

Alok Sharma and anr Vs. State and anr

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Court : Delhi

Decided On : Nov-15-2011

Judge : Suresh Kait, J.

Acts : Indian Penal Code (IPC) - Sections 186, 332, 353, 34, 452, 324; Code of Criminal Procedure (CrPC) - Section 320

Appeal No. : CRL.MC No.3297 of 2011

Appellant : Alok Sharma and anr

Respondent : State and anr

Judgement :

1. On 30.09.2011 the following order was passed:-

"1. Issue notice.

2. Ms.Rajdipa Behura, learned APP for State/respondent No.1 and respondent No.2 who is appearing in person accepts notice.

3. Learned counsel for petitioners submits that vide compromise dated 02.07.2011, petitioners and respondent No.2 have amicably settled all the issues qua the aforementioned FIR and even mutually resolved all the differences.

4. Vide instant petition, they have sought quashing of the FIR in question.

5. Respondent No.2 present in person submits that he has no objection, if the present FIR is quashed, in view of the compromise dated 02.07.2011.
6. I note that vide FIR No.265/2009 dated 31.07.2009 a case under Section 186/332/353/34 Indian Penal Code was registered against the petitioners on the complaint of respondent No.2 at police station Seemapuri, Delhi.
7. Respondent No.2 was on government duty being employed in MCD and stopped the petitioner Nos.1 & 2 - the employees of BSES, who were laying electric cable after cutting the road without any permission. Respondent No.2 submits that his designation is Beldaar, however he was officiating as Supervisor at the relevant time. The Executive Engineer Mr.A. K. Dixit asked him to visit the spot and stop the employees of BSES from cutting the road. He requested them; a linemen of BSES Saleem and Alok Kumar, who were doing the road cutting work beaten him and latter took the respondent No.2 to the office of BSES where also he was beaten.
8. Petitioners and respondent No.2 are all government employees. Even at the time of the incident, they were discharging their government duties. The scuffle took place while working on government duty. Though, respondent No.2 got lodged the complaint; however MCD is his employer. Therefore, since the respondent No.2 is a 'C' Group employee; as such, the competent authority has not authorized him to withdraw the present complaint."
2. On 30.09.2011 the complainant was not having any authority from the senior officers of the Department. Ld. Counsel for the petitioner submits, Shri Himanshu Shekhar, Executive Engineer (Maintenance Division-I), Shahdara (9) Zone, MCD vide communication dated 09.11.2011 has submitted that the office of the Executive Engineer, SDN Hospital, Shahdara, Delhi has no objection if the compromise between the parties is allowed.
3. Ld. APP for the State submits that Section 186/332/353 are non-compoundable. She has referred to the judgment of Hon'ble Supreme Court in Gian Singh Vs. State of Punjab & Anr. in SLP (Crl.) No.8989/2010 wherein the Division Bench of the Supreme Court has referred three earlier decisions, viz, B.S. Joshi V. State of

Haryana (2003) 4 SCC 675, Nikhil Merchant v. Central Bureau of Investigation and Anr. (2008) 9 SCC 677 and Manoj Sharma Vs, State & Ors. (2008) 16 SCC 1, to a larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not.

4. Previously, I have taken the view on the basis of the decision taken by the Division Bench of Mumbai High Court in Nari Motiram Hira Vs. Avinash Balkrishnan & Anr. in decided on 03.02.2011 whereby the Division Bench of Mumbai High Court has permitted for compounding of the offences under Section 452/324 of Indian Penal Code which were 'non-compoundable' as per Section 320 Cr. P.C. Therefore, I feel that unless and until, the decisions which have been referred to above, are set aside or altered by the larger Bench of the Supreme Court, all the above three decisions hold the field and are binding precedents.

5. Alternatively, Ld.APP submits that if the Court is inclined to quash the aforesaid FIR, then some costs may be imposed on the petitioners for substantial justice.

6. In the above circumstances, I quash the aforesaid FIR No.265/2009 dated 31.07.2009 under Section 186/332/353/34 of the Indian Penal Code registered against the petitioners on the complaint of respondent No.2 at police station Seemapuri, Delhi and all the proceedings emanating therefrom.

7. The petitioners are employees of BSES Yamuna Power Limited. Keeping in view their financial status, I refrain from imposing costs on them.

8. CRL. M.C. 3297/2011 is allowed and disposed of accordingly.

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