

(2015) 03 KAR CK 0183
In the Karnataka High Court
Case No : Criminal Petition No. 201093/2014

Ateek Ahmed and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320(1), 320(8)
Penal Code, 1860 (IPC) — Section 302, 304(A), 323, 34, 341

Citation : (2015) 03 KAR CK 0183

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Hanmantharaya Sindhol, for the Appellant; Maqbool Ahmed, HCGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—The learned High Court Government Pleader is directed to take notice for Respondent No. 1.

2. The present petition is filed seeking quashing of the order passed by learned Addl. Chief Judicial Magistrate, Bidar, on 13-05-2010 in C.C. No. 337/2008.

3. The records disclose that the police have submitted a charge sheet against the petitioners herein for the offences punishable U/Sec. 341, 323, 504 R/w 34 IPC. After filing of the charge sheet, the trial Court has proceeded to frame the charge and charges were also framed for the above said offences vide order dated : 30-7-2009. Though the case was registered by the police for the offence punishable U/Sec. 302 IPC in Crime No. 104/2007, but, subsequently, after looking into the post mortem examination report and other materials on record, the police have correctly taken the decision to file the charge sheet under the provisions of Sec. 341, 323, 504 R/w 34 IPC.

4. After framing of the charge, PW-1 was examined and he has implicated all the accused Nos. 1 to 4 for the above said offences, but he has also stated in the

evidence that one Ateek Ahmed has assaulted the deceased with a bench. At the stage of evidence, it appears the matter was compounded between the parties, consequently, an application was filed U/Sec. 320(1) and (2) Cr.P.C., seeking permission of the learned Magistrate to compound the offences. The learned Magistrate has dismissed the application on the ground that though provision U/Sec. 302 IPC is not attracted, nevertheless, it may attract Sec. 304(A) of IPC and also stating that CW-16 one of the injured was not joined the compromise petition, dismissed the said application.

5. As could be seen from the Code of Criminal Procedure, the offences punishable U/Sec. 341, 323, 504 IPC are compoundable in nature. It is not the case of the police or that of the defacto complainant that any other offence was committed by the accused person. Even it is not the case of the Court that the offence U/Sec. 304(A) IPC has been committed, as no charge has been framed by the trial Court at the initial stage.

6. At the time of framing of the charge, it is the fundamental duty of the Court to go through the entire charge sheet papers and other materials on record and find out what are the offences committed by the accused irrespective of the provisions invoked by the police, the Court is at liberty to frame the charges, even if any other offence is also constituted on the basis of the contents of the charge sheet. But, it appears that, the same has not been done by the Court at the initial stages. Even otherwise, as I have already stated, it is not the case that due to rash or negligent act of any of the accused, the deceased died. The post mortem examination report also discloses that the deceased died only due to cardiorespiratory arrest and not due to any injury sustained by him. It is not the case that, due to the assault made by the accused by using of bench or stool, what ever it may be, the death was caused. There is no proximity explained by any of the witnesses between the assault and the death of the deceased. Therefore, the Court itself has imagined with regard to the constitution of the offence U/Sec. 304(A) IPC. This imagination is done to substitute to the charge sheet allegations and charges framed by Court and to reject the application filed by the parties. It is not permissible to the Court to go away from the contents of the charge sheet and imagine some thing which is not there on record and the evidence of the prosecution witnesses. It should act accordingly by looking into the materials on record. Under the above said circumstances, I am of the opinion that the rejection of the application on the ground that the offence punishable U/Sec. 304(A) IPC also may be attracted is not proper and correct on the part of the trial Court. However, I found sufficient force with regard to the rejection of the application because CW-16 who is one of the injured has not been made a party to the compromise petition. Therefore, it is left to the parties to file fresh necessary application before the trial Court for recording of compromise including CW-16 as one of the party to the application. However, in view of the above said facts, the order passed by the learned Magistrate does not sustain and same is liable to be set-aside or quashed. Giving liberty to the parties to approach the trial Court with proper and correct application U/Sec. 320(1) and (2) Cr.P.C., if

CW-16 is also made as party to the compromise petition, the trial Court shall record the compromise and pass appropriate orders U/Sec. 320(8) Cr.P.C.

7. With these observations, the petition is allowed. The Order passed by learned Addl. Chief Judicial Magistrate, Bidar, passed in C.C. No. 337/2008 Dated : 13-05-2010 is hereby set-aside.