
(1984) 01 RAJ CK 0042

In the Rajasthan High Court

Case No : Criminal Revision No's. 206 and 221/83

Dr. Suresh Chandra Jain and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 04-01-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 202
Penal Code, 1860 (IPC) — Section 323, 332, 352, 451, 504

Citation : (1984) RLW 379 : (1984) WLN 21

Hon'ble Judges : Shyam Sunder Byas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Vyas, J.—These two revisions are directed against an order of the learned Judicial Magistrate (3), Jodhpur dated May 30, 1983 by which cognizance for an offence u/s 352, IPC was taken on a private complaint and the accused was summoned to face trial. Since the revisions arise out of one and the same order, they were heard together and are disposed of by a common judgment.

2. The grievance of the complainant is that cognizance for offences under Sections 323 and 504, IPC should have also been taken whereas the contention of the accused is that no cognizance of offence could be taken against him without the previous sanction of the State Government u/s 197 Cr. P.C.

3. It would be proper to briefly recapitulate the facts giving rise to these revision petitions.

4. On 22-1-1982, the complainant Dhanpatmal presented a complaint in the court-below for offences under Sections 323 and 504, IPC. It was alleged that Smt. Hansarani, who was the wife of the son of his brother, was admitted for treatment in E.S.I. Female Ward of M G. Hospital, Jodhpur on 29-4-81 as a burn case. At about 4 30 p.m. on that day, while the complainant and other relatives were standing near her bed, the accused came with a photographer and asked

the photographer to take her nude snaps. The complainant raised protest against this action of the accused. The accused got infuriated and hurled abuses on him and gave a fist blow on his face. It was further averred that the complainant went to the Enquiry Office of the hospital to lodge a complaint. The accused followed him and caught hold of him by his neck. There also he, addressed abusive words to him. The learned Magistrate examined the complainant u/s 200, Cr. PC and thereafter, conducted enquiry u/s 202, Cr. PC. During enquiry, the complainant examined one witness Ganpatmal. He thereafter passed the impugned order and summoned the accused to face trial for an offence u/s 352, IPC.

5. In the revision petition filed by the accused, it was alleged that he was the Doctor on duty in E.S.I. Female Ward of M.G. Hospital. At about 4,30 p.m. he was informed that the condition of Smt. Hansarani was becoming, precarious. He, therefore, immediately reached her bed with House-Surgeon Chameli Patel. He prescribed certain injections and made efforts for arranging the blood from blood Bank for her. Many persons collected, there including patient's father-in-law Shri Vijay Raj and busbenl's brother Kanmal. He asked them not to collect near the patient. They got infuriated and manhandled him. Smt. Hansarani did not survive and passed away. It: was a burnt case, in which Smt. Hansarani was intentionally burnt by her husband Ashok Dhariwal (Oswal). The relatives of Hansarani wanted to hush up the matter and raised protest even against post-mortem examination of her dead-body. Since, he (accused) was man-handled and obstructed by Vijayraj and Kanmal in the discharge of his duties, ne lodged a report against them at Police Station, Sardarpura, Jodhpur. The Police registered a case under Sections 332 and 451, IPC, But after investigation, filed a negative final report. The learned Chief Judicial Magistrate dis-agreed with the view of the Police, did not accept the negative final report and took cognizance for offences under Sections 332 and 451, IPC against Vijayraj and Kanmal by his order dated December 30, 1981. In order to give a counter-stroke to their case, the complainant who h a real brother of Vijayraj has filed the malicious complaint only to numiliate and harass him. The complaint was filed on 22-1-82 only after when the learned Chief Judicial Maaistrade had passed the order of taking cognizance against Vijayraj and Kanmal on 30-12-81. The accused has filed a certified copy of the order of the Chief Judicial Magistrate dated December 30, 1981 in support of his submissions.

6. It is in this manner that both the parties felt aggrieved against the impugned order of the learned Judicial Magistrate (3) Jodhpur.

7. It would be proper first to take up the revision filed by the complainant. It was argued that there were no good and sufficient reasons not lo believe the sworn statements of the complainant and his witness Ganpatmal. Both of them have stated that the accused who were abuses to the complainant and gave him fist blow on his face. These allegations make out the offences punishable under Sections 323 and 504, IPC. The learned Judicial Magistrate recorded no reason

as to why he was impliedly dismissing the complaint for offences under Sections 323 and 504, IPC. I have bestowed my thoughtful consideration to the contention and find no merit in it.

8. In order to properly appreciate the statements of the complainant and his witness Ganpatmal, the back-ground will have to be borne in mind in which offences are said to have been committed by the accused. Complainant Dhanpatmal is the real uncle of the deceased-victim's husband Ashok Dhariwal, so also, Vijayraj is his real brother. Kanmil is the son of Vijayraj. Likewise Ashok Dhariwal is the son of Vijayraj Ashok Dhariwal facing trial for causing the death of his wife Hansarani by burning her. Vijayraj and Kanmai are facing trial for the offences alleged to have been committed at about 4.30 p.m. punishable under Sections 451 and 332, IPC, as is evident from the order of the learned Chief Judicial Magistrate dated December 30, 1981. In that case, under Sections 332, and 451, IPC the charge against Vijayraj and Kanmai is that they obstructed the accused in discharging his duties as a public servant and gave beating to him. The complainant filed the complaint only on 22-1-82 i.e. nearly after eight months of the occurrence and further only after when the Chief Judicial Magistrate took cognizance of the offences against Vijayraj and Kanmai.

9. Keeping this back-ground in mind, the pertinent question is whether the accused Dr. Suresh Chandra Jain hurled abuses on the complainant Dhanpat Mal and gave him fist blows or caught hold of his neck. No details of the abuses were given in the complaint. Only the vague words that ugly abuses were hurled were not sufficient to make out a case u/s 504, IPC. The complainant must state and show what words were actually used by the accused in order to find out whether those words amounted to an insult. It was observed in *Pukh Raj v. State* 1954 RLW 235 that it is necessary that the particular words spoken by the accused, should be proved in order to decide whether the use of those words amounted to intentional insult. In the instant case, the complaint is absolutely silent on this material point, so also the complainant and witness Ganpatmal did not state in their statement; what actual words were used by the accused. The learned Magistrate was, therefore, perfectly justified in not taking cognizance for an offence u/s 504, IPC.

10. Coming to the offence u/s 323, IPC, the allegation is that the accused gave a fist blow on the face of the complainant and later on he caught hold of his neck. The fist blow on the face must have resulted in some injuries. But no medical certificate of injuries was obtained by the complainant. After all, the offence was alleged to have been committed in the hospital itself. The complainant could have easily got himself medically examined then and there when the offence was committed.

11. There is yet another striking feature of the case. The offences are said to have been committed in the hospital. Many persons must have been present there. But the complainant examined none of them except his own relative Ratanlal. The statements of the complainant and the witness can not be readily

believed when the back-ground is kept in mind, that his own nephew Ashok Dhariwal was facing trial for causing the murder of Smt. Hansarani and his own brother and another nephew were facing trial before the Chief Judicial Magistrate relating to this very, incident. Though, all these facts were not before the Chief Judicial Magistrate, but they have been placed before this court. The complaint was filed nearly after eight months of the alleged occurrence. No doubt, the complainant reported the matter to Police on 29-4-81 but he was told that since the offence made out was u/s 323, IPC which was not a cognizable offence, he should approach the proper court and yet the complaint was filed after a long delay of eight months and no explanation was furnished for this inordinate delay. The complaint was filed as stated above, only when the learned Chief Judicial Magistrate had passed the order on December 30, 1981 summoning Vijayraj and Kanmal to face trial for offences under Sections 332 and 451, IPC, which were alleged to have been committed with the accused Dr. Sureshchandra Jain.

12. Having examined the complainant's case from all sides, the imputed order of the learned Chief Judicial Magistrate in not taking cognizance for offence under Sections 323 and 504, IPC cannot be said to be perverse and illegal. No interference is, therefore, required as prayed for by the complainant in his revision. There is no force in his revision petition, it must fail.

13. Adverting to the revision filed by accused, it was argued that he was discharging his duties as a Doctor on duty. He asked those, who were present near Smt. Hansarani not to collect there. Thereupon, he was man handled by the complainant's brother and nephew. No cognizance of an offence u/s 352, IPC could be taken against him even on the facts stated by the complainant for the reasons that what he did so in the discharge of his official duty as a doctor. Cognizance if could be taken only after obtaining the sanction from the State Government.

14. Admittedly, accused Suresh chandra Jain was a doctor in the State M.G. Hospital and still continued to be there. He was on duty and attending Hansarani for treatment. He must, therefore, be treated to be on duty and if at that time, he used any criminal force to keep away the complainant from Hansarani, such an offence was committed by him while acting or purporting to act in the discharge of his official duty. The accused is not removable from his office save by or with the sanction of the State Government. As such, he could not be prosecuted and no cognizance for the offence could be taken against him except with the previous sanction of the State Government.

15. The question whether or not between in was the of that under or to the 197, Cr. PC. so long as there is reasonable connection between the impugned act and the performance of the official duties. The object of Section 197, Cr PC is to guard against vexatious proceedings against the public servant.

16. In the instant case, the material furnished clearly shows that whatever was done by the accused, was done by him while acting or purporting to act in the

discharge of his official duty i.e. to say, while he was discharging his duties as a Doctor attending the pertinent Hansarani. As such, cognizance of an offence u/s 352, IPC could not be taken against him except with the previous sanction of the State Government.

17. It was also contended by the accused that cognizance could not be taken against him by virtue of the period of limitation having expired before cognizance was taken. I need not examine this contention as the revision succeeds on the ground for want of sanction to prosecute.

18. For the aforesaid reasons, the revision petition filed by the accused succeeds.

19. In the result, the revision petition filed by complainant Dhanpatmal is hereby dismissed and the revision petition filed by accused Sureshchandra Jain is allowed. The impugned order of the learned Judicial Magistrate (3), Jodhpur dated May 30, 1983 is set aside and the proceedings in Criminal Case No. 266 of 1983 taken against the accused are dropped, as cognizance against him could not be taken without the previous sanction of the State Government.