Krishna Devi Vs. State and anr.

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Court : Delhi

Decided On : Apr-04-2013

Judge : P.K.Bhasin

Appellant : Krishna Devi

Respondent : State and anr.

Advocate for Pet/Ap. : Mr. Anil Aggarwal, Mr. S.N. Pandey, Mr. M.N. Dudeja, Mr. Ashish S. Kulshreshtha, Mr. Naresh C. Sharma

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL. REV. P. NO.683/2010 Date of Decision:

4. h April, 2013 + # ! KRISHNA DEVI Through: ....Petitioner Mr. Anil Aggarwal & Mr. S.N. Pandey, Advocates Versus $ STATE & ANR. Through: Respondents Mr. M.N. Dudeja, APP for the State Mr. Ashish S. Kulshreshtha, Advocate for R-2 alongwith R-2 in person AND % # ! CRL. REV. P. NO. 684/2010 KRISHNA DEVI Through: ....Petitioner Mr. Anil Aggarwal & Mr. S.N. Pandey, Advocates Versus $ * STATE & ANR. Through: Respondents Mr. M.N. Dudeja, APP for the State Mr. Naresh C. Sharma, Adv. for R-2 along with R-2 in person. CORAM: HON'BLE MR. JUSTICE P.K.BHASIN ORDER P.K.BHASIN, J: These two revision petitions were filed by the petitioner-complainant under Sections 397 and 401of the Code of Criminal Procedure,1973(Cr. P.C. in short) against the order dated 6th May, 2010 passed by learned Additional Sessions Judge in the Criminal Revision Petition

Nos. 14 and 15 of 2009 filed by two accused-police officials, who have been separately impleaded as respondent no. 2 in these petitions, whereby the order dated 2nd May,2009 passed by the learned Metropolitan Magistrate herein summoning them as accused for the commission of the offence under Section 325/34 IPC was set aside.

2. The relevant facts are that the petitioner-complainant had lodged a report on 1st December,1996 at Najafgarh police station against the then Station House Officer(SHO) of that police station Inspector Sat Pal Sharma, who is respondent no. 2 in Criminal Revision Petition No. 684 of 2010, Sub Inspector Bhagwati Prasad, who is respondent no. 2 in Crl. Revision Petition No. 683 of 2010, and other unnamed policemen, in respect of the incident which occurred on 29th November,1996 when these two police officials alongwith some other policemen had come to her house and severely beaten her husband and when she had tried to save her husband from the assault of the policemen she was also slapped and manhandled and the policemen had then taken her and her husband to the police station. At the police station she was asked to take off her clothes which she refused to do and then she was slapped and abused. In that incident the leg of her husband was broken because of the lathi blows given to him. Since the petitioners complaint was against the SHO and his subordinates no FIR was registered and that led to the filing of a criminal writ petition(being Crl.W.P.No.66/1997) by the petitioner herein in this Court. Only thereafter FIR No. 575/97 under Sections 325/509/323/34 IPC came to be registered on 3rd September, 1997 pursuant to the directions of this Court in the said writ petition.

3. The petitioner-complainants grievance is that though this Court had also directed in the writ petition that the investigation was to be carried out under the supervision of Additional Commissioner of Police but the police was not deterred by this Court finding the allegations made against the policemen to be prima facie good enough for registration of FIR and investigation into those allegations and that is evident from the fact that the investigation done was completely an eye-wash and after completing the paper formalities a closure/cancellation report was submitted in the Court of the concerned Metropolitan Magistrate on 30th September, 2000 to the effect that no case was made out for charge sheeting any

police man. The Magistrate was, however, not satisfied with the investigation done and so further investigation was ordered vide order dated 20th April, 2002. The investigation was done by the Crime Branch but once again the police submitted a report in Court on 16th December, 2006 that no case was made out against anyone and that the complaint of the complainant was motivated and fabricated lodged against the police officials to avenge the arrest of her son in a case relating to some incident which took place on 6th November, 1996. This time the learned Magistrate, however, realized that come what may the police is not going to prosecute the policemen and accordingly accepted the closure/cancellation report submitted by the police vide order dated 6th July,2007 instead of once again directing further investigation. However, simultaneously the learned Magistrate himself took cognizance also and called upon the petitionercomplainant to produce whatever evidence she had to substantiate her allegations against the police officials against whom she had lodged the complaint.

4. The petitioner-complainant thereafter adduced her evidence by examining herself and five other witnesses. The learned Magistrate found that the evidence sufficient to summon the SHO Inspector Sat Pal Sharma and SubInspector Bhagwati Prasad as accused for the commission of the offence punishable under Section 325 IPC and so both of them were summoned vide order dated 2nd May,2009.

5. Feeling aggrieved by the order of the Magistrate summoning them as accused the SHO as well as the Sub-Inspector filed separate revision petitions in Sessions Court. Criminal Revision Petition No. 14/09 was of SI Bhagwati Prasad and Criminal Revision Petition No. 15/09 was of Inspector Sat Pal Sharma.

6. The learned Additional Sessions Judge vide common order dated 6 th May,2010 allowed both the revision petitions and set aside the summoning order passed by the Magistrate.

7. The petitioner-complainant did not accept the revisional courts decision exonerating the two police officials and so she approached this Court by filing these two petitions challenging the correctness and legality of the decision of the learned Additional Sessions Judge.

8. The learned Additional Sessions Judge had accepted the plea raised before her on behalf of the two summoned accused police officials that after having accepted the closure report submitted by the police the Magistrate was left with no complaint before him and so the procedure adopted by him by directing the complainant to adduce her evidence, as prescribed under Section 200 Cr.P.C., was not permissible in law. Same stand has been taken before this Court also on behalf of the two policemen by their learned counsel as well as by the learned Additional Public Prosecutor appearing for the State while supporting the decision of the learned Additional Sessions Judge setting aside the order of the Magistrate summoning the policemen.

9. The learned counsel for the petitioner-complainant had submitted that the view taken by the learned Additional Sessions Judge is legally not correct and is liable to be set aside by this Court.

10. In my view also the view taken by the learned Additional Sessions Judge that after having accepted the cancellation report submitted by the police the petitioner-complainant could not be called upon to adduce evidence in support her allegations leveled against the accused police officials is not the correct view in law. Similar question had arisen before the Supreme Court way back in the eighties in the case of M/s India Carat Pvt.Ltd. vs State of Karnataka & anr., (1989) 2 Supreme Court Cases 132 . In that case also the police had registered an FIR on receipt of a complaint directly from the complainant and not through any Magistrate under Section 156(3) Cr.P.C., as is the fact situation in the case in hand also, and after completing the investigation the police had submitted a closure report, as is also the situation in the present case. The Supreme Court held that the Magistrate at that stage could either straightway summon the accused disagreeing with the report of the police or even the procedure under Section 200 Cr.P.C. could also be adopted by calling upon the complainant to adduce evidence in support of the complaint even when no private complaint had been filed in Court and the investigation had not been carried out by the police pursuant to the direction of the Magistrate under Section 156(3) Cr.P.C. The relevant observations of the Supreme Court in the said judgment are reproduced below:

16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer; and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Section 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(b) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

17. The fact that in this case the investigation had not originated from a complaint preferred to the Magistrate but had been made pursuant to a report given to the police would not alter the situation in any manner. Even if the appellant had preferred a complaint before the learned Magistrate and the Magistrate had ordered investigation under Section 156(3), the police would have had to submit a report under Section 173(2). It has been held in Tufa Ram & Ors. v. Kishore Singh, [1978] 1 SCR 61.that if the police, after making an investigation, send a report that no case was made out against the accused, the Magistrate could ignore the conclusion drawn by the police and take cognizance of a case under Section 190(1)(b) and issue process or in the alternative he can take cognizance of the original complaint and examine the complainant and his witnesses and thereafter issue process to the accused, if he is of opinion that the case should be proceeded with.

11. That exactly was done by the Magistrate in the case in hand and in view of the said decision of the Apex Court there was no fault committed by the Magistrate justifying interference by the Sessions Court in exercise of the revisional jurisdiction.

12. These petitions are therefore, allowed and the impugned order of the learned Sessions Judge reversing the summoning order dated 2nd May,2009 of the learned Metropolitan Magistrate is set aside and the order of the Metropolitan Magistrate is restored. The case shall be taken up again now by the Metropolitan Magistrate on 1st May, 2013 at 2 p.m. and then the matter shall be proceeded further in accordance with law. P.K.BHASIN, J April 4, 2013