
(2005) 09 DEL CK 0073

In the Delhi High Court

Case No : Criminal M.C. No. 3830 of 2003

Rupak Mudgal and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 155(4), 482
Penal Code, 1860 (IPC) — Section 323, 324, 339, 34, 341

Citation : (2005) 09 DEL CK 0073

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : D.C. Mathur and P.R. Mudgal, for the Appellant; Richa Kapur, Assistant Public Prosecutor, for the Respondent

Judgement

S.K. Agarwal, J.—By this petition u/s 482 of Code of Criminal Procedure (for short, "Cr.P.C."), petitioners have prayed for quashing of the order dated 5.9.2003 directing framing of charges against them under Sections 341, 323, 324 and 506 (Part-II) read with Section 34, IPC in the case FIR No. 12/01, P.S. Tilak Marg, New Delhi (hereinafter, referred to as "the first case"). State has filed a reply opposing the prayer and has pleaded that on the report lodged by petitioners' father Shri P.C. Mudgal, Advocate, a counter case vide FIR No. 17/01 under Sections 323, 354 and 34, IPC was registered, which is also pending trial (hereinafter referred to as, "the cross-case"). On 20.5.2005, learned Counsel for the petitioner submitted that parties were neighbours and, on request, they v/ere granted some time to settle the matter. File of the cross-case was also summoned.

2. In the first case, prosecution allegations, in brief, are as follows: Petitioners are residents of 60, Todarmal Road, New Delhi. On 11.1.2001, on receipt of information about a quarrel at 62, Todarmal Road, Police reached the spot and took the injured Vishal Gupta to the RML Hospital for treatment. As per the MLC, he was admitted in the hospital at about 11.00 p.m. and was found bleeding

from the nose. X-ray of nasal bone and skull was advised. On the basis of DD No. 27-A, ASI Devi Dayal of P.S. Tilak Marg reached the hospital and after Vishal Gupta was declared fit, his statement was recorded, wherein he stated that his uncle Sunil Jain was residing at 62, Todarmal Road, New Delhi.

On 11.1.2001, at about 10.15 p.m., he along with his wife Mrs. Rachna Gupta had gone to his uncle's place and they were going out for a dinner; when his uncle took out the car from his bungalow, P.C. Mudgal's son pulled out his uncle from the car and started beating him; he rushed to save his uncle; at that time Rupak Mudgal (petitioner No. 1) gave a fist blow on his nose and Deepak Mudgal (petitioner No. 2) gave a danda blow on his back; Nini and Kavita (petitioner Nos. 3 and 4 respectively) also came there and assaulted him. They started pulling him towards their house to beat him. He was saved by his uncle with great difficulty. Petitioner Nos. 3 and 4 threatened him that they would implicate him in a "rape case" and he would not be able to go back to Mumbai and nobody would be able to help. The complainant apprehended danger to his life and prayed for help and suitable action. On this statement, at about 1.15 a.m. on 12.1.2001, first case was registered. After investigations challan was filed on 2.12.2002, cognizance was taken. Petitioners were summoned and by impugned order dated 23.7.2003, prima facie case under above noted sections was found against petitioners and charges were framed. This order is under challenge.

3. In the cross-case, prosecution allegations are as follows : On 13.1.2001, Mr. Mudgal gave a written report to the Police making allegations of assault, threat and outraging modesty of his daughter Kavita. He accused nine persons, namely, Sunil Jain, Siddharth Jain, Smt. Sulbha Jain, Vishal Gupta (complainant in the first case) and his wife Mrs. Rachna Gupta. Three other persons living in the same locality, namely, Deepak Madipuria, r/o. 2, Todar Mal Road; Rakesh Goyal and his son Anuj Goyal, residents of 9-A, Babar Road were also named alleging that they had joined the above six persons in the said assault. On this complaint, on 14.1.2001, cross-case was registered and after investigations challan was filed against six persons named above. However, investigating agency found that allegations against remaining three persons were not substantiated. This case is also pending trial. The perusal of the MLCs in the cross-case reveal that on 11.1.2001, Mr. Mudgal and his two daughters Nini and Kavita were also admitted in the RML Hospital at about 11.57 p.m. They were declared fit for statement by the attending doctor. It appears that Mr. Mudgal declined to make any statement. The letter dated 12.1.2001 addressed by Mr. Mudgal to SHO reads: "Most respectfully I submit that I have cataract in my left eye which is almost matured. My left eye had haemorrhage, in right eye also xxxx. I cant write my complaint at the moment as I am not having my spectacles. Iam mentally also unfit to give my statement/complaint in my own handwriting. I shall give my detailed complaint in writing tomorrow (12-1-2001) after I get my spectacles. Thanking you." It appears that Mr. Mudgal gave written complaint on 13.1.2001 on the basis of which cross-case was registered on 14.1.2001. It is not necessary to examine the facts in detail, as the other party is not before the Court.

4. It may be noted here that on 20.5.2005, while summoning file of cross-case, petitioners were directed to amend the Memo of Parties impleading accused persons in the cross-case as respondents and the notice was ordered to be issued to them. The direction was not followed and amended Memo of Parties was not filed despite repeated opportunities. On 14.9.2005, Shri D.C. Mathur, learned Senior Counsel for the petitioners submitted that petitioners are not interested in any compromise and their petition be heard and decided on merits. Accordingly, I have heard learned Counsel for the parties and have been taken through the record.

5. Learned Senior Counsel for the petitioners, first argued that basic ingredients of the offence u/s 324, IPC are not made out. In order to bring home the charge u/s 324, IPC, prosecution is required to prove that the accused voluntarily caused hurt by means of an instrument referred to in this section. It is a must. The danda allegedly used during the assault was not recovered by the Police. As per MLC, the complainant Vishal Gupta had absconded. Learned APP for the State is unable to contest the same. There is no other material wherefrom it can be prima facie inferred that the injury to the person of the complainant was caused by any of the weapons mentioned in the said section. In view of the same, charge u/s 324, IPC is not sustainable, and the same is accordingly quashed. Needless to add, if during the trial any material is brought on record, it will be open to the Court concerned to amend the charge.

6. learned Counsel next argued that offence of wrongful restraint, which is punishable u/s 341, IPC, is also not made out. Section 339, IPC defines "wrongful restraint", which is made punishable u/s 341, IPC. The "wrongful restraint" is defined to mean preventing or stopping a person from proceeding in any direction in which that person has the right to proceed and has a right to go. The obstruction must be physical. In the first case, as per the information recorded by Police vide DD No. 27-A dated 11.1.2001, some quarrel was going on at house No. 62, Todar Mal Road, Bengali Market. The complainant has made a statement that he had gone to his uncle's house and they were going out for dinner. His uncle was pulled out of the car by Mr. Mudgal's son. When the complainant attempted to save him, he was given blows on his nose and face. It is stated in the complaint that petitioners attempted to drag him towards their house and he was saved by his uncle. From these allegations, necessary ingredients of the offence u/s 341, IPC can be clearly inferred. The contention that the ingredients of this offence are not made out is without any merit and the same is rejected.

7. learned Counsel for the petitioners next argued that allegations against the petitioners are false and improbable. Even if the allegations are taken at their face value, no offence u/s 506 Part-11, IPC is made out. In support of this submission, reliance was placed on the observations made by this Court in Kanshi Ram Vs. State, Learned APP for the State argued to the contrary.

8. Section 506, IPC provides punishment for criminal intimidation. It consists of

two parts. Part 1 provides punishment for criminal intimidation. Part 2 provides punishment if the threat is to cause death, grievous hurt or to cause destruction of any property by fire or to cause offence punishable with death or imprisonment for life or with an imprisonment which may extend to 7 years or to impute unchastity to a woman. The offences which fall under part 2 are cognizable and non-bailable. The offence of criminal intimidation is defined in Section 503, IPC. This section is again in two parts. First part has considered the act of threatening another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested; and the second part refers to the intent with which the threatening is done and it is of the following two categories: the first is intent to cause alarm to the person threatened; and the second is to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. The criminal intimidation which is defined in this section would imply that the threat must be one which can be put into execution by the person threatening, as the Section speaks of avoiding the execution of the threat. The gist of the offence is the effect, which the threat is intended to have, upon the mind of the person threatened. The intention must be to cause alarm to the victim. Whether the victim was actually alarmed or not is not essential. Let us apply these tests to the facts at hand. To recall the facts at the risk of repetition, allegations are that complainant came to his uncle's place; they were going out for a dinner; he was assaulted, as a result of which he received nasal injury and PCR was called; he was taken to RML Hospital where his nose was found bleeding; X-ray of the nose and skull was advised. In the First Information Report, it is inter alia stated that petitioners (including petitioner Nos. 3 and 4) threatened the complainant that they would implicate him in a "rape case" and that he would never be able to return to Mumbai. In the facts and circumstances of this case, the threat of implicating the complainant in a "rape case" brings the case under the ambit of Section 506 Part-II, IPC. The ratio of the decision cited by the learned Counsel for the petitioners is not applicable to the facts at hand.

9. learned Counsel for the petitioners also argued that the offence u/s 323, IPC, being non-cognizable, could not be investigated without sanction under Sub-section (2) of Section 155 of the Code, Therefore, no valid cognizance of the offence was taken and the FIR could not have been registered. In support of this submission, reliance was placed on the observations made by this Court in *Mam Chand and Others Vs. State*, ; and *Surinder Kumar Vs. State*, It is not necessary to deal with this contention as it has been held that prima facie offences under Sections 341 and 506 Part-II, IPC are made out which are cognizable. Section 155(4) provides that where a case relates to two or more offences of which at least one is cognizable, the case is deemed to be cognizable, notwithstanding that other offences are non-cognizable. In view of the same, although the offence u/s 323, IPC is non-cognizable, the same could be investigated along with other cognizable offences.

10. For the foregoing reasons, petition is partly allowed. The charge against petitioners u/s 324, IPC is quashed. The framing of charge under Sections 341, 323 and 506 Part-II, IPC, read with Section 34, IPC, is maintained. Both the cases arise out of the same incident; these are ordered to be tried by the same Court, preferably on the same date or consecutive dates. The Trial Court files be sent back. Any observation made herein would not affect merits of the case during the trial. Copy of the order be placed on both the files.

11. With these directions, petition stands disposed of.