

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 24th May 2019

Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 569/2017

SACHIN & ORS.

..... Petitioners

versus

STATE OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. N. Hariharan, Sr. Advocate with Mr. Nitin Mishra and Mr. Arun Sharma, Mr. Aditya Vaibhav Sharma, Mr. Siddharth S. Yadav, Mr. Sharang Dhulia, Mr. Prateek Bhalla Ms. Mallika and Ms. Rekha Angar, Advocates.

For the Respondents :

Ms. Meenakshi Dahiya, APP with SI S.K. Bharti, PS Uttam Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 569/2017 & CrI.M.A.12469/2017 (stay)

1. Petitioners impugn order dated 11.07.2017, whereby, charges have been framed against the petitioners under Sections 186/353/307 IPC read with Section 34 IPC.

2. Subject FIR No.127/2015, Police Station Uttam Nagar was registered under Sections 186/353/332/34 IPC registered on the

complaint of Inspector Bhagwan Singh, SHO, Police Station Uttam Nagar. After investigation, charge sheet was filed under Sections 307/186/353/332/34 IPC.

3. It was alleged by the SHO, Police Station Uttam Nagar that he was taking round in the Police Station, when he saw the petitioners shouting in the Duty Officer's room. They were shouting that they were illegally challaned by traffic police for the car and truck. It is alleged that he tried to pacify them and asked the Duty Officer to give them a paper so that they could write their complaint.

4. It is alleged that they continued to shout at him and the Duty Officer staff and when he tried to pacify them, they misbehaved with him and petitioner Nos.2 and 3 caught his hand and the petitioner No.1 assaulted him on his forehead and he sustained injuries on his forehead. It is alleged that three of them obstructed him from discharging his official duty and used criminal force upon him.

5. It is alleged that MLC was conducted and an opinion was given by forensic expert that on the basis of Hematoma on the forehead associated with loss of consciousness and vomiting, he was of the considered opinion that it was a "*great head injury*", which could cause permanent mental disorder or even death. Based on the said opinion, charge sheet was filed *inter alia* under Section 307 IPC. Trial Court by the impugned order has framed charges under Sections 186/353/307 IPC read with Section 34 IPC.

6. The contention of the petitioners is that on the night of the incident, the traffic police intercepted one tempo and tried to impound the vehicle illegally. It was initially released, however, another Police Officer again stopped the vehicle and demanded money. Petitioner Nos.2 and 3 made a call to the police control room as traffic police official was demanding bribe. Tempo was challaned and released, however, the car of the petitioner Nos.2 and 3 was illegally impounded. Since multiple calls were made, matter was referred to Police Station Uttam Nagar.

7. SHO, Police Station Uttam Nagar/complainant herein is alleged to have made undue demands from petitioner Nos.2 and 3. Petitioner Nos.2 and 3 thereafter called the petitioner No.1. Petitioner No.1 on reaching Police Station Uttam Nagar requested the Duty Officer to help. The Duty Officer arranged a meeting with the SHO. The SHO is alleged to have made undue demands and once again refused to release the vehicle and started abusing the petitioner No.1. It is alleged that the SHO thereafter assaulted the petitioner No.1 and when petitioner No.1 informed the SHO that he would make a complaint to senior officers, subject FIR was registered based on false and concocted facts.

8. It is pointed out that the SHO was taken to DDU hospital for an MLC, however, the SHO instead of getting the MLC done absconded from the ward. In the MLC, the doctors of DDU Hospital opined that the nature of injury appeared to be “*simple*”.

9. Record reveals that an application was filed on 05.10.2015 by the Sub-Inspector requesting the Casualty In-charge to forward his application to the Forensic Department for subsequent medical opinion with regard to the alleged injury of the complainant. An opinion was rendered by Dr. B.N. Mishra of the Forensic Department, who opined that it was a “*great head injury*” which could cause permanent mental disorder or even death.

10. It is contended that the said opinion was rendered without even examining the patient. Consequent to the said opinion, charge sheet was filed under Section 307 IPC.

11. It is stated that the petitioner No.1 complained against the doctors of DDU Hospital for tampering with the record and giving false opinion in the MLC. The Medical Superintendent constituted a Board to enquire into the complaint. Comments were called for by the board from Dr. B.N. Mishra. Subsequently, opinions/comments were given by Dr. B.N. Mishra of the Forensic Department, who had earlier opined that it was a *great head injury*, that the nature of injury sustained was “*simple*”. Charge sheet was filed under section 307 because of the initial opinion of Dr. B.N. Mishra that it was a *great head injury*. The Medical Board finally opined that the nature of injury sustained was “*simple*”.

12. Further, it is pointed out that the Head of the Department, DDU Hospital, by his letter dated 27.01.2016, stated that the Investigating Officer was misguiding the Court as well as the Authority as no verbal

or written opinion was given by the Head of the Department (Casualty) and stated that necessary action be taken against the said Investigating Officer.

13. It is submitted on behalf of the petitioners that without appreciating the above facts, Trial Court has erroneously framed charges against the petitioners under Sections 186/353/307 IPC read with Section 34 IPC.

14. With regard to the offences under Section 307 IPC, it may be seen that the nature of injury sustained is *simple*. The medical opinion rendered by the doctors, who examined the complainant was that the nature of injury is *simple*. Thereafter, the complainant as well as the Investigating Officer, without any cause or reason, wrote to the Forensic Department seeking reference to the doctors of the Forensic Department for a subsequent opinion.

15. Clearly, there is no such procedure for reference to a doctor in the Forensic Department for rendering a medical opinion on the nature of injury sustained. Even the doctor, who had examined the complainant, in the MLC has written that the patient absconded from the ward. There is no explanation rendered by the doctor or the Investigating Officer as to why the SHO, who is the complainant in the subject case, absconded from the ward. There is further no explanation on record as to why reference was made to the Forensic Department for rendering an opinion.

16. Further, it may be seen that Dr. B.N. Mishra of the Forensic Department, in his opinion, has noticed that a request was received to render an opinion as to whether the injury was fatal/liable to disable mentally or otherwise. He, in his opinion, does not state that he either clinically or otherwise examined the complainant. He has only referred to the MLC which stated *that there was one boggy swelling with tenderness over left side of forehead in addition to history of loss of consciousness and vomiting.*

17. Dr. B.N. Mishra of the Forensic Department rendered an opinion that it was a *great head injury* which could cause permanent mental disorder or even death. He has further mentioned in his opinion that physiological changes in the brain is not always noticeable/observable by means of routine investigations like X-Ray, CT Scan etc.

18. There is no term “*great head injury*” in the medical jurisprudence to describe nature of injury. The facts clearly show that an effort was being made to obtain an opinion so that a charge under Section 307 IPC could be framed.

19. The doctor, who had examined the complainant, had advised X-Ray of skull as well as the CT of the head. Both the X-Ray report as well as the CT Scan report has been produced in Court in these proceedings. CT Scan shows everything to be normal.

20. Further, on the complaint of the petitioner a Board was constituted, the Board summoned Dr. B.N. Mishra of the Forensic Department and inquired about his opinion. Thereafter, Dr. B.N. Mishra of the Forensic Department stated that the report submitted by him was an interim report and he had not seen the CT Scan report as it was not submitted by the Investigating Officer. Later on, in the clarification submitted to the Inquiry Committee he has given an opinion that injury was *simple* caused by blunt force. Neuro Surgery Department had given an opinion that the nature of injury sustained was simple.

21. For a charge under Section 307 IPC to be framed, the nature of weapon used, the manner in which it is used, motive for the crime, severity of the blow, part of the body where injury is inflicted, is all to be taken into consideration to determine the intention.¹

22. In the present case, there is no allegation that any weapon was used. The CT Scan clearly shows no abnormality or injury to the head. Manner in which the Investigating Officer as well as the complainant have conducted themselves clearly shows that an attempt was made to obtain an opinion that the nature of injury sustained was serious in nature. The manner in which the Investigating Officer and the complainant have conducted themselves clearly show that the whole exercise was motivated and mala fide. An effort was made to inflate the charges. The facts, as noticed above, clearly show that a charge

¹ *Hari Kishan & Anr. vs. Suknbir Singh & Ors.*: AIR 1988 SC 2127

under Section 307 IPC could not have been framed against the petitioners.

23. With regard to the charges framed under Sections 186/353 IPC is concerned, said charges could not have been framed in the absence of compliance with Section 195 Cr.P.C. No court can take cognizance of an offence under Section 186 IPC unless a complaint is made by the proper officer in the proper format as prescribed under Section 195 Cr.P.C. Breach of Section 195 Cr.P.C. renders the action void ab initio.²

24. Non-compliance of Section 195 Cr.P.C. is a non-curable defect and renders the proceeding void ab initio³.

25. Further, it may be seen that Section 353 IPC has also been invoked in the subject case which is, in fact, an extension of Section 186 IPC. The allegations with regard to Section 353 IPC, as contained in the subject FIR, really fall in the nature of an offence under Section 186 IPC.

26. As noticed above, no Court could have taken cognizance of the offence under Section 186 IPC except on a complaint of a proper officer made under Section 195 Cr.P.C.

27. Further, it may be seen that the entire proceedings smack of arbitrariness and vindictiveness on the part of the complainant and

² *Saloni Arora vs. State Govt of NCT of Delhi*: (2017) 3 SCC 286

³ *Mohan Kukreja vs. State Govt of NCT of Delhi* 2019 SCC OnLine Del 6398

falls squarely within the parameters of the decision of the Supreme Court in *Manoj Sharma vs. State*: (2008) 16 SCC page 1 and *Prabhu Chawla vs. State of Rajasthan*: AIR 2016 SCC 4245, wherein, the Supreme Court has held that substantive justice requires that proceedings of such a mala fide nature should be quashed in exercise of powers under Section 482 Cr.P.C.

28. In view of the above, I am of the view that the impugned order framing charge against the petitioners for an offence under Sections 186/353/307 read with Section 34 IPC is an order passed by the Trial Court in a mechanical manner without appreciating the true facts and circumstances of the case and application of mind.

29. Further, the impugned order dated 11.07.2017 cannot be sustained and is rendered *void ab initio* as subject proceedings suffer from infraction of Section 195 Cr.P.C., being against the dicta of the Supreme Court in *Daulat Ram vs. State of Punjab*: 1962 Supplementary 2 SCR 812.

30. In view of the above, petition is allowed. Impugned order dated 11.07.2017 framing charges against the petitioners is set aside. Petitioners are, accordingly, discharged.

31. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019/st