

SUPREME COURT OF INDIA

Vinay Kanodia

Vs.

J.P.Singh

Crl.A.Nos.89-90 of 2013

(H.L.Dattu and Ranjan Gogoi JJ.)

10.01.2013

ORDER

Application for impleadment is allowed.

1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Delhi in Criminal Miscellaneous Case No.4308 of 2009 Criminal Miscellaneous Case No.4232 of 2009, dated 01.03.2011. By the impugned judgment and order, the High Court has quashed the entire prosecution proceedings for the offence under Section 323/348/365/368/506 read with 34 and 120-B of the Indian Penal Code, 1860 (“ the IPC” for short).

3. The facts in brief as stated in the complaint are: the proceedings under the Excise Act for evasion of excise duty were instituted by the officers of the Directorate General of Central Excise Intelligence (“DGCEI” for short) wherein search was conducted and summons were served in the name of the appellant i.e. Director of M/s. Vinay Wires. After the service of summons were unattended for quite some time, the appellant was forcibly held by the officers of DGCEI from Balaji Delux Hotel, Paharganj, where the appellant along with the other directors had lodged, and wrongly confined them from 12.00 midnight of 10th November, 2009 till 1.30pm of 11th November, 2009 and thereafter the arrest of the appellant was brought on record. Subsequent to the arrest, the appellant filed a complaint through his father- Hanuman Prasad Kanodia, before the Ld. Magistrate. The appellant before the Ld. Magistrate had brought to the notice that the respondents herein, who are the officers of the Central Excise Department, had illegally

detained and further brutally assaulted him. This allegation of the Complainant was denied by the respondent- officers. However, the learned Magistrate thought it fit to refer the complainant to be examined by a competent doctor on the same date.

4. The doctor, after examining the Complainant and after going through the number of injuries on the body of the Complainant, has observed that the Complainant has suffered multiple injuries on his body. Therefore, the learned Magistrate after examining the injuries reflected on the Medico legal Case Report (“MLC Report” for short) was of the opinion that the appellant was tortured and beaten mercilessly while in custody, and therefore has taken cognizance under Sections 323, 348, 365, 368, 506 read with 34 and 120-B of the IPC.

5. Aggrieved by the order so passed by the learned Magistrate with respect to the issue of cognizance of the complaint filed by the complainant, the respondents- herein had filed a petition under Section 482 of the Criminal Procedure Code, 1973 before the High Court, inter alia, requesting the High Court to quash the entire proceedings initiated by the Complainant.

6. The High Court, in our opinion, though has noticed the number of injuries sustained by the Complainant, but on a very technical ground, has allowed the petition and set aside the entire proceedings.

7. We have carefully perused the order passed by the learned Magistrate in taking cognizance of the complaint and also the order passed by the High Court while setting aside the proceedings initiated by the Complainant before the learned Magistrate. In our opinion, the learned Judge of the High Court was not justified in passing the impugned judgment and order. Therefore, while allowing these appeals, we set aside the impugned judgment and order passed by the High Court. Now, we direct the learned Magistrate to complete the criminal proceedings as early as possible, at any rate, within six months from the date of receipt of a copy of this Court's order. Any observation made by us in the course of this order is only for the purpose of disposal of this appeal. We clarify further, that, we have not expressed any opinion on the merits or demerits of the stand taken by both the parties.

All the legal pleas are kept open.

Ordered accordingly.