SUPREME COURT OF INDIA

Lallan Chaudhary and Others

Vs

State of Bihar and Another

Appeal (Crl.) 1047 of 2006

(H. K. Sema and P. K. Balasubramanyan, JJ)

12.10.2006

JUDGMENT

H. K. SEMA, J.

Leave granted.

This appeal is preferred by the accused, nine in numbers, against the judgment and order dated 8.10.2002 passed by the High Court whereby the High Court directed the concerned Magistrate to proceed in the matter in accordance with law as contained in Section 209 of the Code of Criminal Procedure.

We have heard learned counsel for the appellant as well as the learned public prosecutor for the State.

The controversy involved in this appeal is in short compass being purely a question of law and it may not be necessary to recite the entire facts leading to the filing of the present appeal.

Complaint Case No. 223C/1996 was filed before the Sub- Divisional Judicial Magistrate, Sikrahana at Motihari, District East Champaran by Yogendra Prasad - the respondent herein, to the effect that

on 7.6.1996 at about 6.00 PM the accused Lalan Chaudhary, Din Bandhu Chaudhary, Sanjeev Kumar @ Ghutan, Lalbabu Prasad, Bhola Shah, Nageshwar Shah, Bhagrit Raut, Joka Majhi and Suruj Raut having formed unlawful assembly and armed with Lathi, Fatta, Farsa, Nalkatwa and Rifle, illegally entered in the residential house of the complainant and indulged in 'Loot-Paat' of household articles and also teased female members of the family. When the complainant objected to the accused, the accused persons gave severe beating with slaps, fists and fatta and caused bodily injuries to the appellant. The complaint further disclosed that the accused looted away the household articles comprising utensils, gold articles, silver articles, wearing apparels etc. including cash. The total value of the loot was Rs. 19, 000/-, as detailed in the complaint. In the said complaint case itself, filed before the Sub-Divisional Judicial Magistrate, the offences under Sections 147, 148, 149, 448, 452, 323 and 395 were disclosed.

It appears that the Sub-Divisional Judicial Magistrate, before whom the complaint was lodged, had endorsed the complaint to the SHO, Police Station Ghorasahan, District East Champaran to register an FIR and to investigate. The SHO of the concerned Police Station, however, registered the case under Sections 452/380/323/34 IPC against the accused. Ultimately, the charge-sheet was submitted by the Police only under Sections 452/323/34 IPC. It would, therefore, clearly appear that no case was registered against the accused for offences disclosed in the complaint under Sections 147, 148, 149, 448 and 395 IPC and no investigation was carried out by the Police in respect of the aforesaid sections of law and committed grave miscarriage of justice.

Section 154 Cr.P.C. reads:

"154. Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

Section 154 of the Code thus casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in

charge of a police station, such police officer has no other option except to register the case on the basis of such information.

In the case of Ramesh Kumari v. State (NCT of Delhi) and Ors. this Court has held that the provision of Section 154 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code.

In the present case, undisputedly, the cognizable offences disclosed in the complaint, were under Sections 147, 148, 149, 448, 452, 323 and 395 IPC. The complaint was filed before the Sub-Divisional Judicial Magistrate and the same was endorsed to SHO of concerned Police Station for registering the FIR under Section 154 of the Code. The concerned SHO of the Police Station registered the case only under Sections 452/380/323/34 IPC. Section 395 IPC, which had been disclosed in the complaint, was excluded from the purview of the FIR and resultantly no investigation was carried out by the Police in terms of Section 156 and 157 of the Code of Criminal Procedure. It is well settled principle of law that in criminal trial, investigation is proceeded by an FIR on the basis of written complaint or otherwise disclosing the offence said to have been committed by the accused. In the present case, a grave miscarriage of justice has been committed by the SHO of concerned Police Station by not registering an FIR on the basis of offence disclosed in the complaint petition. The concerned police officer is statutorily obliged to register the case on the basis of the offence disclosed in the complaint petition and proceed with investigation in terms of procedure contained under Sections 156 and 157 of the Code. The FIR registered by the Police would clearly disclose that the complaint for offence under Section 395 IPC has been deliberately omitted and, therefore, no investigation, whatsoever, was conducted for the offence under Section 395 IPC.

It is unfortunate that the Trial Magistrate has failed to notice that in the complaint filed before the Sub-Divisional Judicial Magistrate an offence under Section 395 IPC has been disclosed, amongst others. The Trial Magistrate accepted the charge framed under Sections 452/323/34 IPC mechanically without application of mind. The District and Sessions Judge also failed to take notice the miscarriage of justice by the Trial Judge. It is, in these circumstances that the High Court has, in our view, justly corrected the error committed by two Courts. In our view, therefore, the impugned order of the High Court does not suffer from any infirmities.

Mr. Tripurari Ray, learned counsel appearing for the appellant contended that the complainant has not challenged the charges framed under Sections 452/323/34 IPC. It is also contended that the

appellants are facing criminal trial for the last 14 years and if the committal proceedings are initiated by the trying Magistrate pursuant to the directions of the High Court, it would impede speedy trial and the same would be violative of Article 21 of the Constitution. No doubt, quick justice is sine-qua-non of Article 21 of the Constitution but, when grave miscarriage of justice, as pointed out in the present case, is committed by the Police Officer, the ground of delay of disposal of cases or otherwise would not scuttle the miscarriage of justice. Similarly, we are of the view that in the given facts and circumstances of this case, the accused themselves would be liable to be blamed for the delay, if any. With regard to the submission of the learned counsel for the appellant that the complainant has not challenged the non-framing of charge under Section 395 IPC, the same is not borne out from the record. In fact, an application was filed by the learned Public Prosecutor before the trying Magistrate under Section 216 of the Code of Criminal Procedure for alteration of charge under Section 395 of the IPC, which was rejected by the trying Magistrate, which in our view erroneously.

In the view that we have taken, we do not see any infirmities in the impugned order of the High Court which would warrant our interference. The appeal is devoid of merits and is, accordingly, dismissed.