

(2017) 04 MP CK 0076
In the Madhya Pradesh High Court
Case No : 998 of 2011

SHAILENDRA MAHODAYA

APPELLANT

Vs

THE STATE OF M.P. AND OTHERS

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 200](#), [Section 227](#), [Section 202](#) -
Calling for records to exerci

Citation : (2017) 04 MP CK 0076

Hon'ble Judges : S.K.Awasthi

Bench : Single Bench

Advocate : Amit Lahoti, Rishikesh Bohre, Mohd. Irshad

Judgement

1. This revision application has been preferred by the applicants/accused under Section 397/401 of CrPC being aggrieved by the order dated 14.11.2011 passed by Second Additional Sessions Judge, Guna (MP), in Sessions Trial No. 236/2011, whereby the charge under Section 395 of Indian Penal Code, 1960 (IPC) has been framed against the applicants.

2. The agricultural land bearing survey No. 84/738/1 admeasuring 3.083 Hectare situated in village Todra, Tahsil Raghogarh, District Guna is the root for initiation of criminal prosecution. As per the prosecution case the allegation levelled against the applicants is that on 5.2.2009 they entered into the agricultural field belonging to the respondent No.1 Babulal and took away the crops amounting to Rs.35000/- and in that process certain injuries were also inflicted upon the complainant and his son

Chandra Shekhar. The respondent No.1 made a complaint to the Police Station Jamner, District Guna regarding the alleged offence but the police did not act in furtherance to the complaint prompting the respondent No.1 to take recourse to the remedy of filing complaint under Section 200 of CrPC before the Judicial

Magistrate First Class Raghogarh. On the basis of the aforesaid complaint, cognizance was taken by the learned JMFC and the case was committed to the Court of Session. The applicants filed an application under Section 227 of CrPC before the trial Court with the prayer that prima facie no offence under Section 395 of IPC is made out against them. This application has been rejected by the impugned order and the trial Court framed the charge against the applicants under Section 395 of IPC which is the subject matter of challenge before this Court.

3. The contentions which have been canvassed by the learned counsel for the applicants are that they have been falsely implicated in the instant case on account of civil dispute, which is pending between the parties in the form of appeal filed by the applicant No.2- Daulatram before the Second Additional District Judge, Guna and the same is yet to be decided. Thus, in the civil dispute it would be decided that who is the owner of the suit property. It is further submitted that an FIR was registered against the applicants at Crime No.44/2009 with respect to the same offence, which is subject matter of present case. From perusal of FIR of Crime No.44/2009, it is crystal clear that no

allegations were levelled against the lady applicants. They have been falsely implicated in the present case which is an after thought just to put pressure upon the applicants in civil dispute.

4. Learned Panel Lawyer for the State contends that the impugned order does not suffer from any illegality and, therefore, cannot be interfered.

5. Learned counsel for the respondent No.1 submitted that the trial Court has not committed any error in law in framing the charge against the present applicants as there exists prima facie case against them. Hence, the impugned order be maintained.

6. I have considered the rival contentions of all the parties to the case and perused the documents filed along with revision application.

7. It is pertinent to highlight that the documents which have been brought by the applicants on record clearly show that Civil Judge Class-2 Raghogarh District Guna passed the decree in favour of the present respondent No.1 in Civil Suit No. 13A/2010 dated 17.5.2010 by declaring him as the owner and possession holder of the disputed land and the present applicants No.1,3 and 4 have been restrained from interfering in possession of the respondent No.1 by issuing permanent injunction.

8. Complainant Babulal stated in the private complaint and in the statement recorded under Section 200 of CrPC that Civil Court granted temporary injunction in his favour by restraining the applicants/ accused No.1, 3 and 4 from interfering in possession

of the complainant over the disputed land. In spite of that order, the accused persons entered into the disputed land and took away crops by force. On that

basis, the JMFC Raghogarh district Guna took cognizance against the present applicants for the offence punishable under Section 395 of IPC. Although in the complaint the allegation against the applicants No.4 to 6 is also made regarding commission of aforesaid offence but in the statement of complainant Babulal recorded under Section 200 CrPC and the statements of witnesses Chandra Shekhar Sharma and Matru Mali recorded under Section 202 CrPC, it is not mentioned that the lady applicants were also involved in the present crime. Therefore, no material is available against the applicants No.4 to 6 to implicate them in the present crime, therefore, the trial Court has committed an error in framing the charge against the applicants No.4 to 6.

9. From the statements of complainant and his witnesses, it is shown that on 5.2.2009 applicant No.1-Daulatram along with the labourers came on the field of the complainant and started cutting the crops and took the same amounting to Rs.35000/- and in that process they have inflicted the injuries upon the complainant and his son Chandra Shekhar. So, it cannot be said that there is no material available on record against the applicants No.1 to 3 for framing of charge under Section 395 of IPC.

10. Now I may advert to the second contention of the applicant that with respect to the similar matter an FIR

at Crime No.44/2009 was also registered against the applicants No.1 to 3, therefore, in such circumstances, the Magistrate should have stayed the further proceeding of the case and called for a report from police officer conducting the investigation. The contention of the applicants though looks attractive but has no tenability at this stage. The reason behind this is that the applicants have not challenged the order of JMFC taking cognizance against them for the commission of offence punishable under Section 395 of IPC in the second one. In the case of Colgate Palmolive (India) Ltd. and others vs. Satish Rohra, 2005(4) MPLJ 380, this Court has held in the following manner:- "6. I have heard the learned Counsel of both the parties and carefully perused the evidence and the material on record. Before considering the evidence and the material on record for the limited purpose of finding out whether a prima facie case for issuance of process has been made out or not, it may be mentioned at the very outset that the various documents and the reports filed by the petitioners/Company along with the petition can not be looked into at the stage of taking cognizance or at the stage of framing of the charge. The question whether prima facie case is made out or not has to be decided purely from the point of view of the complainant without at all advert to any defence that the accused may have. No provision in the Code of Criminal Procedure grants to the accused any right to file any material or document at the stage of taking cognizance or even at the stage of framing of the charge in order to thwart it. That right is granted only at the stage of trial. At this preliminary stage the material produced by

the complainant alone is to be considered."

12. In no ambiguous manner this Court has laid down that at the stage of taking cognizance or framing of charge, the complaint and documents filed along with the complaint are to be considered and the material brought by the accused cannot be looked into at the above stage.

13. The law laid down in Colgate Palmolive (India) Ltd. (supra) is squarely applicable to the facts of the present case and the material brought on record against the applicants No.1 to 3 cannot be gone into at this stage.

14. The Hon"ble Supreme Court in Chitresh Kumar Chopra vs. State Govt. of N.C.T. of Delhi), reported in (2009) 16 SCC 605, has observed as under:- "25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] .)"

15. Taking this view of the matter, revision application

stands allowed in part and the impugned order passed by the trial Court framing charge under Section 395 IPC against the applicants No.4 to 6 is set aside and these applicants are discharged from the aforesaid charge. So far as the applicants No.1 to 3 are concerned, this revision has no merit and is hereby dismissed. The trial Court is directed to proceed against the applicants No.1 to 3 in accordance with law.

16. The interim relief granted vide order dated 28.11.2011 directing the trial Court not to pass judgment in Sessions Trial No.236/2011 shall stand vacated. A copy of this order be sent to the concerned trial Court for information and compliance.