

Joginder Singh Vs The State of Rajasthan

Court: Rajasthan High Court

Date of Decision: Dec. 21, 1990

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 197, 219, 350, 351, 352

General Clauses Act, 1897 â€” Section 26

Penal Code, 1860 (IPC) â€” Section 166, 174, 186

Citation: (1990) WLN 231

Hon'ble Judges: B.R. Arora, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.R. Arora, J.

This miscellaneous petition is directed against the order dated January 7, 1989, passed by the Munsif and Judicial

Magistrate No. 1, Bikaner, in Criminal Case No. 30 of 1985, by which the learned Magistrate framed charges against the petitioner Under

Sections 166, 174 and 186, I.P.C.

2. The petitioner was posted as the Station House Officer at Police Station, Nokha, in the year 1982, when he investigated certain cases against

the accused and presented the challan in the Court of the Munsif and Judicial Magistrate, Nokha. The petitioner could not appear in those criminal

cases, which were fixed for recording the evidence of the petitioner and other witnesses on July 6, 1974, September 18, 1984 and November 15,

1984. As the petitioner did not appear on these dates, the learned Judicial Magistrate, therefore, filed a complaint against the petitioner Under

Sections 166, 174 and 186, I.P.C. These, complaints were registered as Criminal Cases No. 30/85, 31/85 and 32/1985 and summons were

issued to the petitioner. After the services of the summons, an application u/s 219, Cr. P.C. was moved and all these three complaints were

consolidated into one. The petitioner, after the service of the summons, also, moved an application u/s 197, Cr. P.C. mentioning therein that the

cognizance against the petitioner could not have been taken as the petitioner is entitled for the protection granted u/s 197, Cr. P.C, but that

application, filed by the petitioner, was, also, dismissed by the learned Magistrate. The petitioner has filed this miscellaneous petition challenging the

order of framing the charges and has also prayed that the proceedings pending in the Court below may be quashed, as according to him, no charge

could have been framed against him on the basis of the evidence recorded against the petitioner. His alternative argument is that the prosecution of

the petitioner u/s 174, I.P.C. is fully uncalled for, as according to him, for dealing with such a matter, the provisions contained in Section 350 Cr.

P.C. have been made and in view of the provisions of Section 350 Cr. P.C., the petitioner cannot be prosecuted u/s 174, I.P.C. The learned

Public Prosecutor, on the other hand, has supported the order framing the charges against the petitioner passed by the learned Judicial Magistrate.

3. I have considered the rival submissions.

4. It is not in dispute that if the same act or omission constitutes an offence under two different laws then the accused can be tried under any of the

law and the accused cannot claim any right for trial by a particular Court under a particular Act. Section 26 of the General Clauses Act gives

power to the prosecution to prosecute the accused under either of the Enactments. It is not in dispute that so far as the provisions of Section 174

I.P.C. is a general provision, which makes the non-attendance in obedience of an order from any public servant an offence. u/s 174, I.P.C.,

whoever, be legally bound to attend in person or by an agent at a certain place and time in obedience of a summon, notice, order or proclamation

proceedings from any public servant legally competent as such public servant, intentionally omits to attend that place or at that time to depart from

the place where he is bound to attend at the time, it is lawful for him to depart, shall be punished with simple imprisonment for a term which may

extend to six months or a fine which may extend to Rs. 1000/-, or both. While Section 350 Cr. P.C. provides for the punishment for non-

attendance by a witness in a Criminal Court to whom the summons have been issued by a Criminal Court. Thus, Section 174, I.P.C. deals with the

offences committed by a witness in disobedience of the summons issued by a public authority including the Civil, Criminal or Revenue Courts,

while Section 350 Cr. P.C. deals only with the witnesses who were summoned to appear before the criminal Court and who neglects or refuses to

accept the notice or summons. Section 174, I.P.C. is, thus, a general provision while Section 350 Cr. P.C. is a special provision made with an

object to empower the criminal Court to try witnesses summarily for disobedience of its order. Section 350 Cr. P.C. is a latter provision while

Section 174, I.P.C. is an earlier provision Section 174. I.P.C. covers the whole field while Section 350 Cr. P.C. operates only in a limited sphere

with respect to Criminal Court only and carves-out an exception from the general provision. Section 174, I.P.C. will operate only in the field which

is not covered by Section 350 Cr. P.C. Sections 350 to 352 Cr. P.C. provide a complete Code in itself for taking proceedings against a person

who has committed an offence for non-attendance in a proceeding before a criminal Court. A lesser punishment has been provided for offences

covered by Section 350 Cr. P.C. than that of the offence triable u/s 174, I.P.C. In my view, by enacting the new provision u/s 350 Cr. P.C.,

the legislature has curtailed the operation of the provisions of Section 174, I.P.C. and has made it operative only in the sphere where Section 350

Cr. P.C. is a latter provision and a special law on the point, while Section 174, I.P.C. is an earlier provision and a general law and the maxim

"general law should yield to special law" is, also, applicable in the criminal proceedings. It would, therefore, be more appropriate to prosecute the

accused under the special provision of Section 350 Cr. P.C, enacted by the legislature rather than falling-back upon a general law and to

prosecute him u/s 174, I.P.C, which prescribes a severe punishment. As the intention of the legislature in enacting Section 350 Cr. P.C. was that

the accused, in these special cases, may be punished in accordance with the provisions of special law, i.e., u/s 350 Cr. P.C. In this view of the

matter, the petitioner can be prosecuted only u/s 350, Cr. P.C. and not u/s 174, I.P.C.

5. I have, also, looked into the case file and looking to the facts and circumstances of the case, I am of the view that the ingredients of offences

Under Sections 166, 174 and 186 of the Indian Penal Code are wanting and the evidence available on record does not prima facie constitute the

offence under these Sections, for which the accused-petitioner has been charged-with.

6. In the result, this petition u/s 482, Cr. P.C. is allowed and the charges framed against the accused-petitioner Under Sections 166, 174 and 186,

I.P.C. are quashed.