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(2007) 1 RCR(Criminal) 759

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 22825-M of 2006

Beni Parshad and others		APPELLANT
	Vs	
State of Haryana and another		RESPONDENT

Date of Decision: Sept. 12, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 401, 482

Citation: (2007) 1 RCR(Criminal) 759

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Advocate: H.S. Gill, with Mr. Vivek Goel, for the Appellant; Deepak Girotra, A.A.G., Haryana For the Respondent No. 2 Mr. Kuldeep Tiwari, for the Respondent

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.
Prayer in the present petition, filed u/s 482 read with Section 401 of the Cr.P.C., is for quashing of the summoning order, dated 27.9.2005. (Annexure P-4), passed by the Chief Judicial Magistrate, Kurukshetra, as also the order dated 4.4.2006 (Annexure P-5) passed by the Additional Sessions Judge, Fast Track Court, Kurukshetra, directing framing of charges, under Sections 323/307/34 of the IPC.

2. Counsel for the petitioners contends that in compliance with an administrative order, passed by the learned Sessions Judge, Kurukshetra, requiring all cancellation reports, disclosing offences, exclusively triable by a Court of Sessions, to be forwarded to the Sessions Judge, the learned Magistrate forwarded the cancellation report to the Court of Sessions. The Additional Sessions Judge, Fast Track Court, Kurukshetra, who was entrusted with the cancellation report, had no jurisdiction to remit the matter to the Chief Judicial Magistrate to consider a protest petition. The Magistrate had no jurisdiction to

treat the protest petition as a private complaint, proceed thereafter to record evidence and summon the petitioners. It is further contended that in view of the aforementioned facts, the Magistrate had no jurisdiction to appraise the material on record and holding that the material, before him, disclosed commission of offences exclusively triable by a Court of Sessions, commit the case to the Sessions Judge. It is contended that the aforementioned facts disclose a procedure unknown to law and, therefore, the impugned orders be quashed.

3. Another contention, pressed into service, is that the protest petition and the evidence recorded thereon do not disclose the commission of an offence, u/s 307 of the IPC. It is further contended that respondent No. 2 was initially admitted to a government hospital. The opinion of the doctor, who examined respondent No. 2 in the government hospital, is that the injury, suffered by respondent No. 2, was not dangerous to life and, therefore, the learned Additional Sessions Judge, Fast Track Court, Kurukshetra was not justified in framing a charge, u/s 307 of the IPC.

4. Counsel for the State of Haryana, as also counsel for respondent No. 2 submit that the aforementioned facts do not disclose any error of jurisdiction and law or such error of fact as would require interference. The petitioners did not impugn the aforementioned procedure, or the order of summoning before a higher forum at any stage either before the High Court, u/s 482 of the Cr.P.C., or before the District and Sessions Judge, Kurukshetra. It was only at the stage of framing charges that the petitioners sought to impugn the procedure adopted and the orders of summoning and committal to the Court of Sessions. It is further argued that the learned Magistrate is empowered, under the provisions of the Cr.P.C. to record evidence on a protest petition, treat the protest petition as a private complaint, and upon appraisal of the protest petition, and the evidence adduced, pass an order of summoning. The order, summoning the petitions, does not suffer from any illegality.

It is further argued that the nature of the injury alone is not the essence of a charge, u/s 307 of the IPC. The material on record should be such as to raise an inference of intention or knowledge that if the injury had caused death, the accused would be guilty of murder. The learned trial Court, after considering the material placed before it, arrived at a conclusion that the petitioners should be charged for the commission of an offence, u/s 307 of the IPC. As the impugned proceedings and the impugned orders do not suffer from any illegality, the present petition be dismissed.

5. I have heard learned counsel for the parties and perused the record.

6. The procedure, adopted by the Courts below, and the impugned orders passed, in my considered opinion, do not call for any interference. Respondent No. 2 registered an FIR against the petitioners. After investigation, police presented a cancellation report, before the Chief Judicial Magistrate, Kurukshetra. The District & Sessions Judge, Kurukshetra had issued administrative orders, requiring a Magistrate, where a cancellation report,

disclosed the commission of offences, exclusively triable by a Court of Sessions, to forward such a report to the Court of Sessions. In compliance with the aforementioned administrative directions, the Chief Judicial Magistrate, Kurukshetra forwarded the cancellation report to the District & Sessions Judge, Kurukshetra. The matter was thereafter entrusted to the Additional Sessions Judge, Fast Track Court, Kurukshetra. Respondent No. 2 appeared before the aforementioned Court and made a request for grant of liberty to file a protest petition. The Additional Sessions Judge, Fast Track Court, Kurukshetra, in view of the aforementioned request, sent the matter back to the Chief Judicial Magistrate, Kurukshetra for consideration. Respondent No. 2 thereafter filed a protest petition. The Chief Judicial Magistrate, Kurukshetra treated the protest petition as a private complaint and permitted respondent No. 2 to lead evidence in support thereof, thus, following the procedure, prescribed in Chapter XV of the Cr.P.C. Upon conclusion of respondent No. 2"s evidence, the learned Magistrate summoned the petitioners, vide order dated 27.9.2005.

7. At no stage of the proceedings did the petitioners ever impugn the correctness of the summoning order. They appeared before the learned Magistrate, participated in proceedings for committal of the case to the Court of Sessions, appeared before the Additional Sessions Judge, Fast Track Court, Kurukshetra and only when the Court proceeded to frame charges, did they file an application impugning the correctness of the procedure and validity of the summoning order. The summoning order, though brief, in my considered opinion does not call (for) any interference, in view of the facts, noticed herein above, as also that charges have already been framed. The learned Chief Judicial Magistrate, Kurukshetra did not commit any error or illegality in treating the protest petition as a complaint and proceeding to record evidence in support thereof. A Magistrate is empowered to adopt such a course.

8. The second contention, namely, that material on record does not disclose the commission of an offence, u/s 307 of the IPC, in my considered opinion, does not merit acceptance. Basis for this plea is the opinion of a government doctor that the injury, suffered by respondent No. 2, was not dangerous to life. It is, thus, canvassed that as the injury was not dangerous to life, the petitioners could not be charged for an offence, u/s 307 of the IPC. The essence of an offence punishable u/s 307 of the IPC, is not the injury alone, but the intention or knowledge that if the act committed had led to death, the accused would be guilty of murder. The fact that the doctor may have opined that the injury was not dangerous to life or not sufficient to cause death, in my considered opinion, cannot be the sole circumstance to draw an inference that the accused could not have been charged for an offence, u/s 307 of the IPC. The learned trial Court, after considering the facts and circumstances of the present case, arrived at a conclusion that the nature of the injury and the circumstances obtaining disclosed sufficient material to infer a prima facie opinion about the commission of an offence, u/s 307 of the IPC and, therefore, proceeded to frame charges, under Sections 323/307/34 of the IPC.

9. At the stage of framing charges, a Court embarks upon a prima facie appraisal of the material, placed before it to discern therefrom, whether an accused can be tried or not and if so, for what offence. At this stage, a Court does not appraise the material to determine its value, its credibility or its nature. A charge is a prima facie expression of opinion, based upon facts and circumstances of a case that an accused should be brought to trial.

10. The impugned orders do not suffer from any illegality, error of jurisdiction or error of law. Consequently, the present petition is dismissed.