

Ashok Kumar Vs. the State

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Court : Jammu and Kashmir

Decided On : Oct-07-1989

Reported in : 1989CriLJ2547

Judge : R.P. Sethi, J.

Appellant : Ashok Kumar

Respondent : The State

Advocate for Pet/Ap. : Mr. Krishen Kumar

Judgement :

ORDER

R.P. Sethi, J.

1. The accused-petitioner, a domestic servant of the deceased is alleged to have fired a shot with a muzzled gun on 19-5-1987 as a result of which Chanchal Singh died whereafter the accused concealed his body in an iron box and kept it under room After removing Rs. 1300/- and other articles belonging to the deceased. On appreciation of the evidence led in the case, the trial court prima facie held the petitioner guilty and charged him for offences punishable under Section 302/381, I.P.C. The order of charge has been challenged in this petition mainly on the ground that there was no sufficient evidence to justify the framing of charge against the petitioner.

2. I have heard the learned Counsel for the parties and perused the record.

3. Sub-section (4)(a) was inserted in Section 435 of the Cr. P.C. vide Act No. XXXVII of 1978 which provides that the powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. This Court in S.K. Mahajan v. Municipality reported in 1982 Kash LJ 1 : 1982 Cri LJ 646 at p. 653 held:

It, therefore, follows, that an order of framing a charge cannot be assailed in revision under Section 439 read with Section 435 on the ground that it is based upon mis-appreciation, insufficiency or even total absence of evidence, for the order in such a case would be correlated to the main controversy viz whether or not the accused has committed the offence and, would be, therefore, an interlocutory order to which the bar of Sub-section (4)(a) will be clearly attracted.

In the instant case the order framing the charge has been challenged on the grounds of insufficiency and non-existence of material evidence connecting the accused with the commission of the crime which in law is deemed to be an interlocutory order not subject to revisional jurisdiction of this i Court.

4. Mr. Krishen Kumar the learned Counsel appearing for the petitioner has however submitted that the inherent powers of this Court under Section 561-A of the Cr. P.C. are independant and without restrains. It is submitted that this Court in exercise of its inherent powers can set aside the order of charge on the basis of the submissions made in the position. The Supreme Court in Madhu Limiye v. State of Maharashtra : 1978 CriLJ165 had held (Para 10):

The purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay in introducing Sub-section (2) to Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercising of the revisional power in relation to any interlocutory order, on the

other the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 428, however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, 'shall be deemed to limit or affect the inherent powers of the High Court'. The bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code, for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of a interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings out a situation which is an abuse of the process of the Court or for the purposes of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceedings initiated illegally, vexatiously or has been without jurisdiction.

It was further held in Madhu Limaye case 1978 Cri LJ 165 (SC) (supra) that following principles be kept in mind for exercise of inherent power of the High Court in proceedings under Section 561-A, Cr. P.C. (Para 8):

1. That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

This court in S. K. Mahajan (1982 Cri LJ 646) (J & K.) (supra) had held (at p. 652):

1. That an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;

2. That the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order.

5. It follows, therefore, that the revision petition cannot be clocked with a petition under Section 561-A, Cr. P. C, nor the proceedings be a substitute for such petition. It has also been specifically held that the inherent power can be exercised only where the proceedings initiated were illegal, vexatious and without jurisdiction but not otherwise. The label of the petition is not material for the exercise of the inherent power. The present revision petition seeking to quash the order of charge which was revisable prior to amendment cannot be interfered with in exercise of the inherent powers of this Court under Section 561-A, Cr. P.C. because proceedings are not alleged to be illegal, vexatious or without jurisdiction.

6. The learned Counsel appearing for the petitioner has then tried to refer to the evidence in the case to urge that no prima facie case was made out against the petitioner justifying the framing of the charge. It may be pointed out that at the beginning and at the initial stage of the framing of the charge, the truth, veracity and effect of the evidence which prosecution proposes to adduce are not required to be meticulously judged nor any weight to be attached to the probable defence of the accused. At that stage the court is not to see whether there is sufficient ground for conviction of the accused and whether the trial is sure to end in his conviction. The test to be applied at the time of framing of the charge as laid by the Supreme Court in *State of Bihar v. Ramesh Singh* : 1977 CriLJ1606 :

It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if approved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. 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 his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion, which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not.

7. In view of what has been stated hereinabove, this petition is mis-conceived and is accordingly dismissed. The record of the trial court shall be immediately sent back, where the parties are directed to appear on 28-10-1989.

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