : Negotiable Instruments Act - Sections 138; [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 326 and 448; Code of Criminal Procedure (CrPC) , 1974 - Sections 357 and 421(1)

Appeal No. : Cri. Revn. Petn. No. 340 of 2004

Appellant : State of Karnataka

Respondent : K. Ganapathi Bhat

Advocate for Def. : S.J. Chouta, Adv.

Advocate for Pet/Ap. : C. Rmakrishna, Govt. Pleader

Disposition : Petition allowed

Judgement :

ORDER

N.S. Veerabhadraiah, J.

1. This revision is by the State being aggrieved of the order passed in S.C. No. 34/2003 by the II Addl. Sessions Judge, D. K., Mangalore recording a finding that

there are no sufficient grounds to frame charges for the offence under Section 307, IPC.

2. The brief facts of the case are as follows:

The accused Sri K. Ganapathi Bhat was charge sheeted for the offence under Sections 448, 326 and 307, IPC in Crime No. 167/02 of Bantwal Town Police Station alleging that the accused Sri K. Ganapathi Bhat jumped inside the compound wall of the house of Dr. Prabhakar Bhat. It was seen by Mahabala Poojary as well as Nonayya Poojary. Suspecting the accused, they followed towards the house of Dr. Prabhakar Bhat. When the door was opened by Dr. Prabhakar Bhat's mother, the accused forcefully entered the house. At the same time, when Mahabala Poojary entered the house, the accused stabbed with knife causing as many as 12 incised wounds whereas, the mother of Dr. Prabhakar Bhat also suffered with fracture over her left femur. After completion of the investigation, charge sheet was filed for the offence under Sections 448, 326 and 307, IPC. The learned CJM committed the case to the Court of Session. On committal of the case, it was registered in S. C. No. 34/2003. After hearing the accused and the prosecution, the learned Sessions Judge recorded a finding that the offence does not fall under Section 307, IPC. Accordingly, remitted the matter to the learned JMFC, Bantwal to frame charges for the offence under Sections 448, and 326, IPC and proceed in accordance with law. It is this order which is questioned in the present revision.

3. The learned Government Pleader vehemently contended that it is clear from the wound certificate that Mahabala Poojary has suffered with as many as 12 incised wounds. This shows that the accused assaulted him only with an intention to commit an offence punishable under Section 307, IPC. When these are sufficient materials, there was no reason for the learned Sessions Judge to come to a conclusion that there are no ingredients for the offence under Section 307, IPC that too, at the preliminary stage. Therefore, prayed to set aside the impugned order and to direct the Sessions Court to frame charges for the c under Section 307, IPC.

4. The learned Counsel Sri S. J. Chouta justified the impugned order contending that though the offence falls under Section 326, IPC, there are no materials to gather that there was any intention to constitute an offence under Section 307, IPC. Therefore prayed to dismiss the revision.

5. In the light of the submissions, the point for consideration that arises is:

Whether the order of the learned Sessions Judge suffers from infirmities? If so, liable to be interfered with?

6. As could be seen from the materials on record, it is clear that the accused Sri K. Ganapathi Bhat when entered the house of Dr. Prabhakar Bhat, Mahabala Poojary also entered. Then the accused by bolting from inside stabbed Mahabala Poojary and attempted to commit the offence. It is further seen from the medical certificate that there are severe incised wounds. That apart, the mother of Dr. Prabhakar Bhat had also suffered with fracture injuries. These are all the matters to be considered at the time of the trial as to whether the accused has committed an offence punishable under Section 326 or 307 IPC. But not at the stage of framing of charges.

7. In the present case, the Court has to see as to whether there is a prima facie case or not. That apart, it is not open for the Sessions Court to scrutinise the statements of the witnesses. Thereby, it is clear that the learned Sessions Judge has erred in recording a finding that the offence does not fall under Section 307, IPC which is nothing but perverse.

8. For the foregoing reasons, the revision is allowed. The records are ordered to be transmitted to the Court of the learned Sessions Judge and the same be taken on its original file in S. C. No. 34/2003 and further, the Court after framing charges for the offence under Sections 448, 326 and 307, IPC, proceed to dispose of the matter in accordance with law expeditiously.