

Dileep and anr. Vs. the State

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Court : Uttaranchal

Decided On : Feb-19-2010

Judge : Dharam Veer, J.

Appellant : Dileep and anr.

Respondent : The State

Advocate for Pet/Ap. : Sri. Arvind Vashistha, Sri. L.K. Tiwari

Disposition : Appeal allowed

Judgement :

Dharam Veer, J.

1. This appeal, preferred by the appellant under Section 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr PC), is directed against the judgment and order dated 6.5.1997 passed by II Additional Sessions Judge, Dehradun in Special Sessions Trial No. 12 of 1994, State v. Dileep and Anr. whereby the accused appellants have been convicted under Section 452/323/34 of the Indian Penal Code, 1860 (for short, IPC) and in place of sentence, the accused appellants were directed to be released on probation for a period of two years on furnishing a personal bond of Rs. 5000/- and two sureties of similar amount by each of the accused appellants before the Probation Officer and it was further directed that if the accused appellants would fail to keep the good conduct, they

shall be sentenced by the court.

2. During the pendency of this appeal, Sri Arvind Vashistha, learned Counsel for the appellant No. 2 Ram Gopal @ Gopal filed a Criminal Miscellaneous Application No. 810/2006 stating therein that the appellant No. 2 had completed his probation of sentence and, therefore, he prayed that he did not want to press the appeal in respect of appellant No. 2 Ram Gopal @ Gopal. Accordingly, this Court vide order dated 23.5.2006 dismissed the appeal of appellant No. 2 Ram Gopal @ Gopal. However, Sri L.K. Tiwari, learned Counsel for the appellant No. 1 Dileep stated that he would argue the appeal in respect of appellant No. 1 on merit.

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

4. In brief, the prosecution case is that on 29.3.1994 at 9.50 pm, PW3 Chaman Lal lodged a report with PS Doiwala, Dehradun with the averments that Ram Gopal @ Gopal was having a roving eye on the girls of his village Madhowala and, therefore, he used to wander behind the girls of his village. The complainant prohibited him from doing so. On 29.3.1994 at about 7.45 pm, when the complainant was at his house, Ram Gopal @ Gopal along with accused appellant No. 1 Dileep and two other people, intruded in his house and threatened him that they would teach him a lesson today. On this, the complainant raised the alarm and then Multan Singh (PW2), Ram Prasad and many other villagers came at the house of the complainant. Then they committed marpit with the villagers with the lathis. When they realized that they would be encircled, they ran away from the place of occurrence. When they were being chased by the villagers, they shot a fire in the air and sneaked into the forest. Multan Singh (PW2) and Gulab Singh (PW1) received injuries in the said incident. They also threatened the complainant for his life while leaving the place of occurrence.

5. On the basis of the aforesaid report Ex. Ka-1, Head Constable Satya Narayan prepared the chick FIR Ex. Ka-7. Investigation of this case was entrusted to SI Pramod Kumar Singh (PW6). The injured Multan Singh and Gulab Singh were medically examined on 30.3.1994 at 12 am and 12.30 am respectively by Dr. JP

Joshi (PW5), who prepared the medical reports Ex. Ka-3 and Ka-4 respectively. They were also x-rayed by PW4 Suresh Mehta, Sr. Radiologist, who also prepared the X-ray report Ex. Ka-2. During the course of investigation, the I.O. inspected the place of occurrence and prepared the site plan Ex. Ka-5. During the course of investigation, the I.O. recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-6 against the accused appellants under Section 452/325 IPC and Section 3(10) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the Act).

6. Thereafter on 25.7.1994, Special Judge/II Additional Sessions Judge, Dehradun framed the charges against the accused appellants under Section 452 read with Section 34 IPC, Section 323 read with Section 34 IPC, Section 325 read with Section 34 IPC and Section 3(1)(x) of the Act. The charges were read over and explained to each of the accused appellants, who pleaded not guilty and claimed to be tried.

7. To prove its case, the prosecution has examined PW1 Gulab Singh, the injured witness; PW2 Multan Singh, another injured witness; PW3 Chaman Lal, the complainant; PW4 Suresh Mehta, Sr. Radiologist who conducted the X-ray on the injured witnesses and prepared the X-ray report Ex. Ka-2; PW5 JP Joshi, who medically examined the injured witnesses and prepared the medical report Ex. Ka-3 & Ka-4 and PW6 SI Pramod Kumar Singh, the I.O. of the case.

8. Thereafter, the statements of the accused appellants were recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to each of the accused appellants in question form, who denied the allegations made against them. However, they did not produce any oral or documentary evidence in defence.

9. After appreciating the evidence on record and after hearing learned Counsel for the parties, the learned II Additional Sessions Judge, Dehradun vide his judgment and order dated 6.5.1997 convicted and sentenced the accused appellants as mentioned above. Feeling aggrieved by the aforesaid judgment and order, the present appeal has been preferred.

10. Sri L.K. Tiwari, learned Counsel for the accused appellant Dileep argued that the chargesheet in the present case was filed in the court of Special Judge/II Additional Sessions Judge, Dehradun on 6.6.1994 and the Special Court i.e. Special Judge/II Additional Sessions Judge, Dehradun for the offence under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the offence under Section 452 and 325 IPC, could not take cognizance of offence straight away without the case being committed to the court. He further submitted that the charge sheet cannot straight away be laid before Special Court. I find force in the arguments raised by the learned Counsel for the accused appellant Dileep for the reasons to be stated hereinafter.

11. As regard the jurisdiction, it is necessary to refer Section 14 of the Act which is as follows:

14. Special Court- For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

From the above-said provision, it can be seen that the Special Court is constituted by the Act with concurrence with the Chief Justice of the High Court by a Notification with an object of speedy trial of the offences under the Act.

12. A perusal of the Act does not show any procedure prescribed for trial of the offences under the Act, and also does not specifically bar the procedure prescribed under the Cr.P.C. No doubt the language employed in the above Section shows that it is a Court of Session.

13. The relevant provisions of the Cr.P.C are in Section 173, which deals with report of the Police Officer after completion of investigation. Section 190 Cr.P.C. deals with the procedure of taking into cognizance of the offence by the Magistrate and after taking cognizance of the offence, the procedure prescribed under Sections 207 and 209 of the Cr.P.C. has to be followed. At this juncture, it is relevant to extract the provisions under Sections 193 and 209 of Cr.P.C.:

193. Cognizance of offences by Courts of Session: Except as otherwise provided by this Code or by any other law for the time being in force, no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

209. Commitment of case to Court of Sessions when offence is triable exclusively by it- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall-

(a) commit the case to the Court of Sessions;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Sessions.

14. A reading of Section 193 shows that a Court of Sessions is barred from taking into cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate and Section 209 of the Cr.P.C expressly provides that if it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, such cases shall be committed to a Court of Sessions.

15. A combined reading of these two provisions only goes to show that the Magistrate Court is the initial Court to take cognizance of any offence including that of an offence exclusively triable by a Court of Sessions. It is for the Magistrate to decide whether the offence is exclusively triable by the Court of Sessions or not. In other words, if the offence falls under the category of offences which are exclusively triable by a Court of Sessions, the Magistrate has to commit the same to the Court of Sessions for trial. It further follows that the Court of Sessions cannot directly take into cognizance of any offence unless provided by the Cr.P.C or by any other law. After such committal, the procedure for trial prescribed under

Chapter XVIII of the Cr.P.C has to be followed.

16. Now, it has to be seen whether the Special Court constituted under the Act has made any express provision with regard to taking into cognizance of an offence by the Special Court without there being any committal proceeding by the Magistrate as provided under Sections 193 and 209 of the Cr.P.C.

17. As already observed, except Section 14 of the Act, no other express provision is available under the Act to try the offence under the Act by taking into cognizance straight away. Further no procedure to try any offence by Special Court is prescribed under the Act equivalent to that of the procedure prescribed under Chapter XVIII of the Cr.P.C, nor there is any specific provision expressly excluding the procedure prescribed under Sections 193 and 209 of the Cr.P.C.

18. Learned Counsel for the accused appellant referred to a judgment of Hon'ble Supreme Court delivered in the case of Moly and Anr. v. State of Kerala reported in 2004 SCC (Cri.) 1348 and relied on para 16 of the said judgment which reads as under:

16. Hence, we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act. We are reiterating the view taken by this Court in Gangula Ashok v. State of A.P. and in Vidhyadharan v. State of Kerala in above terms with which we are in respectful agreement. The Sessions Court in the case at hand, undisputedly has acted as one of original jurisdiction, and the requirements of Section 193 were not met.

19. Therefore, in the light of the detailed discussion made in the judgment referred to above and the relevant provisions of the Act and the Cr.P.C. as well as in view of the aforesaid judgment of Hon'ble Supreme Court in the case of Moly and Anr. (Supra), I am of the considered view that Special Court could not have tried the offence under the Act by directly taking into cognizance of the offence deviating from the procedure prescribed under the Cr.P.C and thereby vitiate the trial of the

offence by the Special Court rendering such trial as without jurisdiction and consequently any judgment rendered by such Court without jurisdiction, would not be a judgment in the eye of law.

20. For the reasons recorded above, the appeal is allowed. The judgment and order dated 6.5.1997 passed by II Additional Sessions Judge, Dehradun in Special Sessions Trial No. 12/1994, State v. Dileep and Anr., is hereby set aside only in respect of accused appellant Dileep. The conviction and sentence awarded to him as discussed above is hereby also set aside. Appeal in respect of accused appellant No. 2 Ram Gopal @ Gopal has already been dismissed being not pressed vide order dated 23.5.2006 passed by this Court.

21. A copy of this judgment be sent to the trial court for its compliance. Let the lower court record be sent back.

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