
(2014) 09 DEL CK 0123
In the Delhi High Court
Case No : CRL. M.C. No. 1708/2013

Savitri	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 190, 482
Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2014) 09 DEL CK 0123

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : R.N. Sharma, Advocate for the Appellant; Parveen Bhati, APP and Kamal Sawhney, Advocate for the Respondent

Judgement

V.P. Vaish, J.—By filing the present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") the petitioners have assailed the order dated 26.02.2013 passed by learned Metropolitan Magistrate, Rohini Courts, Delhi in case FIR No. 77/2009 under Sections 323/ 325/ 34 registered at P.S. Maurya Enclave, Delhi whereby the petitioners have been summoned for the offence punishable under Sections 323/ 325/ 34 IPC.

2. In short, the facts of the case are that on the complaint of Smt. Sushila Devi FIR No. 77/2009 under Sections 323/ 325/ 34 IPC was registered on 13.02.2009.

3. On completion of investigation, a final report under Section 173 of Cr.P.C. was filed. Vide order dated 30.09.2010, cancellation report was rejected by the trial court and the concerned Assistant Commissioner of Police was directed to get the investigation done by another investigating officer.

4. Again, after conducting further investigation final report was filed and the name of accused persons (petitioners) were kept in column No. 12. The trial court after considering the final report took cognizance and summoned the petitioners for the offence under Sections 323/ 325/ 34 IPC vide impugned order

dated 26.02.2013.

5. Feeling aggrieved by the said order, the petitioners have filed the present petition.

6. Learned counsel for the petitioners urges that on 24.01.2009, Ms. Komal, who is daughter of respondent No. 2/ complainant accompanied the complainant/ Smt. Sushila to Bhagwan Mahavir Hospital, Delhi, where her statement was recorded by the police and she had not made any allegation of inflicting any injury to her mother. On 24.01.2009, the complainant was examined at Bhagwan Mahavir Hospital vide MLC No. 106/2009 and doctor opined injuries to be fresh in nature. The investigating officer recorded the statement of witnesses under Section 161 Cr.P.C. and final report was submitted by the investigating agency and the name of witnesses were kept in column No. 12. He also submits that no protest petition was filed by the complainant and the trial court took cognizance.

7. Rebutting the arguments, learned APP for the State contends that the charge was framed by the trial court on 03.04.2014 and the petitioners have not challenged the order on charge.

8. At this juncture, it is necessary to re-produce Section 190 of Cr.P.C., which reads as under: -

"190. Cognizance of offences by Magistrates. - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specifically empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

9. From the perusal of Section 190 Cr.P.C., it is manifestly clear that it empowers any Magistrate of the first class and second class specially empowered in this behalf under sub-section (2) to take cognizance of any offence in three contingencies.

10. It is a settled rule of law that if the Magistrate is satisfied that a prima facie case had been made out to proceed further despite the final report submitted by the investigating agency, Magistrate can take cognizance of the offence in case the report under Section 173 of Cr.P.C. is submitted and if the Magistrate disagrees with the police report he has two choices, he may act on the basis of protest petition that may be filed or he will while disagreeing with the police

report issue process and take the cognizance and summon the accused. Thereafter, if on being satisfied that a case has been made out to proceed against the person or if he was satisfied that a case has been made out which was triable by Court of Sessions, he may commit the case to the Court of Sessions to proceed further in the matter.

11. At the present stage the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing of charges. The truth, veracity and effect of the evidence which the complainant produces or proposes to adduce is not to be meticulously judged. The standard of proof of judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of summoning.

12. In the instant case, the investigating agency had filed the final report and kept the name of petitioners in column No. 12 of the final report. Learned trial court after considering the final report, statement given by the prosecution witnesses and MLCs of the injured persons found that there is sufficient evidence on record to proceed against both the accused persons namely, Smt. Savitri and Mr. Kuldeep for the offence punishable under Sections 323/ 325/ 34 IPC. There is no illegality and infirmity in the order passed by the trial court. Accordingly the petition is dismissed.

Crl. M.A. No. 5318/2013

The application is dismissed as infructuous.