

(2004) 05 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 641 of 1999 With Criminal Revision No. 642 of 1999

Varinder Choudhary

APPELLANT

Vs

P. Kumar and Another

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 323

Citation : (2004) 10 CriminalCC 108 : (2004) 3 RCR(Criminal) 502

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Navkiran Singh, for the Appellant; Govind Goel, for the Respondent in Crl. Rev. No.641 of 1999 and Mr. A.K. Jaiswal, for the Respondent in Crl. Rev. 642 of 1999, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—This order shall dispose of two revision petitions bearing Nos.Crl.Revision No.641 and 642 of 1999 as these are arising out of the same order.

2. The petitioner Varinder Choudhary filed a complaint against the respondents under Sections 323/147/148/ 149/ 325/ 427/ 436/ 447/395/ 504 and 506 IPC on the allegations that he is the resident of Ropar and his father Choudhary Gopal Krishan, owns land as a co-sharer in Village Ghanauli, as mentioned in the complaint. It was alleged in the complaint that his father filed a civil suit against Punjab State Electricity Board and others for permanent injunction restraining them from installing the electric pole on the said land. The said suit was disposed of on the undertaking given by the Punjab State Electricity Board to the effect that they (defendants) would not act forcibly or install electric pole and not to interfere with the possession of the land except otherwise in due course of law. Since the Punjab State Electricity Board wanted to install on electric pole/tower for providing electricity supply to Gujarat Ambuja Company, therefore, the said

Company filed a suit for mandatory injunction against the father of the complainant and obtained ex parte injunction order. On appeal, the said injunction order was set aside and the matter was remanded to the trial Court for deciding the same after hearing the parties. In spite of the aforesaid facts, on 29.12.1994, the respondents came to the land along with some other persons and entered into the land of the father of the complainant with unlawful object to forcefully occupying the land and to construct/install the electric pole and to cause mischief to the crops. It has been alleged in the complaint that all accused gave abuses to the complainant and also gave slaps to him. Further, the complainant was thrown on the ground and kick blows were given to him. The accused also put on fire the hut of the complainant standing in his fields. The detailed allegations regarding the role attributed to each of the accused has been mentioned in the complaint. The matter was then reported to the police, but the local police did not take any action against the accused being under their influence, the instant complaint was filed.

In support of the complaint, the complainant examined six witnesses, namely, PW-2 Dr. N.K. Singla, PW-3 Dhani Ram, PW-4 Santa Singh, PW-5 Lal Singh and PW-6 Surjit Singh, Medical Officer, Civil Hospital, Ropar besides the complainant himself coming into the witness box as PW-1 and produced on record the X-ray films (Ex. P-1) to Ex.P-4), X-ray report (Ex.PA), copy of MLR (Ex.PB), copy of order dated 17. 11.1994 (Ex. PD and Ex.PE).

3. After considering the evidence brought on the record the trial Court vide order dated 24.3.1995 summoned all the accused under Sections 148/325/323/436/447 and 504 read with Section 149 IPC while observing as under:-

"The preliminary evidence led by the complainant at this stage remains unchallenged and unrebutted. Thus, from the evidence discussed above, in my opinion, there is sufficient evidence to show that Gopal Krishan father of complainant had filed the civil suit for permanent injunction against the PSEB, and another restraining them from installing tower or electric wires: that on 29.12.1994 at about 12 noon all the accused entered into the fields of father of the complainant forcibly and formed an unlawful assembly and in prosecution of common object of the said unlawful assembly, they caused grievous and simple injuries to Varinder Chaudhary complainant and damaged their crops and their hut was put on fire and cot and beds etc., lying therein were burnt; and that the complainant thus suffered loss at the hands of the accused; and that accused intimidated the complainant. Consequently, in my opinion, there are sufficient grounds made out for proceeding against all the accused for their trial under Sections 148, 325, 323, 436, 447 and 504 read with Section 149 IPC. All the accused are, therefore, ordered to be summoned for their trial for the abovesaid offences on payment of PF and copies of complaint."

4. Against the aforesaid order, the accused respondents filed two separate revisions before the Sessions Judge, Rupnagar. Those revisions were allowed by

the Revisional Court, and the summoning order dated 24.3.1995 passed by the trial Court was set aside and the matter was sent back to the trial Court for holding further enquiry into the matter, and to pass fresh order in the complaint in accordance with law, while observing as under:-

.....The impugned order has not been passed by the trial Magistrate after applying the mind to the facts and circumstances of the case, as observed above. The complainant has, rather, withheld and suppressed the material evidence from the Court, by not producing the copy of the contempt petition, filed by him against the accused/revision petitioners, after the installation of the pole in the land of his father. That petition is still pending. He also did not bring to the notice of the Court, the facts and circumstances under which the order of the police help, was obtained by the accused/revision petitioners for installation of the electricity pole in the land of his father.

27. In view of the discussion made above, both the revision petition are accepted. The impugned order of the trial Magistrate is set aside. The case is sent back to the trial Magistrate for holding further enquiry into the matter and to pass fresh appropriate order in the complaint in accordance with law. The trial Court file be sent back for 10.5.1999 and the complainant shall appear there, on that date.

5. While arriving at the aforesaid conclusion, the revisional Court observed as under about the merits of the Case:-

"21. The accused/petitioners admittedly, as even alleged by the complainant in the complaint, approached Additional District Magistrate, Ropar and obtained order from him for police help and thereafter, installed the electric pole in the land, under the supervision of the police. That being so, it is highly improbable and impossible to accept that in the presence of the police, they gave beating to the complainant and threw him on the ground and also burnt his hut. The occurrence, as alleged, by the complainant to this effect, in the complaint, could not possibly (had) taken place in the presence of the police. Moreover, accused P. Kumar is the Chief Engineer of the Thermal Plant, while accused M.P. Mittal is the General Manager of the Gujarat Ambuja Cement Company Ltd., and it is highly improbable to accept that they both personally went to the spot and gave slaps to the complainant and threw him on the ground and got his hut burnt from the officials, when the installation of the pole was to be done by the lower staff of the Thermal Plant. The complainant admittedly filed a contempt petition, after the installation of pole in the field of his father, against the accused/revision petitioners and in that petition, he did not make any allegations regarding the giving of abuses and causing of injury to him or about the damaging of his crop and burning of his hut, by them, as is clear from the copy of that petition, placed on file of this court, by the counsel for the revision petitioners.

22. The trial Magistrate, has failed to apply its mind by taking into consideration all the above referred facts and circumstances, about the very probability of the

occurrence, alleged by the complainant in the complaint. The court did not even call upon the complainant to produce the copy of the contempt petition filed by him in the court against the accused/revision petitioners, to see for itself if all these allegations regarding the occurrence, as alleged, by him in the complaint, were ever made by him in that petition or not. The occurrence is said to be dated 29.12.1994, while the complaint was filed only on 9. 1.1995. No doubt, the complainant produced the two doctors before the trial Magistrate, to prove the injury on his person, but the alleged injury received by him, was only dislocation of the shoulder, as is evident from the evidence of Dr. Surjit Singh who examined him and Dr. N.K. Singla, who conducted the X-ray of the injury. The doctors did not find any external mark of injury on his person and only swelling on the upper surface of his left shoulder joint, was found. The dislocation of his left shoulder could be the result of his, even fall on the hard surface in natural course.

23. The installation of the electric pole having been done under the supervision of the police, after getting the due order for police help from the Additional District Magistrate, Ropar, prima facie the story put forth by the complainant in the complaint regarding hurling of abuses to him, giving of slaps on his face, throwing him on the ground, causing damage to the crop and burning of his hut, by the accused/petitioners, does not appeal to the reasons. His version in this regard inherently appears to be weak and improbable. The trial Magistrate has failed to apply his mind and examined the genuineness of the occurrence, as alleged by the complainant, by taking into consideration the background and the facts, circumstances of the case, as even disclosed by the complainant, himself, in para 2 of the complaint."

6. Against the aforesaid order, the instant revision petition has been filed.

7. The learned counsel for the petitioner submitted that in the instant case, the Revisional Court has exceeded its jurisdiction while passing the impugned order. It is well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same. He is only to satisfy whether a prima facie case has been made out and there are sufficient grounds for proceedings against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case. Similarly, the Revisional Court has no jurisdiction to go into the merits of the case. The scope of the inquiry u/s 202 Cr.P.C. is extremely limited. The Revisional Court could have only set aside the summoning order passed by the trial Court when the same was found to be a case of no evidence, but the Revisional Court has no power or jurisdiction to go into the merits of the case. He further submitted that in the instant case, the Additional Sessions Judge wrongly assumed a position that the police help was accompanying the accused/respondents at the time of the incident and so the incident was not probable, as the accused could not have beaten the complainant in the presence of the police. He submitted that the revisional Court set aside the order passed by the trial Court merely on the basis of conjectures after going

into the merits of the case, which was not permissible under the law. In support of his contention, learned counsel for the petitioner has placed reliance on Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, and Dev Raj Garg v. State of Punjab, 1997(2) RCR (Cri) 26 (P&H).

8. On the other hand, learned counsel for the respondents submitted that the Magistrate while holding inquiry u/s 202 Cr.P.C. is not bound to accept the testimony of the complainant and his witnesses in routine regarding the allegations made by the complainant in the complaint. The Magistrate in the said inquiry is required to apply his mind to the facts and circumstances of the case before passing the summoning order. He submitted that in the instant case, the pole in question was installed under the supervision of the police who was deputed on the spot under the orders of the Additional District Magistrate. He further submitted that in the Indian Telegraphic Act, the electricity department is having a right to install the electric pole on the private land even without acquiring the land of any person. The person who suffers any damage on that account can claim only compensation from the department. He submitted that the learned Revisional Court while taking into consideration the various factors, including the fact of police help and the power of the department to install electric pole, came to the conclusion that the version given by the complainant in the complaint appears to be weak and improbable. The revisional Court was within its jurisdiction while arriving at such conclusion, therefore, there is no illegality in the impugned order in the same vide which the order of the trial Court was set aside and the case was remanded to the trial Court for holding further enquiry into the matter, and to pass fresh order in accordance with law. He submitted that there is no infirmity or illegality in the impugned order, therefore, the revisions filed by the petitioners are liable to be dismissed.

9. Learned counsel for the respondents, however, contended that in case this petition is allowed, then the respondents may be granted exemption from personal appearance before the trial Court.

10. After hearing the arguments of the learned counsel for the parties and perusing the record of the case, I am of the opinion that while setting aside the order of the trial Court, the revisional Court had exceeded its jurisdiction. Firstly, it has to be seen whether the trial Magistrate in the instant case has committed any illegality while summoning the accused for the alleged offence in the complaint made by the petitioner. At the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint and the evidence led in support of the same. Prima facie, he has to satisfy himself to the question whether there are sufficient grounds for proceeding against the accused or not, on the basis of the averments made in the complaint and the preliminary evidence led in support of the same. The Hon'ble Supreme Court in Smt.Nagawwa's case (supra) has held that the scope of the inquiry u/s 202 Cr.P.C. is extremely limited and that too, only to the ascertainment of the truth or falsehood of the allegations made in the complaint-(i) on the materials placed by

the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. In fact, in proceedings u/s 202 Cr.P.C. the accused has got absolutely no locus Standi and is not entitled to be heard on the question whether the process should be issued against him or not.

11. In the aforesaid case, the Hon'ble Supreme Court explained the situation in which the summoning order issued by the trial Court can be set aside by the revisional Court while observing as under:-

"It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judiciously exercised, by him. Once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

- (1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

12. In the instant case, the impugned order passed by the revisional Court is not in conformity with the aforesaid proposition of law laid down by the Hon'ble Supreme Court. The revisional Court has set aside the order of the trial Court on the basis of conjectures and surmises and on the ground that the allegations

made by the complainant were highly improbable and impossible. The revisional Court proceeded in a manner as it was hearing the appeal against the order of conviction and observed that there was no probability of convicting the accused in the complaint. This is reflected from the observations made by the revisional Court to the effect that "it is highly improbable and impossible to accept that in the presence of the police, they gave beating to the complainant and threw him on the ground and also burnt his hut. The occurrence, as alleged, by the complainant to this effect, in the complaint, could not possibly taken place in the presence of the police", "...it is highly improbable to accept that they both personally went to the spot and gave slaps to the complainant and threw him on the ground and got his hut burnt from the officials, when the installation of the pole was to be done by the lower staff of the Thermal Plant." Further, while discussing the medical evidence produced by the complainant, the revisional Court has observed that no doubt the complainant produced two doctors before the trial Magistrate to prove the injury on his person but the alleged injuries received by him was only dislocation of the shoulder, as is evident from the evidence of Dr. Surjit Singh, who examined him and Dr. N.K. Singla, who conducted the X-ray of the injury. The doctors did not find any external mark of injury on his persona and only swelling on the upper surface of his left shoulder joint, was found. The dislocation of his left shoulder could be the result of his even fall on the hard surface, in natural course. These facts again clearly establish that the revisional Court has entered into the merits of the case and decided the same as if it is deciding the case on merits while evaluating the evidence. This is not permissible under the law. Further, regarding the allegations made in the complaint, the revisional Court has observed that prima facie story put forth by the complainant in the complaint regarding hurling of abuses to him; giving of slaps on his face, throwing him on the ground; causing damage to the crop and burning of his hut by the accused petitioners, does not appeal to the reasons, and his version in that regard inherently appears to be weak and improbable. The trial Magistrate has failed to apply his mind and examined the genuineness of the occurrence, as alleged by the complainant, by taking into consideration the background and the facts and circumstances of the case. This fact also disclose how the revisional Court has gone into the merits of the case.

13. After considering these factors, I am of the opinion that the revisional Court has exceeded its jurisdiction while setting aside the order dated 24.3.1995 passed by the trial Magistrate.

14. In view of the aforesaid, these petitions are allowed and the impugned order dated May 4, 1999 passed by the learned Additional Sessions Judge, Rupnagar, is set aside.

15. However, it is made clear that in case the respondents file an application seeking exemption of their personal appearance before the trial Court, the trial Court shall exempt their personal appearance subject to the conditions to be imposed by it.