

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 18th February, 2015
Judgment Pronounced on: 27th February, 2015

CRL.REV.P. 418/2008

SUSHIL SHARMA AND ANR.

..... Petitioners

Through: Mr.R.S. Malik, Mr.Sahil Malik and
Mr.Vishal Bhardwaj, Advocates .

versus

STATE & ANR.

..... Respondents

Through: Mr. P.K.Mishra, APP for State.
Mr. Deepak Pandey Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the order on charge dated 04.07.2008 and framing of charge under Section 147/148/186/353/332/342 read with section 149 IPC and under Section 135 of the Electricity Act by the learned Special Judge (Electricity), the present revision petition has been filed by the petitioners.
2. Factual matrix, as emerges from the record, is that BSES Rajdhani Power Limited (respondent no.2) filed a criminal complaint under Section 135 read with section 150/151 of the Electricity Act, 2003

before the learned Special Judge (Electricity) against the petitioners Sushil Sharma, Pradeep and Bal Kishan (since deceased) with the allegations that they were involved in the electricity theft. The Delhi Police also filed separate charge sheet in FIR No.1258/2005, PS Nangloi against the petitioners and Bal Kishan (since deceased) for offence punishable under Section 147/148/149/186/353/332/342/379/34 IPC and under Section 135 of the Electricity Act. Both the cases i.e. the complaint filed by BSES Rajdhani Power Limited and the charge sheet filed by the police were clubbed by the learned Special Judge.

3. The learned Special Judge passed the order on charge on 04.07.2008 and framed the charge against the petitioners to which they pleaded not guilty. Feeling aggrieved of the passing of order on charge and framing of charge on 04.07.2008, the petitioners have preferred the present revision petition to set aside the order and charge.
4. Learned counsel for the petitioners has argued that in the present case, there is no complaint by the public servant and the cognizance taken by the learned trial court is barred by Section 195 of Cr.P.C. In support of this contention, he has relied upon judgment in case of ***Gurinder Singh & Anr. vs. State 1996 JCC 535*** in which it was observed that if the acts as a whole would disclose an offence for which a special complaint is necessary under the provision of Section 195 Cr.P.C., the Court cannot take cognizance of the case at all unless that special complaint had been filed.

5. In *P.D. Lakhani & Anr. vs. State of Punjab & Ors. III (2008) CCR 24 (SC)*, it was held as under:

“.....Section 195 contains a bar on the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer.”

6. The same view was further expressed in case of *Ramji Bhikha Koli and others vs. State of Gujarat 1999 Cri.L.J. 1244* and *Vasudev vs. State 1985 C.C. Cases 97 (HC)*.
7. The learned APP for the State as well as learned counsel for the respondent no.2 have submitted that where the offence complained of is under Section 186 IPC, no Court can take cognizance of the same unless there is complaint under Section 195 Cr.P.C. by the public servant.
8. The provision of Section 195 Cr.P.C. reads as under :

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.- (1) No Court shall take cognizance-

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii)of any abatement of, attempt to commit, such offence, or

(iii)of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

9. In view of specific provision of Section 195(1)(a) of the Cr.P.C., no Court can take cognizance of the offence where the offence involved is for contempt of lawful authority of public servants or offences against public justice or offences relating to documents given in evidence, except on the complaint in writing of the public servant concerned or his superior officer. As per the law laid down in judgments *Gurinder Singh* (supra), *P.D. Lakhani* (supra), *Ramji Bhikha Koli* (supra) and *Vasudev* (supra), if the acts complained of would disclose an offence for which a special complaint is necessary under the provision of Section 195 Cr.P.C., the Court cannot take cognizance of the case at all unless that special complaint had been filed.
10. In the present case, the cognizance was taken under Section 186 IPC without the complaint under Section 195 Cr.P.C.
11. In view of above discussion, this Court is of the considered opinion that the cognizance taken by the learned Special Judge (Electricity) was bad in law in the absence of complaint by a public servant as provided under Section 195 of Cr.P.C. and not sustainable in the eyes of law.

12. While taking the cognizance, the learned trial Judge also proceeded to frame the charge on the basis of the same under section 147/148/186/353/332/342 read with section 149 IPC and under Section 135 of the Electricity Act. The argument advanced by the learned counsel for the petitioners is that if cognizance in one of the particular sections is barred by the statute without following the special procedure, the cognizance under the same cannot be taken with the other sections, not required to be having any special procedure. The cognizance taken in the entire matter is not sustainable in the eyes of law and charge framed thereto is consequential and not sustainable in the eyes of law.
13. The legal position argued by the learned counsel for the petitioners is not disputed by the counsel for the respondents. The learned APP as well as learned counsel for Electricity Company have not disputed the legal position to the effect that the cognizance under Section 186 IPC cannot be taken without the complaint under Section 195 Cr.P.C., rather the request made by the counsel for the respondents that the matter may be remanded back to the Court below to proceed in accordance with law.
14. *This Court is of the considered opinion that the cognizance under Section 186 IPC cannot be taken without the complaint under Section 195 Cr.P.C. even if the complaint is filed along with other sections of IPC or any other statute. The Court taking the cognizance cannot bypass the procedure provided under the statute to deal with taking of cognizance of particular sections mentioned*

in Section 195 Cr.P.C. Section 195 Cr.P.C. gives the protection to the person against whom action is sought for, particularly when the allegations are levelled by complainant in its official capacity rather than the personal capacity, which is the valuable right provided by the Code of Criminal Procedure in view of Article 21 of the Constitution of India and the same cannot be taken away by any direct or indirect method. Even if such procedural violation is found, it would make the entire order illegal and not sustainable in the eyes of law.

15. Consequently, the order taking cognizance as well as framing the charges under Section under 147/148/186/353/332/342 read with Section 149 IPC and under Section 135 of the Electricity Act vide order dated 04.07.2008 are set aside. The case is remanded back to the Court concerned to proceed in accordance with law.
16. Accordingly, the present revision petition is allowed.

P.S.TEJI, J.

February 27, 2015
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