
Asharam Babu Vs Aman Singh Dangi

Miscellaneous Cri. C. No. 6347/2013

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Sept. 12, 2014

Acts Referred:

Constitution of India, 1950 " Article 227#Criminal Procedure Code, 1973 (CrPC) " Section 200, 202, 204, 251, 252#Penal Code, 1860 (IPC) " Section 147, 148, 294, 298, 323

Citation: (2015) CriLJ 1765 : (2014) 3 JLJ 295 : (2014) 5 MPHT 71

Hon'ble Judges: B.D. Rathi, J

Bench: Single Bench

Advocate: R.K. Sharma, Advocate for the Appellant; T.C. Bansal, Advocate and Prabal Solanki, Public Prosecutor, Advocate for the Respondent

Final Decision: Allowed

Judgement

B.D. Rathi, J.

The present petition preferred u/s 482 of Cr.P.C. is directed against an order dated 19/6/2013 passed by the Judicial

Magistrate First Class, Vidisha (M.P.) in R.T.No. No.1032/13, taking cognizance against the accused-petitioner for commission of offence

punishable under Sections 294 and 323 of I.P.C.

2. The facts, in nutshell, just necessary for the decision of this petition are that complainant Aman s/o late Shri Amol Singh Dangi filed a private

complaint against the present petitioner in the court of Judicial Magistrate First Class, Vidisha to register of offence u/s 323, 294, 298 and 500 of

I.P.C. It is mentioned by him that that on 4/2/2013, at the ground of Meda Mill, Civil Lines Vidisha, there was a religious programme arranged by

the followers of the petitioner. In the said function, number of persons gathered to listen the lecture of the petitioner. The complainant with his

friends also reached and attended the function. At around 10 o'clock, in night, when the function was over and the petitioner was likely to get

down from the stage for sitting in the vehicle, the complainant went towards him and when he tried to touch the feet, the petitioner kicked him after

abusing and thereafter proceeded in the vehicle. The complainant fell down and the persons collected nearby lifted him up to his house. Due to

such an incident, the complainant suffered mental agony and was also made subject to social indignity. The whole episode was cached by the

media and later on flashed in the daily news magazines. On 7/2/13, the complainant went to police station civil lines and submitted a written

complaint for taking legal action in the matter, marked as Annexure-P/2. Thereafter, he again made a complaint as per Annexure-P/3, dated

20/3/13 in writing to the concerning S.P. of the district but when no action was taken by the police authority, he had to file a private complaint in

the court. After recording and analyzing the statements of the complainant and his witnesses u/s 200 and 202 of Cr.P.C., the court prima facie

found commission of offence under Sections 294 and 323 of I.P.C., hence, secured the present of the petitioner through issuing summons by

registered A/d under the order impugned. Being aggrieved by the said order, the present petition has been filed.

3. Learned counsel for the petitioner argued that in view of the allegations made in the complaint as well as the statements recorded under sections

200 and 202 of Cr.P.C. of the complainant and his witnesses, prima facie, no case is made out against the petitioners for offence under sections

294 and 323 of I.P.C. It is further submitted that the incident in this case as per complainant occurred on 4/2/13 and after a period of three days,

he approached the police authority, which shows that the complaint was made with some ulterior motive and some oblique motive in order to gain

the publicity. Further in the written complaints made to the police vide Annexures-P/2 and P/3, the complainant has not mentioned about using

abusive language by the petitioner against him. On the contrary, it is submitted that the complainant is having a criminal background. The

documents marked as Annexure-P/8, P/9 and P/10 have been filed on record and were referred in support during the course of hearing. In view

the aforesaid premised arguments, it is prayed that the order passed by the trial Magistrate is not sustainable in law and deserves to be quashed.

4. At the outset, learned counsel for the respondent No.1 submitted that the present petition is not maintainable and on this ground alone petition is

liable to be dismissed.

5. The second ground raised by the counsel is that at the time of taking cognizance only prima facie case has to be seen rather than looking to the

minor contradictions and omissions crept in the statements of the complainant and his witnesses. It is submitted by the counsel that the complaint

made in this case shows the ingredients of the offence and therefore after consideration of the evidence recorded, the learned Magistrate has rightly

formed an opinion and took cognizance against the accused. The impugned order is, therefore, well merited calling for no interference.

6. Having regard to the arguments advanced by the learned counsel for the parties, the entire case has been examined.

7. Now, before going into the merits of the case, it would be appropriate to consider first the objection raised by the learned counsel for the

respondent No.1 as to whether the petition u/s 482 of Cr.P.C. is maintainable or not especially when other forum of filing criminal revision is

available to the petitioners.

8. The Legislature in its wisdom, while emphasising the need of providing inherent powers to the High Court, introduced Section 482 of the

Criminal Procedure Code which reads as under:

482 Saving of inherent powers of High court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to

make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise

to secure the ends of justice.

9. A bare reading of the above provision indicates that the Legislature intentionally worded this provision widely and, thus, necessarily in order to

prevent abuse of the process of any court or otherwise to secure ends of justice, appropriate order can be issued by this court under inherent

powers vested u/s 482 of Cr.P.C. and the petitions therefore are maintainable for seeking such kind of reliefs. Only on the ground of non- availing

of remedy provided for filing criminal revision would not create obstruction in the way of filing such petitions u/s 482 of Cr.P.C. A reference may

be made on this point to a decision of Hon. Apex court in the case of Dhariwal Tomacco Product Limited and others Vs. State of Maharashtra

and another (2009) 2 SCC 370.

10. In the case of Subramaniam Sethuraman Vs. State of Maharashtra and Another, it was held by the Apex Court that issuance of process u/s

204 is a preliminary steps in the stage of trial contemplated in Chapter 20 (Ss. 251 to 259) Cr.P.C. and is therefore interlocutory order against

which as per provision of section 397(2) of Cr.P.C., criminal revision is not maintainable. The only remedy to challenge the order is given u/s 482

of Cr.P.C. by invoking inherent powers of the High Court. This view was taken by the bench led by Hon. three Judges. Prior to that same view

was adopted by the bench led by Hon. three Judges in the case of Adalat Prasad Vs. Rooplal Jindal and Others, by overruling the view taken in

the case of K.M. Mathew Vs. State of Kerala and another, Prior to above, same view Asharam Bapu Vs. Amansingh Dangi and another was

taken in the case of Madhu Limaye Vs. The State of Maharashtra, Again in the year 2012 in the case of Punjab State Warehousing Corporation

Faridkot Vs. Sh. Durga Ji Traders and Others, the view taken by the bench led by two Hon. Judges is that availability of alternative remedy is not

an absolute bar in entertaining a petition u/s 482 of Cr.P.C. In a recent case of Devendra Kishanlal Dagalia Vs. Dwarkesh Diamonds Pvt. Ltd. and

Others, same view was taken into consideration by the bench led by Hon. two Judges and held that once the decision is taken and summons are

issued in the absence of power of review, remedy lies before the High Court u/s 482 of Cr.P.C. or under Article 227 of the Constitution of India.

11. On the contrary, it is submitted by learned counsel Shri T.C.Bansal appearing on behalf of the respondent No.1/complainant that in a latest

decision of Om Kumar Dhankar Vs. State of Haryana and another 2013 (1) SCC (Cri) 493 it was held by the Apex Court that revision is

maintainable against order of summoning. It was submitted by the learned counsel that in case of Mohit alias Sonu and Another Vs. State of U.P.

and Another, again it was held by the Apex Court that order of summoning u/s 319 of Cr.P.C. is revisable and petition u/s 482 of Cr.P.C. is not

maintainable.

12. The contention raised by Shri Bansal is not tenable because the aforesaid two views were expressed by the bench led by Hon. two Judges

thereunder facts of the case of Adalat Prasad (supra) were not at all considered, therefore, the view expressed by the bench led by Hon. three

Judges will prevail in view of the principles laid down by the Apex Court in the case Central Board of Dawoodi Bohra Community and Another

Vs. State of Maharashtra and Another, Therefore, the contention of the learned counsel for the respondent No.1 about tenability of the petition is

not acceptable and is hereby rejected.

13. Now, next question for consideration is whether the learned Magistrate erred in framing the alleged charges against the petitioner as there is no

material sufficient for framing any charge whatsoever.

14. The procedure to issue process is given u/s 204 of Cr.P.C., relevant extract of which is as under:-

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or.....

15. The Magistrate has no power to summon person merely because complaint against him has been filed, but there should be sufficient ground for

proceeding in the case of complaint after the examination of the complainant. Summoning of accused by the Magistrate without examining the

contents of the complaint amounts to non-application of his judicial mind. The Magistrate cannot enjoy upon restricted power to summon person.

If the facts alleged in the complaint and the complainant's statement show sufficient ground for proceeding, process should be issued otherwise

not. The case in hand is a summons trial in which the cognizance has been taken against the petitioner-accused for the offence under sections 294

and 323 of I.P.C.

16. Now, if we would examine the facts of the complaint addressed to the SHO of police station Vidisha, dated 7/2/13, it is emphatically clear that

nowhere it was mentioned by the complainant that he was abused by the accused. Thereafter, when no action was taken by the police, second

complaint dated 20/3/13 addressing to the Superintendent of Police, Vidisha was sent by the complainant. This time also nowhere it was

mentioned by the complainant that he was abused by the accused. Then after near about three months on 25/4/13, written complaint was filed in

the court of Judicial Magistrate First Class, Vidisha. In para 2 of the complaint, the following allegations were made showing that in what manner

the complainant was abused:-

17. Same allegations were also made by the complainant and his witnesses, though with certain inconsistencies, in their statements recorded u/s

200 and 202 of Cr.P.C., but therein nowhere it was stated by the complainant that due to aforesaid abusive words, he became annoyed.

Therefore, mere utterances of some abuses are not sufficient to constitute an offence u/s 294 of I.P.C. This view was taken by this court in the

cases of Sobaran Singh Vs. State 1962 J.L.J. SN 135 and Banshi Vs. Ramkishan [1997 (II) MPWN SN 224. Apart that, explanation was not

given by the complainant that why the written complaint was made belatedly after a period of three days, i.e., on 7/2/2013 when incident occurred

on 4/2/2013. Shrinath Awasthy (PW-2) and Vikram Singh Danti (PW-3) have not stated anything that after hearing the abusive words, they have

got or anybody has got annoyed. In the aforesaid premises, in the considered opinion of this court, no offence is made out u/s 294 of I.P.C.,

against the petitioner.

18. So far as charge framing for offence u/s 323 of I.P.C. is concerned, the following allegations were made in the written complaint dated

7/2/2013 sent to the police that ""on 4/2/2013 the applicant went to listen lecture of Asharam Bapu in Meda Mill Compound. After lecture was

over, at around 10 o'clock when Asharam Bapu was proceeding then alongwith other persons when applicant also tried to touch the feet,

Asharam gave a blow with a kick on the head of the applicant due to which applicant felt dizziness.

19. Though some allegations were made in the private complaint in para 2, in para 1 thereof it was also mentioned that at the time of speech and

Satsang of accused so many persons gathered together. When the police report was called by the Magistrate vide report dated 17/6/2013, it was

also informed by the police that due to gathering of large group of persons and rains, there was formed mismanagement.

20. In the end of para 1 of the complaint, it was also alleged by the complainant that he alongwith accompanied with his colleagues reached at the

spot to hear spiritual speech of Sant Asharam. Again in para 2, it was alleged that ""at that juncture when alongwith others the complainant tried to

touch the feet of Asharam Bapu"" it shows that in the heart of the complainant there was full respect and regard for Saint Asharam. In para 2 of the

complaint further it was alleged that when blow of kick was given on the head by the accused, he (complainant) felt dizziness and fell down, but

this fact of falling down on the earth was not mentioned in the previous complaints made to the police authorities. Furthermore, it was not disclosed

by the complainant that he was injured because of falling down on the earth.

21. If we go by the present scenario and would imagine the picture for the moment taking in view the allegations made by the complainant that he

went to touch the feet of the accused at the place which was almost overcrowded and all of a sudden he (complainant) felt that accused gave a

blow with a kick on his head when the accused was going to pick up a car, it means and shows that there was no intention on the part of the

accused to kick on the head of the complainant because at the place which was completely filled with large group of persons it was practically

impossible for the accused to move and see the particular person who has touched his feet and in that event if he waved his feet aside, it will not

mean that intentionally the accused had given the blow with a kick on the head of the complainant. In the opinion of this court, such action of the

accused, even if the entire facts of the complaint are considered to be true, even then no case is made out against the accused in the light of

provisions of section 81 of I.P.C., which reads as under:-

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.-Nothing is an offence merely by reason of its being done

with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of

preventing or avoiding other harm to person or property.

22. On perusal of definition employed in section 81 of I.P.C., it makes it clear that the act likely to cause harm but done without criminal intention

and to prevent other harm is not an offence. Here in this case also, there was no criminal intention inflicted to the accused and if the blow of kick

was received by the complainant on his head that may be in a case when the accused was going towards his car from the midst of the huge public

and then all of a sudden when he felt that he was obstructed by someone else with touching his feet and if he waved his feet aside which

unknowingly hit the head of the complainant, in the opinion of this court, such act cannot be treated to be an act in view of the provisions of section

81 of I.P.C. Reference may be made to the decisions in the case of Tunda Vs. Rex,

23. Now, the next question is whether, having regard to the circumstances, the harm caused to the complainant/respondent No.1 was so slight that

no person of ordinary sense and temper would complain of such harm. Section 95 is intended to prevent penalisation of negligible wrongs or of

offences of trivial character. It reads as under:-

Section 95 provides:

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so

slight that no person of ordinary sense and temper would complain of such harm.

24. Whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the

knowledge or intention with which the offending act is done, and other related circumstances. Apparently the circumstances and the evidence on

record justify that the harm caused to the complainant/respondent No.1 in this case was ""trivial"", and the injury was also so slight that a person of

ordinary sense and temper placed in the circumstances in which the complainant was placed may not reasonably have complained for that harm.

Therefore, having regard to the facts and the situation of the place where large number of people gathered together vis-a-vis other related

circumstances in which the harm is caused that the victim/complainant ordinarily may not complain of the harm, can be regarded as so slight in the

absence of sustaining any physical injury and thus will not be an offence within the meaning of section 95 of I.P.C.

25. Hence, on bare perusal of the allegations made in the complaint and also in the statements of the complainant and his witnesses, it seems that

the allegations are petty and trivial, therefore, no proceedings could be taken especially in view of the provisions given in section 95 of I.P.C., as

mentioned above. Same view was taken in the cases of Bindeshwari Prasad Singh Vs. Kali Singh, , Veeda Menezes Vs. Yusuf Khan and

Another, and (1927) ILR 5 RANG 662

26. Further, it cannot be lost sight of the fact that some criminal cases were also registered against the complainant/respondent No.1 ranging for the

years- 1979, 1988, 2008, 2013 for the offence under sections 451, 452, 147, 148, 506, 323, 294 etc. of I.P.C, therefore, after taking into

consideration the aforesaid criminal background of the complainant, it cannot be said that the complainant has come to this court with clean hands.

Hence, in view of the principles of law laid down by Hon. Apex Court in the afore cited judgments, discussed above, in the opinion of this court,

the ends of justice requires that the proceedings of the pending criminal case against the petitioner ought to be quashed.

27. Thus, after taking into consideration the aforesaid factual and legal aspects of the matter, in the opinion of this court, no case is made out

against the petitioner. Therefore, the order dated 19/6/2013 passed by the Judicial Magistrate First Class, Vidisha (M.P.) taking cognizance

against the accused-petitioner for commission of offence punishable under Sections 294 and 323 of I.P.C., consequently is set aside by recalling

the order of summoning the petitioner.

28. The petition stands allowed in the manner indicated above.

29. Copy of the order be sent to the trial court.

No order as to costs.