

(1985) 10 AHC CK 0063
In the Allahabad High Court
Case No : Criminal Revision No. 2252 of 1984

Harihar Sharma

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 323
Penal Code, 1860 (IPC) — Section 147, 307, 323, 452

Citation : (1986) 10 ACR 176

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Jagdish Tewari and P.C. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

N.N. Sharma, J.—List has been revised.

2. This revision was already part heard yesterday when it was taken up in the revised list.

3. I have heard Sri V.K. Shukla, learned Advocate for revisionist and learned AGA, on behalf of State.

4. Sri P.C. Sharma, learned Advocate for opposite party No. 2 did not turn-up yesterday or today.

5. This revision is directed against order dated 13-7-1984 recorded by Sri S.K. Gupta, learned IInd Additional Sessions Judge, Etah in Criminal Appeal No. 82 of 1981. By the impugned order, learned Sessions Judge set aside the order of the Magistrate dated 30-5-1981 and directed him to commit the case to the Court of Sessions.

6. The incident, giving rise to this revision, occurred on 2-11-1977 at 6.30 p.m. when the accused, who are Narayan Prasad and others are alleged to have

entered the house of late Sri Suraj Prasad armed with weapons and made an attempt on his life.

7. First information report was lodged at police station Kasganj, district Etah in that connection and Crime No. 752 of 1977 was registered. The case was committed to the Court of Sessions and is pending now as Sessions Trial No. 261 of 1981 in the Court of Sessions.

8. Narayan Prasad, opposite party No. 2, could not file his report at the police station but applied to Superintendent of Police, Etah. His application was registered as Crime No. 752-A of 1977. Narayan Prasad alleged that incident occurred on 2-11-1977 at about 5.30 p.m. at his shop. Suraj Prasad etc. removed the sign-board from his shop and attacked him while he was sitting at his shop and in that connection Marpit took place. However, the case was not sent up by police but had to be initiated on a complaint, under Sections 147/323 IPC. The accused were summoned by learned Magistrate.

9. On 30-5-1981, an application paper No. 34/B was filed in the Court of Magistrate by complainant that this case should be committed to the Court of Sessions as it was the cross case of the aforesaid Sessions trial. Learned Magistrate observed that there was no evidence on record to show that it was the cross case of the version given by Suraj Prasad about which the aforesaid sessions trial was pending in the Sessions Court. He further found that he did not think it expedient in the interest of justice also to commit the case to the Court of Sessions.

10. After the rejection of this application, the matter was carried up in Cr. Revision No. 32 of 1981 and the learned IXth Additional Sessions Judge, Etah ordered on 7-8-1981 that the Magistrate should commit the case to the Court of Sessions.

11. Against that order of Sessions Judge, revisionist approached this Court in Criminal Revision No. 1795 of 1981 when Hon'ble Mr. Justice V.N. Misra found that both versions related to separate incidents and under such circumstances, it was difficult to hold that there were cross reports in respect of the same occurrence. However, on 25-2-1983, learned Judge remanded the case to the Court of Sessions for disposal of the revision afresh after scrutinising the facts involved in the two cases and if he found that these were cross cases, then only he could direct the learned Magistrate to commit the case to the Court of Sessions.

12. It was after this remand order that Sri Sushil Kumar Gupta, learned IInd Additional Sessions Judge, Etah recorded the impugned order. He opined that learned Magistrate had not properly gone through the facts of the case. It was correct that the time and place of occurrence of both the incidents were different yet the matter appears to have sprung out of one incident.

13. On behalf of revisionist, it was argued that these observations of learned

Sessions Judge were counter to the observation made by this Court who found that both the cases were totally different as was obvious from the time and venue of occurrence.

14. It appears vide annexure-A to the revision, that FIR was lodged by Suraj Prasad Sharma on 2-11-1977 at 7.15 p.m. about the incident which occurred in the same evening at 6.30 p.m. Narayan Panda and 11 others were nominated in that report as having entered his house when an attempt was made on the life of Harihar Sharma. Narayan Panda, Param Narain and Ram Chandra were armed with knives and others were armed with sharp edged weapons. They inflicted injuries on Harihar Sharma with various weapons. Harihar Sharma sustained serious injuries in his chest and abdomen. Bharat Chaturvedi etc. intervened.

15. In the complaint, Narayan Prasad nominated Suraj Prasad, Harihar Sharma, Murari, Ramesh and Hublal as accused under Sections 147/307/323/452 IPC. This second complaint resulted in the case pending before the Magistrate and was filed on 8-1-1979. The first complaint filed on 30-10-1978 had been dismissed in default.

16. According to the version of this complaint, the occurrence took place on 2-11-1977 at 5.30 p.m. at the factory of Narayan Prasad. After scrutinising the evidence, learned Magistrate found that only case u/s 147/323 IPC was made out against the accused. He further found that the two incidents were distinct and separate and there was no occasion to commit the case to the Court of Sessions.

17. Obviously, the rule as regards the cross cases to be tried by the one Court is only one of prudence to avoid different standards being applied in two cases arising out of same transaction. It is not a rule of law. Both the cases are separate and have to be decided on their own evidence on record vide Subhash Chandra and Others Vs. State and Another, .

18. The Magistrate was in a better position, to have scrutinised the fact and evidence examined by him and gave good reasons to exercise his discretion. It was open to him to commit the case to the Court of Sessions after scrutinising the evidence vide Section 323 Code of Criminal Procedure. In the impugned order, the learned Sessions Judge did not give any cogent ground as to why he interfered with this discretion of Magistrate which was not improperly exercised. Such discretionary orders of the trial Court should not be lightly interfered with unless it appears that the Magistrate exercised his discretion arbitrarily by relying on irrelevant evidence or the orders suffered from some fundamental legal error like want of sanction etc. Such fundamental error in principle was not committed by the Magistrate nor his order was without jurisdiction. The case was within the jurisdiction of the Magistrate. It was open to the accused in Sessions trial also to put forward counter version if both the incidents sprang out of the same occurrence according to the defence.

19. In the result, the impugned order is set aside and the order of Magistrate dated 30-5-1981 is restored. Interim orders dated 27-11-1984 and 12-9-1985

are vacated herewith.

20. Send the record of the case to the Courts concerned at once for a quick disposal of the aforesaid sessions trial and criminal case.