

PETITIONER:
SUBHASH CHANDRA

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH & ORS. C

DATE OF JUDGMENT: 12/01/1999

BENCH:
S.S.Ahmad, D.P.Wadhwa

JUDGMENT:

D E R

The dispute between the petitioner and respondent Nos. 3 to 6 dates back to 10th of March 1998, when respondents 3-6 are alleged to have forcibly taken-away 350 bags of potatoes valued at more than Rupees one lakh, from the fields of the petitioner, by loading the consignment in their tractor-trolley. In order to prevent the petitioner from lodging the First Information Report with the Police, respondents 3-6 took the petitioner to their residence and allegedly assaulted him. On the next day, namely, on 11th March, 1998, the petitioner informed the Sr. Superintendent of Police, Farrukhabad, about the above incident through a fax message.

In another incident, which is the incident involved in this case, respondents 3-6 assaulted the petitioner on 29th March, 1998 at 11 A.M., Rs.500/- which the petitioner had with him at that time was taken-away by respondents 3-6 and they also badly abused the petitioner. The incident was allegedly witnessed by Ram Niwas and Siya Ram. Petitioner immediately went to the Police Station to lodge the report but no action was taken. Consequently, the petitioner filed a complaint in the court of Chief Judicial Magistrate, Farrukhabad, against respondents 3-6 on 2nd April, 1998 in respect of the incident of 29th March, 1998. While the application was pending in the court, the petitioner was advised that in respect of the incident in question the court competent to take action was the court of Special Sessions Judge, (DAA), Farrukhabad, and not the court of Chief Judicial Magistrate. Consequently, on 24th June, 1998, petitioner moved an application under Section 156 (3) of the Criminal Procedure Code in the court of Special Sessions Judge (DAA), Farrukhabad. On the direction of the Special Sessions Judge (DAA), Farrukhabad, on 6.7.1998, a case was registered under Section 394/504/506 IPC at Police Station, Farrukhabad, against respondents 3-6 as crime case No. 541/98. The order dated 6.7.1998, by which the learned Special Sessions Judge (DAA), Farrukhabad, had directed Police Station House Officer to register a case against respondents 3-6, was challenged by the latter in the Allahabad High Court through a petition (Criminal Miscellaneous Application No. 2527 of 1998) under Section 482 Cr.P.C. On this petition, the High Court passed the following order dated 23.7.1998 :

Heard the applicants counsel that in respect of the

same incident a criminal complaint has already been filed against the applicants and the same is pending. During the pendency of the same complaint, complainant Subhash Chandra also filed application U/S 156(3) Cr.P.C. before another court, i.e. the court of Special Judge (D.A.A.), Farrukhabad, by concealing the fact that he has already moved an application before the Court of Chief Judicial Magistrate, Farrukhabad for necessary action by filing an application under Sec. 156(3) Cr.P.C. and the C.J.M. refused to order investigation. It is further contended that the local police is inimical to the applicants. The applicants have filed writ petition against the police authorities as well as contempt petition. In short, the argument of the learned counsel is that the complainant by concealing material facts before the Special Judge (DAA), Farrukhabad has succeeded in procuring a favourable order on 6.7.1998, on his application moved under Sec. 156(3) Cr.P.C. In the circumstances, this petition is disposed of finally with the observation that the applicants, if so advised, may move before the Special Judge (SAA) Farrukhabad inviting his attention to the aforestated objection and if such an objection is filed, the same shall be decided by Special Judge (DAA) Farrukhabad in accordance with law after getting opportunity of hearing to both the sides.

The operation of the order dated 6.7.98 passed by Special Judge (DAA) Farrukhabad shall remain stayed for a period of 10 days in order to enable the applicants to file suitable objection and if such objections are filed, the order shall remain stayed until the objection is disposed of.

A certified copy of this order be given to the learned counsel for the petitioners on payment of usual charges within 48 hours.

When the matter was taken up by the Special Sessions Judge, Farrukhabad, on 17.11.1998, he recalled his earlier order dated 6.7.1998 and issued a notice requiring the petitioner to show cause why action be not taken against him for concealing the fact that he had earlier filed a complaint in the court of Chief Judicial Magistrate which was not mentioned by him in his complaint under Section 156(3) Cr.P.C. Petitioner filed his objections to the show cause notice, but the Special Sessions Judge (DAA), Farrukhabad, by order dated 14/15.1.1999, initiated proceedings against the petitioner for an offence under Section 182 of the Indian Penal Code, allegedly on the ground that the petitioner had concealed the material facts from the court and had not mentioned that he had earlier filed an application in respect of the same incident before the Chief Judicial Magistrate Farrukhabad. This order was challenged by the petitioner before the High Court in Criminal Misc. Writ Petition No. 2123/99 which has been disposed of by the impugned judgment dated 21.4.1999. The High Court disposed of the writ petition with the following operative order :

This writ petition is disposed of with the direction that a complaint shall be drafted and lodged against the petitioner in accordance with Section 340 Cr.P.C. and other formalities of law under Section 340 Cr.P.C. read with Section 195 Cr.P.C. shall be complied with. Orders passed on merits u/s 340 Cr.P.C. is confirmed.

With these directions, the writ petition is disposed of. Petitioner shall appear before the Special Judge (D.A.A.), Farrukhabad on 10.05.1999.

Learned counsel for the petitioner has contended that the High Court could not have directed the Special Sessions Judge, Farrukhabad, to lodge a complaint under Section 340 Cr.P.C. read with Section 195 Cr.P.C. at that stage as the complaint was still pending before the Chief Judicial Magistrate while the complaint filed by the petitioner in the court of Special Sessions Judge (DAA), Farrukhabad, under Section 156(3) Cr.P.C. had also not been disposed of finally on merits.

Learned counsel appearing on behalf of the respondents, on the other hand, has contended that there was no dispute with regard to the fact that the fact that the petitioner had earlier filed a complaint in the court of Chief Judicial Magistrate was not mentioned in the complaint filed under Section 156(3) Cr.P.C. in the court of Special Sessions Judge (DAA), Farrukhabad, and that this vital fact had been concealed from that court. That being so, it is contended by learned counsel for the respondents, that the petitioner could be legally proceeded against in terms of the directions issued by the High Court. It is contended that in these circumstances the learned Special Sessions Judge (DAA), Farrukhabad, would be fully justified in lodging the complaint under Section 340 Cr.P.C. read with Section 195 Cr.P.C.

After having heard learned counsel for the parties, we are of the view that the Special Sessions Judge (DAA), Farrukhabad, as also the High Court have acted hastily in the matter. Mere non-mention of the complaint already filed in the court of Chief Judicial Magistrate, in the petition filed under Section 156(3) Cr.P.C. before the Special Sessions Judge (DAA), Farrukhabad, would not be enough.

There are many ingredients set out in Section 182 IPC. Unless all the ingredients are established by evidence, the offence cannot be treated to have been committed. In order to ascertain whether the petitioner had committed any offence under Section 182 IPC, it is necessary to find out whether all the ingredients constituting an offence under that Section have been proved or not. The petitioner had only filed a complaint under Section 156(3) Cr.P.C., before the court of Special Sessions Judge (DAA), Farrukhabad. It is still to be investigated and found out by that court whether the complaint lodged before that court was false and had been made with the necessary intention or knowledge to induce the court to exercise its lawful power so as to cause injury to respondents 3-6. Once those ingredients are established and the charge is found to have been proved, then alone the court can take cognizance of that offence and proceed in the manner directed by the High Court by the impugned judgment. But the stage at which such directions have been issued is, in our opinion, premature.

Consequently, this petition is disposed of and the order dated 15.1.1999 passed by Special Sessions Judge (DAA) Farrukhabad, as also order dated 21.4.1999 passed by the High Court are set aside, with the observation that the Special Sessions Judge (DAA), Farrukhabad, shall proceed to

dispose of the complaint under Section 156(3) Cr.P.C. in accordance with law and if it is found that the complaint was false and has been filed with the knowledge and intention set out in Section 182 IPC, the court will proceed further in the manner indicated by the High Court.

JUDIS