
(2013) 05 DEL CK 0292

In the Delhi High Court

Case No : Criminal Rev. Petition No. 709 of 2007

Haji Mohd. Altaf

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 195(1)(b)(ii)
Penal Code, 1860 (IPC) — Section 120B, 193, 195, 196, 218

Citation : (2013) 7 AD 493

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : R.K. Sharma, Mr. Lav Kumar Agrawal and Mohd. Iqbal, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The petitioner-accused, who is an advocate by profession, alongwith three others is facing trial in Sessions Case No. 141/1/10, arising out of FIR No. 852/2000 registered on 29th August, 2000 at Rajouri Garden Police Station, for the commission of offences punishable u/s 120-B IPC, Sections 193 /195 /196 r/w Section 120-B IPC, Section 389 r/w 120-B IPC and Section 218 r/w Section 120-B IPC. Charges for these offences were ordered to be framed against the four accused persons by the learned Additional Sessions Judge vide order dated 18th August, 2007. Only the petitioner-accused felt aggrieved by the trial Court's order framing these charges against him and so he filed the present revision petition and sought his discharge. The prosecution evidence is being recorded in the trial Court since the prayer of the petitioner-accused made in this petition for stay of the trial was not accepted by this Court and all the material witnesses were stated to have already been examined.

2. The relevant facts, which only need to be noticed for the disposal of this petition are that on 29th August, 2000 a case of gang rape of PW-1 was registered vide FIR No. 852/2000 at Rajouri Garden police station on 30th

August, 2000. One Sushil Gulati was arrested for the commission of the said offence which was allegedly committed on 29th August, 2000. However, after his arrest the investigation of the case came to be transferred to the Crime Branch of Delhi Police on 3 September, 2000. During the investigation conducted by the Crime Branch it was found out that the said Sushil Gulati was, in fact, falsely implicated by PW-1 in conspiracy with the present petitioner-accused who during those days was an Inspector in the Delhi Police and was involved in a case u/s 354 IPC in which the said Sushil Gulati was a witness against him and so the petitioner-accused wanted to take revenge by implicating Sushil Gulati in a false case of heinous offence of gang rape. On 9th April, 2001 Sushil Gulati was got discharged by the police from the Court of the Metropolitan Magistrate and the present petitioner and three others were arrested and charge-sheeted for the offences noted already. Sushil Gulati and the girl who had earlier got him implicated in this case for having raped her with two others in the evening of 29th August, 2000 were cited as the prosecution witnesses. One of the four charge-sheeted accused expired after the commitment of the case to Sessions Court but before the trial court could examine the case on the point of charge. So, the trial Court ordered framing of charges against the remaining three accused persons.

3. Learned counsel for the petitioner-accused raised a point that the Additional Chief Metropolitan Magistrate could not have taken cognizance in the matter without a complaint as provided u/s 195(1) (b)(ii) Cr.P.C. having been filed by the Magistrate before whom the original so called false and fabricated FIR was produced and on the basis of which Sushil Gulati was arrested and further proceedings had taken place. This objection was raised by the petitioner-accused before the Additional Chief Metropolitan Magistrate after he had been summoned but that objection was rejected. In the revision petition filed against that order by the petitioner-accused he was given the liberty to raise that objection at the stage of charge which he did but the learned Additional Sessions Judge also rejected that objection.

4. It is significant to note that before filing of the charge-sheet in Court the investigating officer had also moved an application on 24th May, 2001 before the Additional Chief Metropolitan Magistrate for making a complaint as per Section 195(1)(b)(ii) Cr.P.C. but the learned Magistrate had dismissed that application vide order dated 19th July, 2001 on the ground that this provision of law was not attracted in the facts of the case.

5. The Additional Chief Metropolitan Magistrate as well as the learned Additional Sessions Judge had rejected the objection raised on behalf of the accused that initial cognizance itself was wrongly taken in the matter since no complaint had been made by the Court where forged and fabricated FIR was filed initially in respect of which act of the accused persons Sections 193 and 195 IPC had been invoked against them, relying upon a judgment of the Hon'ble Supreme Court in the case of " Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and

Another, . It had been held by the Hon"ble Supreme Court in that judgment that the bar of Section 195(1)(b)(ii) Cr.P.C. does not get attracted when any document is forged prior to its submission in Court. Learned counsel for the petitioner accused could not produce any other judgment of the Apex Court wherein the said judgment had been considered and overruled or even distinguished. Therefore, no fault can be found with the findings of the learned trial Court in not discharging the petitioner accused on the ground that initial cognizance taken by the Additional Chief Metropolitan Magistrate was bad in law.

6. It was also contended by the learned counsel for the petitioner-accused that the entire proceedings from the stage of filing of the charge-sheet in Court to the stage of taking of cognizance by the Additional Chief Metropolitan Magistrate and the ongoing trial of the accused persons is vitiated for the reasons that initially FIR was registered against one Sushil Gulati under Sections 376 /328 /506 /341 IPC on the complaint of PW-1 but during the course of investigation the police had produced Sushil Gulati before the Court of Magistrate and got him discharged which could not have been done by the Magistrate. It was submitted that if at all the police had found that a false case had been registered against Sushil Gulati the police could have filed a closure report in respect of FIR No. 852/2000 and registered another FIR against the petitioner-accused and his co-accused persons but they could not have been prosecuted in the case pertaining to FIR No. 852/2000.

7. Learned Additional Public Prosecutor, however, submitted that there was no illegality or even irregularity in the police filing a charge-sheet against the petitioner and his co-accused persons without first filing a closure report against Sushil Gulati and further that in any event, non-registration of a separate FIR against the petitioner and his co-accused persons was a mere irregularity and for that reason the proceedings against them cannot be quashed. In support of this submission, the learned Public Prosecutor cited one judgment of the Supreme Court in " Gurbachan Singh Vs. State of Punjab, It was also submitted that the petitioner-accused has not been able to show that he had been prejudiced in any manner because of non-registration of a separate FIR against him and his co-accused persons for the offences for which they are being tried.

8. In my view, the petitioner-accused cannot seek his discharge on the aforesaid ground as urged strongly by his counsel in this Court for the reason that this point was not taken either before the Court where charge-sheet was filed initially or before the Sessions Court where the case was committed because of the offence u/s 195 IPC being triable exclusively by a Sessions Court.

9. I am also in full agreement with the submission of learned Additional Public Prosecutor that the petitioner-accused has not even otherwise, been able to show as to what prejudice has been caused to him because of the police not registering a separate FIR against him and his co-accused persons after the Crime Branch had come to the conclusion that a false case of rape had been foisted upon Sushil Gulati.

10. As far as the merits of the prosecution case is concerned, the statements of the complainant (PW-1) made under Sections 161 and 164 Cr.P.C. after the investigation had been taken over by the Crime Branch clearly implicate the petitioner-accused in the false implication of Sushil Gulati. Similarly, statements of PWs. 2, 6 and 7 made during investigation also made out a strong prima facie case against the accused persons for the offences for which they have been charged. The effect of the complainant (PW-1) making contradictory statements at different stages of investigation can be seen by the trial Court while delivering the final judgment. I, therefore, do not find any merit in this revision petition and consequently the same is dismissed.