

Manikandan

Vs

Pandian and Others

Criminal Appeal No. 516 of 1989

(L. M. Sharam, K. Jagannatha Shetty JJ)

23.08.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. Special leave granted and the appeal stands disposed of by the following order.

2. The facts leading to the appeal may briefly be stated :

On November 15, 1984 at about 5.00 p.m. Peria Mayan, elder brother of the appellant received a fatal stab injury at his right side of the abdomen. The appellant took him to the Police Station B-II SS Colony, Circle B North, District Madurai South and gave information about the attack and the assailants. The Sub-Inspector who was in charge of the police station recorded that statement. He found the victim in a critical condition. He registered the case under Sections 324 and 307 of the Indian Penal Code and issued first information report with the name of the first respondent as the accused. The victim died at 5.25 p.m. on the same day. Consequently, the offence was altered into one under Section 302 of the Code. After investigation, the police filed charge-sheet against the accused before the Judicial Magistrate II Class No. II Madurai. The accused has been committed to the Court of Session.

3. When the said case was pending, the appellant filed a complaint before the aforesaid Magistrate. In that complaint, he has mentioned the names of three accused including the accused against whom the charge-sheet had already been filed. The allegations in the complaint are almost similar with the averments in the first information report. In the complaint, the appellant has stated that he had informed the police the names of all the three accused who participated in the murder of his brother, but he came to know that the charge-sheet was filed only against the first accused. The learned Magistrate upon examining the complainant took cognisance of the offence under Section 302 IPC and issued process to all the three accused.

4. The accused moved the High Court under Section 482 of the Code of Criminal Procedure for quashing the proceedings instituted upon the private complaint. The High Court accepted the petition and quashed the proceedings. The reasons given by the High Court may be summarised as follows : That there is absolutely no variation between the case set out in the charge-sheet filed by the police and the private complaint filed by the appellant. The first information report has been laid by the appellant before the police within half an hour of the occurrence. There he has mentioned only the name of the first accused. The police has investigated into the matter and filed the charge-sheet against the first accused. There is, therefore, no need whatsoever for a separate private complaint either against the first accused or against the other two accused. Since the appellant has

not mentioned about the other two accused in his information to the police, the case on private complaint as against the other two accused was purely an afterthought. The allegations indeed came five months later and were intended only to harass the other two accused by implicating them in the crime of murder.

5. These are the main observations of the High Court. So stating the proceedings instituted on the private complaint were quashed making it however, clear that the trial of the case against the first accused pending before the Court of Session, Madurai will continue.

6. Being aggrieved by the order of the High Court, the complainant has appealed to this Court.

7. We heard counsel on both sides and also perused the material on record. We are of the opinion that the High Court was not justified in quashing the proceedings initiated on the private complaint as against the other two accused. The appellant claims to be the eye-witness to the occurrence. It was he who gave the information to the police and it was he who filed the private complaint. His case was that he informed the Sub-Inspector the names of three accused persons who committed the murder but the charge-sheet was filed only against the first accused. To be more specific, he was complained as under :

"After that the B-II Police arrested the aforesaid first accused alone and did not arrest the second and third accused. The second and third accused were moving freely when I enquired about this in the B-II Police Station, I came to know that a case had been filed only against the first accused. Realising that some mistake had crept in into this, I informed the Superintendent of Police Madurai South Circle on December 14, 1984 and other higher police authorities, through petitions, about what had happened. But no action was initiated."

8. The private complaint thus contains reasons why the appellant found it necessary to move the learned Magistrate. The High Court without appreciating the grievance of the appellant has proceeded solely on the omission of names of the two accused in the first information report and the charge-sheet filed by the police. In fact, that was the very grievance of the appellant. If the appellant had mentioned the names of all the three accused who, according to him, were responsible for the murder of his brother, but the Sub-Inspector of Police issued the first information report only against the first accused, it is indeed a serious matter to be looked into. It is at any rate too premature to state that the appellant was making improvement in the case so as to involve the other two accused with a view to harass them. We cannot, therefore, sustain the order of the High Court.

9. Before parting with the case, it may be necessary to point out that the two cases however, cannot be consolidated and tried together though the case instituted on private complaint is in respect of the same offence the case instituted on private complaint is in respect of the same offence for which the charge-sheet has been filed against the first accused. The entire evidence in the case may not be the same. It may, therefore, be proper to record the evidence separately in both the cases unless the witnesses are common. The cases be tried one after another. In this context, we invite the attention of the parties and the trial court to have regard to the principles laid down in *Harjinder Singh v. State of Punjab* ((1985) 1 SCC 422).

10. In the result the appeal is allowed and the order of the High Court so far as it relates to quashing the proceedings against the other two accused, is set aside. The order so far as it relates to the first accused is however, kept undisturbed since he has already been committed to the Court of Session

on the charge-sheet filed by the police. It is made clear that the case instituted on private complaint against two other accused will proceed according to law and in light of the observations made.

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