

(1989) 08 DEL CK 0055

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1145 of 1989

Ajit Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Citation : (1989) 39 DLT 468 : (1989) RLR 392

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : A.S. Vir and P.S. Sharma, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This petition u/s 482 of the Code of Criminal Procedure has been filed for quashing the criminal proceedings against the petitioner in relation to Fir No. 40 of 1986 of Police Station Anand Parbat, New Delhi.

(2) The circumstances in which the prosecution against the petitioner arose are that the petitioner owns a factory-M/s Capital Machine India at New Rohtak Road, New Delhi, One Ram Kewal, complainant worked in that factory. The complainant went to the seat of another worker who was operating the power press. Arm of the complainant got caught in the power press which was being operated by another worker. The arm was then amputated in the hospital. Therefore, the crux of the allegations against the petitioner is that he did not put safety guard on the power press "Garari" which resulted in grievous hurt to the complainant.

(3) A case was registered against the petitioner u/s 338 Indian Penal Code and after completion of investigation it was filed in the court of Sh. Sukh Dev Singh, Metropolitan Magistrate, Delhi. After hearing arguments at the stage of charge the learned Magistrate was of the view that the offence actually falls u/s 287 of Indian Penal Code and not u/s 338 I PC. The order shows that even the learned App appearing before him conceded that the offence actually was covered by

Section 287 IPC.

(4) I have heard the arguments advanced by learned counsel for the petitioner and learned counsel for the State and have given my careful consideration to all the circumstances involved in this petition. It has been argued on behalf of the petitioner that the offence u/s 287 Ipc was actually non-cognizable and Therefore the police could not investigate this case without seeking permission of the learned Magistrate u/s 155(2) of the Code of Criminal Procedure^ Simply because the case was registered u/s 338 Indian Penal Code which is a cognizable offence, the police could not investigate the offence which actually fell u/s 287 IPC. He has cited some judgments which may now be noticed. In K.L. Bhasin Vs. Sundar Singh, , this Court held that offence u/s 504 Indian Penal Code being a non-cognizable offence, a police officer had no power to investigate it unless he had obtained an order from a Magistrate for investigation in terms of Section 155(2) Code of Criminal procedure. Similarly in the case of Vasudev v. State 1984 14 RLR 689, an offence u/s 186 Indian Penal Code was investigated by the police and the challan was filed. This Court quashed the proceedings in that case also holding that the offence could not have been investigated without the orders of a Magistrate u/s 155(2) of Code of Criminal Procedure. Although the facts of the present case are little different from the facts of the cases cited above, yet the argument of the learned counsel for the petitioner seems to be correct that when case is actually registered against an accused in respect of a cognizable offence, which actually is not made out and ultimately it is found that the offence was non-cognizable, it may mean giving long hand to the police in first registering cases for cognizable offences which ultimately may not fall within the definition of such a case. Since actually the offence made out against the petitioner was covered by Section 287 I Pc, it must be held that the police could not have investigated the offence without seeking appropriate permission from the Magistrate u/s 155(2) of Code of Criminal Procedure. The State has not filed any revision against the order of the learned Magistrate by which he held that actually the offence was made out u/s 287 Indian Penal Code and not u/s 338 IPC.

(5) I am, Therefore, of the view that since the offence was non-cognizable wherein the permission of the Magistrate for investigation u/s 155(2) of Code of Criminal Procedure was not obtained the continuation of the criminal proceedings before the learned Magistrate would amount to an abuse of the process of the court. I, Therefore, quash the proceedings against the petitioner in relation to Fir No. 40 of 1986 of Police Station Anand Parbat.