
(2011) 01 DEL CK 0263
In the Delhi High Court
Case No : Criminal Rev. P. 689 of 2007

Laxmi Devi and Others

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 251

Citation : (2011) 1 AD 748 : (2011) 176 DLT 664 : (2011) 1 JCC 355

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Jai Bansal, for the Appellant; Manoj Ohri, APP and Yogesh Kumar, S.I., for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.

1 This revision petition impugns the order dated 29th September, 2007 passed by the learned Metropolitan Magistrate directing framing of notice for offence punishable u/s 323/34 IPC against both the Petitioners and for offence punishable u/s 354 IPC against the Petitioner No. 2, also the notice framed for the said offences u/s 251 Code of Criminal Procedure

2 The prosecution case in brief is that on 28th July, 2006 an information was received at P.S. Geeta Colony vide DD No. 27/A regarding a quarrel at House No. 1/8, Gali No. 5, Rani Garden, Shashtri Nagar, Delhi. On reaching at the spot HC Om Veer Singh met Smt. Babita and her mother Smt. Joginder Verma who stated that they had received injuries and thus, they were taken to the SDN Hospital. Their examination was conducted and in the MLC the Doctor opined the injuries to be simple blunt. No formal statement was given by them. In view of the situation at the spot HC Om Veer Singh prepared a Kalandra under Sections 107/151 Code of Criminal Procedure which was presented before the Executive Magistrate, Krishna Nagar. Both the parties gave their written statements stating

that they have settled the matter and they will live peacefully and create no nuisance in future.

3. However, on 22nd August, 2006 Smt. Babita came to the police station and got recorded her statement stating that she was a housewife living with her husband. On 28th July, 2006 at about 7.00 P.M. she had come to visit her mother Joginder Devi at Gali No. 5, Rani Garden, Shashtri Nagar along with her husband and the motorcycle of her husband was parked at a little distance near the house of their neighbour Mahender. Laxmi wife of Mahender came out of her house and started abusing saying that people put their cots opposite their house and also park their vehicle there. Though her mother tried to stop Laxmi however, she started quarrelling. Mahender's nephew Hoshiar Singh along with his associates came to intervene in the matter and gave beatings to her, her mother and her husband. He caught her breast and started doing wrong acts with her along with his associates due to which she sustained injuries including on her breast and also used abusive language against her. Hoshiar Singh also tore her shirt from the front side. Babita further stated that till date she was silent however, now Laxmi and Hoshiar Singh have threatened to lodge a complaint against them under SC/ST Act and that is why she had come to lodge her complaint. On the basis of her statement FIR u/s 323/354/34 IPC was registered and on investigation being conducted a charge sheet was filed resulting in the framing of the notice u/s 251 Code of Criminal Procedure which is impugned in the present petition.

4. Learned Counsel for the Petitioners submits that since the matter had been settled between the parties on the date of the incident, for the same complaint no fresh FIR could be registered between the parties. Further as per Babita's compromise statement pursuant to the Kalandra being filed it was only a case where a quarrel had taken place and in the said statement there was no allegation of molestation and in view of this contrary statement of the complainant, no charge can be framed against the Petitioners. Reliance is placed on Harvinder Singh Khurana and Others Vs. The State (NCT of Delhi) and Another wherein this Court quashed the FIR u/s 498A/406 IPC being a gross misuse of criminal justice system as in the earlier complaints there were no allegations of harassment for dowry. It is further urged that since action had already been taken on the first complaint in the form of Kalandra, the FIR and the trial thereon would amount to double jeopardy and is impermissible in law.

5. Learned APP for the State on the other hand contends that the incident is of 28th July, 2006 when on an information being received at the Police Station HC Om Veer took the complainant and his mother to the hospital where their respective ML Cs were prepared. It is stated that the medical examination of the complainant on the same date shows multiple abrasions on various parts of the body including on the right upper part of the chest. Merely because the complainant did not want to proceed with the complaint on that date and compromised the matter and since it was being compromised she did not give

the complete details of the injuries caused to her, it cannot be said that this belated complaint of her is false or sham and cannot be proceeded forward. The complainant in her complaint itself has explained the reason why she did not want registration of the case against the Petitioners on the date of the incident. It is urged that merely giving in complete details in the first statement, which was a compromise statement, does not belie the version of the complainant. Moreover, whether the complainant is speaking the truth or not is a question which has to be gone into at the stage of trial and at this stage the order that is required to be passed is one of framing of the charge/notice. Reliance is placed on Soma Chakravarty Vs. State through CBI, , State of Madhya Pradesh Vs. Sheetla Sahai and Others, and P. Vijayan Vs. State of Kerala and Another, .

6. It is further contended that this is not a case of double jeopardy. Section 300 Code of Criminal Procedure provides that once a person has been tried and convicted or acquitted for an offence, by a court of competent jurisdiction he cannot be tried for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made. The Petitioners in the present case have neither been tried nor convicted or acquitted of the said offence. The complainant at that stage did not lodge her complaint and thus, it cannot be said that the present trial would amount to double jeopardy.

7. I have heard learned Counsel for the parties and pursued the record. The issues that call for determination are whether the order impugned and the trial pursuant thereto are illegal as the same amounts to double jeopardy and whether at this stage in view of the fact that the complainant did not make any allegation of molestation in her statement settling the matter on 28th July, 2006 the learned trial court at the stage of framing of notice could come to the conclusion that there is no strong suspicion against the accused for having committed the offence alleged.

8. The statement of the complainant that she, her mother and her husband were beaten and her modesty was outraged is corroborated by the MLC conducted on the same date at 10.30 P.M. that is soon after the incident wherein the following injuries on the complainant were recorded:

- 1 Multiple abrasions at anterior aspect of left forearm (lower part)
- 2 Abrasions (multiple) at anterior aspect of right forearm (lower part).
- 3 Abrasion on right upper part of chest.

9. In State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., it was held:

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the

accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

10. At this stage this Court cannot appreciate the evidence and arrive at the conclusion that the version of the complainant is false as she did not make an allegation of molestation in her statement settling the matter on the date of incident. This is in the realm of appreciation of the evidence and has to be decided during the trial after recording of evidence.

11. I do not find any merit in the contention of learned Counsel for the Appellant that since a Kalandra u/s ec. 107/151 Code of Criminal Procedure was lodged wherein the parties settled the matter and undertook to live peacefully and not create any nuisance in future, the FIR and the trial pursuant thereto amounts to double jeopardy. In terms of Section 300 Code of Criminal Procedure, only if a person is acquitted or convicted after trial by a court of competent jurisdiction he cannot be tried again for the same offence. The explanation to the said Section further states that the dismissal of the complaint or the discharge of the accused is not an acquittal for the purpose of this Section. In the present case the complainant did not even lodge her complaint on the date of incident. Moreover the kalandra lodged u/s 107/151 Code of Criminal Procedure was an action taken by the police authorities against both the parties to prevent breach of peace which is a preventive action and not a punitive action like the present one which is a trial for adjudicating the allegations of the complainant against the Petitioners for committing offences punishable under the Indian Penal Code, 1860.

12. As regards the contention that in the statements made on the date of incident compromising the matter, the complainant had not levelled any allegation about the molestation and thus, no case for framing notice for an offence punishable u/s 354 IPC is made out, it may be noted that since that was only a statement settling a preventive action taken by the police, the complainant was not required to give each and every detail of the omissions and commissions on the part of the Petitioners on that date. Merely because certain facts were not stated in the statement recorded on the date of incident cannot be a ground to dislodge the FIR or discharge the accused for the said offence. The law is well settled that even in the FIR, it is not essential to give the entire details of the incident as the same is for the purpose of setting the investigating machinery into motion. The details of the incident have been mentioned by the complainant in the complaint on the basis of which FIR has been registered which fact also finds support from her MLC. At this stage the trial cannot be set at naught for the grounds agitated by the Petitioners.

13. For the aforesaid reason, I find no illegality in the impugned order. Hence, the present Revision Petition is dismissed.