
(2005) 02 CAL CK 0041
In the Calcutta High Court
Case No : C.R.R. No. 2456 of 2004

Jagadish Keshri alias Sao and Others	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(2), 482
Penal Code, 1860 (IPC) — Section 147, 307, 323, 324, 325

Citation : (2005) 2 CALLT 317

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Himangshu De and Navanil De, for the Appellant; R.S. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application filed by the petitioners praying for revision of the order dated 19.06.2004 passed by learned Additional Sessions Judge, Fast Track Court No. 2 at Purulia in Sessions Case No. 22/2004 (ST 21/2004) by way of setting aside the same.

2. The circumstances leading to the above application are that the defacto complainant Arun Sao lodged an FIR with Purulia Town P.S. alleging that on 23.10.2003 at about 9.30 a.m. the present petitioners being armed with deadly weapons trespassed into their house, threatened his father with dire consequences if the partition suit is not withdrawn immediately and on account of his protest, with a view to committing murder assaulted him on different parts of his person including head resulting in his bleeding injuries and unconsciousness. When the defacto complainant and his mother went to his rescue, they too were assaulted. After completion of investigation the police submitted charge sheet under Sections 452/323/307/34 Indian Penal Code, and charge was framed against the petitioners under Sections 147/452/34 and 307/34 Indian Penal Code on 19.06.2004.

3. Mr. Himangshu De, learned counsel for the petitioners, at the outset, submitted that though the impugned order dated 19.06.2004 has been assailed on two-fold grounds, he is not pressing the ground of juvenility of petitioners 2 and 3. As regards the other ground, on referring to the order of anticipatory bail of the petitioners passed by the learned Additional Sessions Judge-in-charge, Purulia on 25.11.2003, Mr. De contended that since the father of the informant is alleged to have sustained lacerated injury over right parietal region, it may at best constitute an offence u/s 324 or 325 Indian Penal Code and not u/s 307 in any way. Mr. R.S. Chatterjee, learned counsel for the State, on the other hand, supporting the impugned order of framing charge u/s 307/34 and other provisions of Indian Penal Code, contended that whether the offence is one u/s 325 or 307 Indian Penal Code is a matter for trial and cannot be expected to be determined at this stage.

4. To start with, an order framing charge is an interlocutory order as it does not decide the question of guilt or innocence of the accused, and as such it is not vulnerable in revision. In this connection, the decision in V.C. Shukla Vs. State through C.B.I., may be referred to.

5. As regards quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice, it may be done where: (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In this connection, reference may be made to the case of R.P. Kapur Vs. The State of Punjab, and State of Haryana and others Vs. Ch. Bhajan Lal and others, . It is to be borne in mind that the power to quash an FIR by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. At this stage the Court cannot inquire about reliability or genuineness or otherwise of the allegations made in the FIR nor it can inquire whether the allegations are likely to be established or not, as was held in the case of M. Narayandas v. State of Karnataka, reported in 2004 SCC 118 at 123. Such a situation is not involved here, and accordingly there is no scope for quashing the impugned order.

6. A harmonious construction of Sections 397 and 482 Code of Criminal Procedure would lead to the irresistible conclusion that where a particular order is expressly barred u/s 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply, as it is well-settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject matter, and where there is an express provision barring a particular remedy, the Court cannot resort to the

exercise of inherent powers, as was held in Amar Nath and Others Vs. State of Haryana and Another, .

7. Furthermore, in order to amount to an attempt to murder, the act attempted must be such that if not prevented or intercepted, it would be sufficient to cause death of the victim. To constitute the offence no injury need be caused to the victim. To sustain conviction u/s 307 Indian Penal Code, the intention to kill should be clearly proved by circumstances like persistence of attack on vital parts of the body or the assailant lying in wait armed with dangerous weapons or declarations made by him that the victim would be killed. Intent which is a state of mind can never be precisely proved by direct evidence as a fact, and it can only be deduced or inferred from other facts viz. (1) the nature of weapon, (2) the place where injuries were inflicted, (3) the nature of the injuries caused, (4) the opportunity available which the accused got etc. here, the father of the defacto complainant is said to have sustained lacerated injury over right parietal region which is a vital part of the body. Considering the facts and materials available on record it cannot be said that a prima facie case u/s 307 Indian Penal Code has not been made out. Accordingly, considering the matter on merit also the application is not tenable.

In the premises, there being no material to interfere with the impugned order, the present application be dismissed on contest but without any cost.

Let a copy of this order be sent down at once to the learned Court below.