
(2012) 03 SHI CK 0414
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 162 of 2011

Jai Parkash Bhatia and Others

APPELLANT

Vs

Dr. Satish Malhotra

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 210, 245
Penal Code, 1860 (IPC) — Section 147, 149, 307, 323, 34

Citation : (2012) 03 SHI CK 0414

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : M.S. Guleria, for the Appellant; Shrawan Dogra, for the Respondent

Final Decision : Dismissed

Judgement

Kuldeep Singh, Judge

1. This revision has been filed against the order dated 6.4.2011 passed in Case No. 149-II/2006 by the learned Chief Judicial Magistrate, Mandi ordering framing of charge against the petitioners for offences punishable under Sections 451, 341, 323, 506 read with Section 34 IPC. The facts, in brief, are that the respondent had filed a complaint before the learned Chief Judicial Magistrate, Mandi, preliminary evidence was recorded and thereafter the petitioners were summoned. The summoning order was quashed in Cr. MMO No. 82 of 2008 on 18.11.2008 by the High Court for offences punishable under Sections 147, 149, 307 IPC. It was observed that there are sufficient grounds for summoning the petitioners under Sections 451, 341, 323 and 506 IPC.

2. The learned trial Court recorded the evidence of the complainant and after hearing the arguments framed the charge against the petitioners for offences punishable under Sections 451, 341, 323, 506 read with Section 34 IPC on 6.4.2011. The petitioners No. 1 and 3 are the Directors of the Company and cannot be said that they had trespassed in the building. They have every right to

enter into the building being the Directors of the Company. The charge framed u/s 451 IPC is not sustainable.

3. It has come in the evidence that in respect of the occurrence the petitioners and respondent had filed complaints at Police Station, Ratti. The Investigating Officer found that offences committed by the petitioners as well as the respondent are not cognizable and are triable by the Panchayat and, therefore, both the challans were referred to the Panchayat. There cannot be two complaints in respect of the same offence one before the Police and the other before the Court.

4. The trial Court has erred in not summoning the record of the cross complaints from the Panchayat of the Police u/s 210 Cr.P.C. and tried them together. It has been alleged that non-summoning of the two cross complaints from the Panchayat is against the provisions of law and, therefore, impugned order is liable to be set-aside.

5. I have heard the learned counsel for the parties and have also gone through the record. Mr. M.S. Guleria, learned counsel appearing on behalf of the petitioners taking help of Section 245 Cr.P.C. has submitted that even if the case of the complainant remained unrebutted still on the basis of evidence on record, no conviction can be recorded against the petitioners and, therefore, the petitioners are entitled to discharge but this aspect has not been appreciated by the learned Chief Judicial Magistrate. He has submitted that with respect to the same occurrence both the sides had reported the matter to the police earlier. However, the cases of both the sides were referred to the Panchayat. The learned Chief Judicial Magistrate has erred in not summoning those files from the Panchayat and trying them with the present case. The learned counsel for the petitioners has relied *Darshan Singh vs. Sukhdev Singh* and Ors. 2010 (3) CCC 854 (P&H). The submission has been made for setting aside the impugned order.

6. Mr. Shrawan Dogra, learned counsel for the respondent has submitted that the High Court in the judgment dated 18.11.2008 has already observed that there are sufficient grounds for summoning the accused/petitioners under Sections 451, 341, 323 and 506 IPC. There is evidence on record for framing the charge against the petitioners for offences punishable under Sections 451, 341, 323, 506 read with Section 34 IPC. It has been submitted that no fault can be found with the impugned order. The learned counsel for the respondent has relied *Kanti Bhadra Shah and Another Vs. The State of West Bengal*, and *Munna Devi Vs. State of Rajasthan* and anr, . The submission has been made for dismissal of the revision petition.

7. In the revision petition, it has been stated that the petitioners No. 1 and 3 are the Directors of the Company and, therefore, it cannot be said that they have trespassed in their own building as Directors and committed an offence punishable u/s 451 IPC. In the revision petition, it has not been stated that petitioners No. 2, 4 to 8 are also the Directors of the Company. The complainant

has alleged that petitioners trespassed into his possession. In criminal trespass or house trespass, the criminal Court is concerned with the possession of the complainant. The title to the property will not be of much significance in a case of settled possession in a case of trespass. In *Khaija Waiphei vs. Ngulthang Chief* 1963 Cri.L.J. 775, it has been held that Magistrate dealing with the case of trespass is only concerned with the possession of the complainant and not whether the complainant has title over the property.

8. The question of possession as alleged in the complaint is to be ascertained, nothing has been placed on record except the assertion of the petitioners No. 1 and 3 that they are the Directors of the Company. The connected question is on the relevant date who was actually running the affairs of the Company and was responsible for day-to-day work of the Company. It has not been alleged that petitioners No. 1 and 3 were in control of the premises on the relevant date for day-to-day affairs of the Company. The intention to commit offence is other relevant factor. In the pre-charge evidence allegations have come against the petitioners for commission of offences punishable under Sections 451, 341, 323 and 506 IPC. In the order dated 18.11.2008 the High Court has already observed that there are grounds for summoning the petitioners for offences punishable under Sections 451, 341, 323 and 506 IPC.

9. In *Kanti Bhadra Shah* (supra) the Supreme Court after noticing Sections 245 of the Code has held that the judge is required to record the finding only if he discharged the accused. But if he is to frame the charge, he may do so without recording his reasons saying why he framed the charge. In *Munna Devi* (supra) it has been held that it is pre-mature for the High Court to say that material was insufficient for framing of the charge. It is not a case of no evidence at this stage. On the basis of pre-charge evidence case has been made out for framing of charge for offences punishable under Sections 451, 341, 323 and 506 IPC.

10. It has been submitted by the learned counsel for the petitioners that earlier also petitioners and respondent reported to the police regarding the same incident and after investigation challans were referred to the Panchayat. The learned counsel for the petitioners has taken the help of Section 210 of the Code and has submitted that the learned Chief Judicial Magistrate has erred in not summoning the two cases pending before the Panchayat and to try those cases alongwith the case instituted on complaint at the instance of the respondent.

11. I have gone through the impugned order. There is nothing in the impugned order that it was brought to the notice of learned Chief Judicial Magistrate that two cases on the basis of police report arising out of the same incident are pending elsewhere. In the revision petition also, it has not been stated that anything was placed before the learned Chief Judicial Magistrate and petitioners invited his attention to such material with a request to summon the record of two cases pending before the Panchayat. The learned Chief Judicial Magistrate had no occasion to consider the applicability of Section 210 of the Code. The petitioners in these circumstances in the revision petition cannot be heard to say that the

learned Chief Judicial Magistrate has erred in not invoking Section 210 of the Code for trying the case arising out of the present complaint and earlier two cases pending before the Panchayat. Darshan Singh (supra) in these circumstances is not applicable when no case was set up by the petitioners before the learned Chief Judicial Magistrate for trying all the three cases collectively. Thus seen from any angle, there is no merit in the petition and the same is dismissed. In view of dismissal of the main revision petition, Cr.M.P. No. 633 of 2011 has become infructuous.