

(2007) 05 DEL CK 0272

In the Delhi High Court

Case No : Criminal Revision Petition No. 963 of 2002

Ashok Kumar Nayyar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2
Penal Code, 1860 (IPC) — Section 169, 170, 173, 354, 509

Citation : (2007) 05 DEL CK 0272

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : D.C. Mathur and D.K. Sharma, for the Appellant; V.K. Malik, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This revision petition No. 963/2002 is preferred by the Petitioner against an order of charge framed u/s 354/509 IPC by the Metropolitan Magistrate on 29.10.2002 in a complaint lodged by one Ms. Neelam Mahajan Singh (herein after referred to as "the Complainant").

2. The brief facts necessary to decide this petition are that the complainant on, 19.6.1995 at about 9.30 AM went to M/s B.K. Dry cleaners, Bengali Market, New Delhi to collect her clothes. An employee Mr. Rajinder Prasad was present at the shop. The complainant was not happy with the service; she complained that her clothes had not been dry cleaned properly.

3. The complainant alleged in her complaint that the Petitioner who came to the shop as a customer without any provocation called her an "ugly bitch" hailing from a cheap family and looking like a "whore" and assaulted her by punching on her hips. She stated that the beat constable Sh. Kishan Gopal was present. She alleged that this incident was witnessed by others.

4. The Petitioner alleges that the investigation was conducted and along with the

charge sheet, statements of constable Shri Kishan Gopal and of the employees were filed. None of them supported the complainant's version. The trial Court by its order dated 29.10.2002 framed charges against the petitioner for offences committed under Sections 354/509 IPC.

5. The extracts of the order dated 20.10.2002 are as follows:

I have perused the original complaint and other material available on record. A perusal of it shows that a prima facie case u/s 354/509 IPC is made out against the accused. Accordingly charge has been framed against accused to which he pleaded not guilty and claimed trial.

6. The petitioner stated that the eye-witness to the incident, Beat Constable Kishan Gopal did not support the complainant's story, he categorically denied that any such incident taken place. The petitioner further states that employees of the shop also do not support the complaint. The petitioner urged that the complaint is totally silent regarding the motive/reason for his alleged behavior. He stated that it is highly improbable that an aged person for no reason abused and assaulted a stranger. The petitioner avers that he had advised the complainant not to pick up a fight with the employees in the shop, and that such advice could not be termed as an offence.

7. The constable Sh. Kishan Gopal joined investigations and stated that he was on duty as a beat Constable at Bengali Market on the date of incident. At around 9.15 AM one lady namely Neelam Singh called him and said that a quarrel had taken place near Bee Kay Dry Cleaners. He reached the spot but did not find any kind of quarrel at the shop nor did he find any one teasing any lady.

8. The Employees Sh. Rajinder Prasad and Dhirender at Bee-Kay Dry Cleaners stated that at around 9.30 am one lady had gone to their shop to collect her clothes, when the clothes were being packed she argued that the clothes were not washed and packed properly. She further said that she would burn the shop. At this juncture, one customer Ashok Nayyar told her that as she was an educated lady it was improper on her part to use such language. Then, the lady started quarreling with the customer in loud voice in English. The employees stated that in their presence the complainant was not abused, assaulted or teased by the petitioner. They also stated that the woman deliberately started the quarrelling and threatened Ashok Nayyar.

9. It is contended by Mr. D.C. Mathur, learned senior counsel for the petitioner that the entire evidence and materials placed before the Court nowhere support the allegation of the informant, who had clearly stated that the petitioner had used criminal force and assaulted her on 19.6.1995. It was also contended that each of the persons alleged to have been present on the spot, did not support the version of the informant and on the contrary disputed it. Counsel contended that the statement of even the beat constable Krishan Gopal who immediately reached the spot on hearing about the incident, showed that the version of the informant was not correct indeed untruthful. The informant/complainant had

clearly stated that the petitioner had physically touched her and also abused her in foul and vulgar language which amounted to outraging her modesty, in the presence of her minor son as well as others at M/s B.K. Drycleaners. However, the police constable Krishan Gopal, in his statement gave a completely different version and stated that there was no quarrel in that place; nor was there any fight. He also relied on the statements of two employees of M/s B.K. Drycleaners who did not support the informant's version. Counsel contended that when there were such two rival versions the Court should take a view that would support a version favorable to the accused and not frame the charge. He relied upon the judgment of the Supreme Court in *Union of India (UOI) Vs. Prafulla Kumar Samal and Another*, to say that there are no material circumstances disclosing grave suspicion of the petitioner having committed the offence alleged. He also relied on decision in *Dilawar Balu Kurane v. State of Maharashtra* 2002 SCC 310.

10. Learned Counsel contended that there was absolutely no material or evidence in support of the charge u/s 354 and that Section 509 was merely added to ensure so that the petitioner stood trial. Counsel submitted that on a fair reading of Sections 169/170 and 173, there should be something more for the Court to arrive at a determination regarding existence of grave suspicion. It was contended, by placing reliance on Section 2(h), Criminal Procedure Code that investigation would include all the materials. In this case, the materials were only statements. All the statements recorded (except that of the informant), were favorable to the petitioner accused. Under these circumstances the court should not have framed the charges as it did.

11. Learned Counsel for the State submitted that the Court, while framing charges is no doubt duty bound to sift the evidence and consider whether on an over all appreciation of the facts, there was grave suspicion about the accused having committed the offence. He relied upon the judgment of the Supreme Court as *Rajbir Singh v. State of UP and Anr.* 2006 (2) Crimes1 and submitted that in cases where Section 354 and such like offences are involved, the Court has to weigh the evidence with care and possibly give allowance to the version of the informant so that it can be corroborated later, at the stage of trial. It was contended that if these principles were to be kept in mind, the charges framed were justified. Learned Counsel urged that the complainant was in the habit of levelling false allegations and picking up quarrels. He relied on the judgment of a Full Bench of this Court in *Ms. Neelam Mahajan Singh v. Commissioner of Police* 1993 JCC 536 to say that the complainant had sought to level false allegations in another incident.

12. The trial Court records were also summoned. I have gone through them.

13. The factual narrative would reveal that according to the informant, in the morning of 19th of June, 1995, the petitioner, allegedly in the presence of a Constable, (who was called to the spot), physically assaulted and touched her. Besides he is alleged to have used vulgar and abusive language. The informant also gave details about the incident which is alleged to have occurred in the

premises of B.K. Drycleaners, Bengali Market. It was alleged that the petitioner called her "an ugly bitch" hailing from a cheap family". In the investigation by the police statement of the informant was recorded. None of the statements of witnesses (who were according to the informant present at the spot), supported her version. In fact the Constable stated that there was no quarrel. Similarly, the two employees of B.K. Drycleaners denied the incident and instead alleged that the informant had complained that her clothes were not packed properly and started abusing them. According to them she threatened to burn the shop. At that stage the petitioner allegedly tried to intercede, stated that she was an educated lady and it was not proper for her to use such language. Upon this she quarreled with him. Those two witnesses also stated that the petitioner did not quarrel or abuse her.

14. It is evident that the informant had alleged something which was at complete variance with the version and statements of witnesses at site including those present, admittedly, according to her. The statement of the crucial witness, ie Krishan Gopal, the Constable is diametrically opposite to what she described. Both the statements corroborate each other as to the presence of Krishan Gopal but there is complete divergence thereafter. The informant leveled allegations against the petitioner who is supposed to have assaulted her in the presence of many persons. Krishan Gopal, however, stated that there was no such quarrel. The other witnesses mentioned about a quarrel started by the informant herself. When the petitioners attempted to reason with her, she turned at him and abused him. I am of the opinion that the so-called previous conduct of the complainant in an unrelated incident, is irrelevant to decide this case.

15. The facts on record which are part of the charge sheet, Therefore, present a conflicting picture all the statements of independent witnesses do not support the version of the informant. It was only the statement of the informant that the incident alleged by her occurred, according to the facts described in the FIR and the charge sheet. It is well-settled in Prafulla Kumar Samal's case that the Court has to sift the evidence and determine whether a grave suspicion about commission of offence exists on the basis of the materials. Kurane's case is an authority for the proposition that if there are two versions or two inferences can be reasonably drawn, the version favorable to the accused has to be accepted by the Court so long as it is a reasonable one.

16. No doubt some judgments such as State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., have indicated that in charges of rape etc. the Court should avoid embarking on detailed consideration of the probative value of materials. The decision in Rajbir Singh's case is also to that effect. However, in my opinion these do not detract from the basic time tested norm that the Court has to form a reasonable opinion about existence of grave suspicion, regarding commission of the offence. Equally if two versions are possible, the one supporting the accused has to be preferred. In this case the entire materials before the Court are in the form of statements. There is a clear conflict about the

facts alleged. Besides the informant there is no one speaking about the incident as alleged by her. The police constable who was admittedly on the spot, stated that there was no quarrel as described by her and the two independent witnesses again admittedly present, gave a completely different picture pointing to the informant starting a quarrel with them. They clearly state that the petitioner did not threaten, assault or abuse the informant.

17. In these circumstances, after careful consideration of the materials I am of the opinion that there is a reasonable version which supports the petitioner. The materials on record also do not point to a grave suspicion to warrant the charges, framed in the impugned order.

18. In view of the above discussion, the petition deserves to succeed. It is accordingly allowed. The impugned order is hereby set aside.