

(2012) 01 DEL CK 0545

In the Delhi High Court

Case No : Criminal Rev. P. No. 20 of 2011

Sunil

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 186, 195, 2
Penal Code, 1860 (IPC) — Section 186, 308, 332, 34, 353

Citation : (2012) 01 DEL CK 0545

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : N. Hariharan and Mr. Vaibhav Sharma, for the Appellant; Manoj Ohri, APP, for the Respondent

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. The present petition assails the order dated 3rd November, 2010 framing charges for offences under Sections 186/353/332/308/34 IPC against the Petitioner. Learned counsel for the Petitioner contends that even taking the allegations on the face of it, no offence u/s 308 IPC is made out. The injuries are abrasions caused by blunt weapon which are not possible by an iron rod, as alleged. The injuries could have been caused by fall. Even taking the allegations on their face, giving a brick blow would not make out an offence u/s 308 IPC. As regards, Sections 186/353/332, the events are so intermixed that Sections 186/353 cannot be separated. The separation of two cannot be done by camouflage to bypass provision of Section 195 Cr.P.C. Section 195 Cr.P.C. mandates filing of a complaint and the cognizance thereon. The filing of the charge-sheet and the cognizance thereon is bad in law and the trial stands vitiated. Thus, according to the Petitioner even taking the allegations on the face of it, at best an offence u/s 332 IPC is made out. Further, since the same is a non-cognizable offence, no FIR could have been registered and cognizance taken on a charge sheet filed thereon by the learned Trial Court. The contention of the

Petitioner is fortified by the fact that the first D.D. entry i.e. DD No. 21A also talks about a fight between the Complainant and the driver of the TSR and not the Petitioner. Reliance is placed on State of Bihar Vs. S.K. Roy, and C. Muniappan and Others Vs. State of Tamil Nadu, .

2. Learned APP for the State, on the other hand, contends that in the present case the complaint was filed by the Head Constable Brij Mohan Sharma. The case falls within the ambit of explanation to Section 2(d) Cr.P.C. There are two injuries on the head of the Complainant, one on the parietal and the other on the temporal region. Thus, it cannot be said that there was no intention and an offence u/s 308 IPC is not made out. Reliance is placed on Rajesh Sharma @ Raju, 2011 JCC 266 to contend that even in the absence of injury, the Court has to see the intention to find out whether the offence u/s 308 IPC is made out or not. The prosecution u/s 332 /353 IPC is not barred in the absence of a complaint u/s 195 Cr.P.C. As a matter of fact, the charge-sheet itself states that along with the chargesheet permission u/s 195 Cr.P.C. has been filed in the sealed cover. Reliance is placed on C. Muniappan and Others Vs. State of Tamil Nadu, .

3. I have heard learned counsel for the parties. The abovementioned FIR was registered on the complaint of Head Constable Brij Mohan Sharma who alleged that on 5th May, 2009 at around 10:00 a.m. while he along with Constable Inder Raj on motor cycle were challaning the traffic violators at Raj Nagar Petrol Pump near Trauma Centre they challaned one Kulvinder Singh s/o Chandan Singh for driving his two wheeler scooter in the wrong carriage way. When the Complainant and Inder Raj asked him to stop and asked for his licence, he tried to run away. They chased him and stopped him at Taj Apartments in front of ring road and took into possession the key of his scooter. The scooter rider called his friend on mobile. Thereafter three boys reached the spot and started quarrelling with them. The scooter rider picked-up a stone and hit the Complainant on his head and gave fist and kicks blows. The other picked up rod from the petrol pump and started beating the Complainant. The fourth accused beat Inder Raj by blows. On the Complainant and Inder Raj making hue and cry the said boys ran away. The Complainant caught hold of the scooter driver and in the process some of his photos, I Card and a driving license came in his hand. The boy who was driving the scooter was being addressed as Sunil by the co-accused. The scooter bearing No. DL 3S AG 4584 was taken away from the spot. Permission u/s 195 Cr.P.C. was obtained and filed in the Court. The Challan was also filed against the Petitioner for offences under Sections 308/332/186/353 IPC.

4. It may be noted that the Petitioner along with two others came to the spot on the phone call made by Kulvinder Singh. All the four persons started beating the Complainant and Constable Inder Raj. The Petitioner picked-up a stone and hit the head of the injured. Another person picked-up rod from the petrol pump and started beating the Complainant. The forth boy starting boxing and kicked them. Thus, the common intention can be inferred from the facts of the case. Further in

an offence of giving an injury by the stone on the head which is a vital portion, it cannot be said that no intention to cause injury which if causes death would amount to culpable homicide not amounting to murder, is not made out. Thus, I find no infirmity in the order on charge for offence u/s 308 IPC. Learned counsel for the Petitioner has fairly admitted that on the facts of the case offence u/s 332 IPC is made out.

5. As regards Section 186 Cr.P.C., it may be noted that though a complaint u/s 195 Cr.P.C. was filed however no cognizance thereon has been taken. The cognizance has been taken on chargesheet as is evident from the order dated 7th June, 2010 passed by the learned Metropolitan Magistrate. In the absence of a cognizance not being taken on the complaint u/s 195 Cr.P.C., the prosecution for offence u/s 186 IPC is liable to be set aside, as held by the Hon''ble Supreme Court in Durgacharan Naik (supra) and Pankaj Aggarwal and Others Vs. State of Delhi and Others, . It was further held by their Lordships in Durgacharan Naik(supra) that Section 195 Cr.P.C. does not bar the trial of an accused for the distinct offence u/s 353 of the Penal Code though it may be practically based on the same facts as for the prosecution u/s 186 of the Penal Code which is barred for want of necessary sanction u/s 195 Cr.P.C. Thus, in the facts of the present case the Petitioners are liable to be proceeded for offence u/s 353 IPC as well and not u/s 186 IPC.

6. In view of the fact that the Petitioner is liable to be charged for an offence u/s 308 IPC, the contention of the learned counsel for the Petitioner that the cognizance was taken by the learned Trial Court for offence which was non-cognizable, on which no FIR could have been registered and thus the entire prosecution stands vitiated, does not hold any ground. The impugned order dated 3rd November, 2010 framing charge is modified to the extent that the Petitioner will now be proceeded for offences punishable under Sections 353/332/308/34 IPC. Petition is disposed of accordingly.