
(2004) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 936 of 2001

Abdul Qayyum Akhtar and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228

Citation : (2004) CriLJ 2764 : (2004) 4 RCR(Criminal) 559 : (2004) 3 RLW 2005 : (2004) 2 WLC 635

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Z.A. Naqvi, for the Appellant; Rizwan Alvi, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The petitioners seek to quash the order of framing charges on the ground that supplementary charge-sheet could not have been made the basis, being against the provisions of Section 173 Cr. P.C., for framing the said charges.

2. Contextual facts depict that on September 13, 1995 at 10.00 p.m. one Ghayasuddin lodged a written report at Police Station Ramganj Jaipur with the averments that his brother Mohd. Khalid and uncle Qamruddin after taking their evening meals were strolling along the road leading to Phutakhura, when a mob of 150-200 persona appeared from the side of Rehmaniya Masjid and one of them Abdul Qayyum Akhtar (petitioner No. 1) exhorted them saying that they (Qamruddin and Mohd. Khalid) should be given the account of the R.C. Centre, where upon one Haider All attacked Qamruddin with a knife and when Mohd. Khalid rushed to rescue of his uncle he was also attacked by Shokat who caused knife-Injuries to him. Thereafter other persons namely, Abdul Hameed, Nasiruddin, Jawahar, Liyaqat, Farid and Abdul Hai also caused injuries to the two injured. On this report a case No. 359/95 was registered under Sections 147,

148, 149, 307 and 120B, IPC. Later on Section 302, IPC was also added. On conclusion of investigation charge-sheet No. 106/96 against ten accused persons namely, Haider Ali, Mohd. Fareed, Mohd. Yusuf, Jameel Ahmed, Abdul Hameed, Liyaqat Ali, Bashiruddin, Aijaz, Shokat Ali and Nasiruddin was filed. But the investigation against petitioners Abdul Qayyum Akhtar and Abdul Hai was kept pending under Sec. 173(8), Cr. P.C. The case was committed to the Court of Special Judge, Sati Niwaran and Additional Sessions Judge, Jaipur City Jaipur bearing Sessions Case No. 106/96. As many as 22 witnesses were examined by the prosecution. Out of which Ghayasuddin (P.W. 1), Islamuddin (P.W. 2), Amiruddin (P.W. 3), Darakhshan Parveen (P.W. 4), Jamaluddin (P.W. 5), Aslam (P.W. 7) and Umarddin (P.W. 8) deposed that they had not witnessed the occurrence. All these witnesses were declared hostile. Motbirs of recovery were also declared hostile. On hearing final submissions, learned Special Judge (Sati Niwaran) Rajasthan and Additional Sessions Judge, Jaipur City, Jaipur vide judgment dated July 31, 1997 acquitted all ten accused persons. It so appears that after about two years of the judgment of acquittal i.e. on June 9, 1999 the supplementary charge-sheet bearing No. 41/99 was filed implicating the petitioners Abdul Qayyum Akhtar and Abdul Hai, against whom the Investigation was kept pending u/s 173(8) Cr. P.C. When the case came up for trial before the learned Special Judge (Sati Niwaran) Rajasthan and Additional Sessions Judge, Jaipur City, Jaipur, a request was made to drop the proceedings but the learned trial Judge did not accede to the request and vide order dated April 20, 2000 framed charges against the petitioners for the offences under Sections 302 and 302/34, IPC. Against this order that the present action of filing misc. petition has been resorted to by the petitioners.

3. Mr. Z.A. Naqvi, learned counsel appearing for the petitioners, vehemently canvassed that in the matter where the Investigation was kept pending u/s 173(8) Cr. P.C., supplementary charge-sheet could not be filed on the basis of that evidence which was already available in the diary. If that evidence was found insufficient at one point of time, then how it could have been made the basis for filing the charge-sheet afterwards. Reliance is placed on Nooruddin v. State of Rajasthan (1998) 2 Raj Cri C 116, Satish Mehra Vs. Delhi Administration and Another, and Gurpreet Singh v. State of Punjab (1995) 3 Crimes 1 (Punj & Hry).

4. Having considered the rival submissions, I deem it appropriate at the outset to consider the provisions of Section 173(8) Cr. P.C. which reads as under :--

"(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer In charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report

forwarded under Sub-section (2)."

5. A bare look at the aforesaid provisions reveals that it empowers the Investigating Officer to make further investigation in respect of an offence after submission of charge-sheet and supplementary charge-sheet can be filed if on further investigation fresh evidence, oral or documentary is available. A condition precedent to the exercise of the right to submit fresh report or further report as provided u/s 173(8) Cr. P.C. Itself is the obtaining of "further evidence" over and above what was collected or known earlier. Further report must be solely "regarding such evidence" which was not collected or which was not available earlier. Undeniably in the case on hand the supplementary charge-sheet was filed by police station Ramganj, Jaipur without making further investigation into the matter and that too after about two years of the judgment of acquittal passed by learned trial Judge. Since the supplementary charge-sheet was filed without further investigation against the petitioners. I am of the opinion that it was not in accordance with the provisions contained in Section 173(8) Cr. P.C. It is inexplicable as to why the Investigating Officer kept the matter pending u/s 173(8), Cr. P.C. earlier, and why after two years of the Judgment of acquittal filed the supplementary charge-sheet on the basis of the police statements of those witnesses who did not at all support the prosecution case and were declared hostile. In Satish Mehra Vs. Delhi Administration and Another, their Lordships of Supreme Court Indicated that valuable time of Court should not be wasted for holding a trial only for purpose of formally completing procedure to pronounce conclusion on a future date. As already noticed that the same eyewitnesses have been shown in the supplementary charge-sheet who did not support the prosecution case, therefore, no purpose would be served to complete the formality in calling those witnesses again in the Court and to declare them hostile. I do not find it a fit case for framing the charges against the petitioners.

6. For these reasons, I allow the Misc. Petition. While setting aside, the impugned order dated April 20, 2000, I discharge the petitioners Abdul Qayyum Akhtar and Abdul Hai of the charges under Sections 302 and 302/34, IPC. Record of the case be sent back forthwith.