

Samaya Singh and Others. Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-22-2010

Judge : S.C. Agarwal, J.

Appeal No. : Criminal Misc. Writ Petition No.20475 of 2010

Appellant : Samaya Singh and Others.

Respondent : State of U.P. and Others

Advocate for Def. : Sri. Santosh Kumar Singh

Advocate for Pet/Ap. : Sri. B.B. Paul

Judgement :

1. This writ petition under Article 226 of the Constitution of India has been filed with a prayer to issue writ, order or direction in the nature of certiorari quashing the order dated 19.10.2010 passed by Judicial Magistrate, Mathura in criminal case no.95 of 2003 State v. Samaya Singh & others under sections 323, 504, 308 IPC, Police Station Naujheel, District Mathura, whereby the discharge application filed by the petitioners was rejected.

2. Heard Sri B.B. Paul, learned counsel for the petitioners, learned A.G.A. for respondent no.1 and Sri Santosh Kumar Singh, learned counsel for respondent no.4.

3. Respondents no.2 & 3 are formal parties.

4. The facts of the case are that on 16.10.2002, NCR No.67 of 2002 was lodged by respondent no.4 against the three petitioners Samaya Singh, Smt. Rajesh and Pappu as well as one Navla son of Pyarey alleging therein that on 16.10.2002 at 17:30 hours in village Chhinparai, Police Station Naujheel, District Mathura. The four accused assaulted the complainant Sreepal and his father Atar Singh causing them injuries. After investigation, a charge sheet under sections 323, 504 IPC was filed against the petitioners. Subsequently, a fresh charge sheet under section 308 IPC was submitted on 21.1.2003 by the police and cognizance was taken by the Magistrate. The order taking cognizance under section 308 IPC was challenged by the petitioners and co-accused Navla by means of Application under section 482 Cr.P.C. No.2558 of 2003, which was disposed of by order dated 28.1.2009 with a direction to move a discharge application before the Court concerned through counsel and expeditious disposal of the said application. In pursuance of order dated 28.1.2009 passed by this Court, the petitioners filed an application for discharge through counsel before the Magistrate, which was rejected by the Magistrate vide order dated 18.8.2009 on the ground that the case was triable by the Court of Sessions and Magistrate had no jurisdiction to review the summoning order or to discharge and accused. The said order was challenged by the petitioners before this Court by means of Criminal Misc. Writ Petition No.17567 of 2009, which was allowed. The order dated 18.8.2009 passed by Judicial Magistrate, Mathura was set-aside with a direction to the petitioners to file a fresh application before the Magistrate and learned Magistrate was directed to dispose of the same within a month. Accordingly, a fresh application for discharge was moved on behalf of the petitioners on 10.9.2009, which was rejected by the impugned order dated 19.10.2010. Hence this petition.

5. Learned counsel for the petitioners submitted that once the police decided to submit charge sheet under sections 323, 504 IPC specifically mentioning that offence under section 308 IPC was not made out, the police was not competent to file a fresh charge sheet or supplementary charge sheet under section 308 IPC. It was further submitted that both the injured were allegedly medically examined by Dr. Ravi Sharma, who was not competent to conduct medico legal examination of

the injured and was under a cloud and the injury reports prepared by him are suspicious and forged documents and could not have been relied on by the Magistrate. Learned counsel elaborated the arguments by stating that Dr. Ravi Sharma had earlier prepared forged medical certificates of Sukhram on 28.6.2001 and one Smt. Rukmani Devi on 14.7.2001. The then Chief Medical Officer, Mathura vide order dated 26.7.2001 (annexure no. 4 to the writ petition), finding the two medico legal certificates to be doubtful, divested Dr. Ravi Sharma from doing medico legal work with immediate effect. It was further submitted that Dr. J.P. Sharma, examined as P.W.1 in criminal case no.1 of 2003 Samaya Singh v. Atar Singh under sections 323, 203, 420, 406, 504, 526 IPC, P.S. Naujheel, stated that injury reports dated 16.10.2002 of Atar Singh and Sreepal are not entered in the medico legal register nor requisite fees was deposited. On 26.7.2001, Dr. Ravi Sharma was not entitled to conduct medico legal examination. The contention is that these medical certificates have been prepared by the doctor in collusion with the complainant and cannot be relied upon and the learned Magistrate should not have relied on the two medical certificates prepared by Dr. Ravi Sharma.

6. Learned A.G.A. and learned counsel for the complainant submitted that the incident took place on 16.10.2002 at 5:30 p.m., whereas F.I.R. was lodged on the same day at 6:00 p.m., which is prompt. The complainant Sreepal and his father Atar Singh were sent to the hospital by police for medico legal examination, which was conducted by Dr. Ravi Sharma and the complainant cannot be blamed if there was any administrative order against Dr. Ravi Sharma. The next contention is that whether the medico legal certificates are correct or doubtful, cannot be decided at the stage of summoning or discharge and their validity can only be considered by the Court after examination of the doctor in Court. At that stage, the defence would have an opportunity to cross-examine the doctor and to bring true facts before the Court.

7. It was further submitted by learned counsel for the complainant and learned A.G.A. that both the injured sustained head injuries in the incident and prima facie case under section 308 IPC is made out and the application for discharge was rightly rejected by the Magistrate.

8. Both the injury reports of Atar Singh and Sreepal reveal that they were brought to the hospital by Constable 704 Dharamveer Singh of Police Station Naujheel. Thus, it is apparent that the complainant did not choose the doctor for medical examination, but the police constable took both the injured to hospital for medical examination. Whether Dr. Ravi Sharma was authorized to conduct medical examination of the complainant and his father, is a matter of evidence and can only be considered after examination of the doctor in evidence before the trial court. Even though it may appear that Dr. Ravi Sharma was divested of his authority to conduct medico legal examination, at this stage it would not be just and proper to presume that the medical certificates of Sreepal and Atar Singh are fictitious. This question can only be answered by the court concerned after evidence.

9. The injury reports of Atar Singh discloses four injuries including one lacerated wound on top of skull in mid line size 3 cm. x 5 cm. x muscle deep. Sreepal also sustained three injuries including one lacerated wound 6 cm. x 1 cm. x bone deep on top of the skull, one lacerated wound on left side head and traumatic swelling 6 cm. x 4 cm. on back of neck. Both the injured appear to have sustained head injuries, therefore, it cannot be said at this stage that offence under section 308 IPC is not made out.

10. After considering the relevant material, this Court is of the opinion that at this stage, no case for discharge is made out and the application for discharge has been rightly rejected by learned Magistrate. The impugned order does not suffer from any illegality requiring any interference by this Court.

11. In the facts and circumstances of the case, the writ petition is disposed of with a direction that if the petitioners surrender before the Magistrate concerned within a period of three weeks from today and apply for bail, their prayer for bail be considered by the courts below on the same day keeping in view the fact that the head injuries sustained by the injured Atar Singh and Sreepal were not grievous.