

Virender Yadav vs The State Nct Of Delhi on 24 January, 2024

Author: Suresh Kumar Kait

Bench: Suresh Kumar Kait

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A. 778/2023

VIRENDER YADAV

Through:

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THE STATE NCT OF DELHI

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Through: Mr. Rajesh Mahaja

Curiae with Ms. J

Mr. Ranjeeb KJ. B

Insp. Braj Mohan,

Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% 24.01.2024 CRL.A. 778/2023 & CRL.M.(BAIL) 1308/2023

1. The present appeal has been filed by the appellant against the Judgment dated 01.03.2023, passed by learned trial Court, whereby he has been held guilty for commission of offence u/S 195/196 IPC and vide order on sentence dated 29.05.2023, he has been, inter-alia sentenced to life imprisonment and fine.

2. Brief facts of the case which led to filing of the present appeal are that on the basis of information of appellant and his written complaint dated 11.04.2012, FIR No.43/12 was registered by P.S. Old Delhi This is a digitally signed order.

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3. The said case was put to trial.

4. During the course of recording of evidence in the aforesaid case, prosecution examined as many as 24 witnesses, out of which PW8 Santosh Updahayay and PW9 Balram Singh and the appellant

herein were also examined as eye witnesses. PW8 & PW9 did not support their respective previous statements made u/S 161 Cr.P.C and did not support the case of the prosecution and were declared hostile. Likewise, the appellant also did not support his previous written statement given to the police, on the basis of which, the aforesaid FIR came to be registered. In his evidence before the Court, the appellant, who was examined as PW12, identified his signature on the complaint dated 11.04.2012 as Ex.PW12/A. The learned Trial Court pronounced its judgment on 18.02.2013 in said case and acquitted all the accused persons therein and while passing the said judgment, the learned Trial Court formed an opinion that prima facie, there was sufficient evidence on record that PW12 appellant/applicant herein had committed offences punishable under Sections 193 to 195 IPC and accordingly, it directed that a complaint be filed against him.

5. Accordingly, a complaint under Section 195 Cr.P.C was filed against the appellant through Reader of the Court. Such complaint was registered as CC No.01/2016.

6. On 12.05.2016, the learned Magistrate committed the case to the Court of Sessions. Thereafter, the case was forwarded to the Sessions Court and was registered as CC No.01/2016 titled as State vs. Virender Yadav.

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7. The appellant, in the said case, has been held guilty by the Court of learned ASJ, District Central, Tis Hazari Courts, Delhi, vide judgment dated 01.03.2023 and sentenced to life vide order dated 29.05.2023.

8. Learned Senior Counsel appearing on behalf of the appellant submits that the judgment and order on sentence are against law and facts on record. The learned Magistrate while taking cognizance failed to appreciate that no complaint was made before him under Section 340 of Cr.P.C as contemplated under the law. The complaint that had been made was under Section 195 of Cr.P.C which merely provides procedure for taking cognizance and not the complaint. So, the manner of filing the complaint in the instant case is per se illegal and so is the subsequent proceeding emanating there-from. It is further stated that the learned Judge did not follow the prescribed procedure as required under Section 195 Cr.P.C read with Section 340 Cr.P.C.

9. Moreover, the concerned Court which tried the murder case did not form an opinion that it was expedient in interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195 Cr.P.C, which appeared to have been committed or in relation to a proceeding in that Court or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court and as such filing of complaint for offences under Sections 193 to 195 IPC in the Court of the learned CMM was illegal, without any sanctity of law and entire prosecution is bad in law and the judgment and order on sentence are liable to be set aside.

10. He further submits that the learned Court failed to appreciate the settled proposition of law that the First Information Report was only an This is a digitally signed order.

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11. Learned counsel for the appellant has handed over a compilation of judgments. We have perused the same and the same is taken on record.

12. To strengthen his arguments, learned counsel for the appellant/applicant has relied upon the case of Chandra Shekhar vs. State of M.P.: MANU/MP/ 0283/1980 wherein it is held as under:

"3. On hearing the learned counsel for the appellant and the State, I find that this appeal deserve to be allowed Section 182 of the Indian Penal Code lays down as follows:

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Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury Or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

From the narrative of the facts, it is clear that the initial information was a telephonic message contained in the document (Ex. P-13) to the Dhar Police by some one. It was This is a digitally signed order.

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the information later on given by the injured appellant contained in Ex P-3 at 1.10 a.m. on 8-10-1978, the appellant had given that information to the Police. Hence under the terms of section 182 Indian Penal Code, the complaint only by the concerned police was competent. A complaint by the learned Additional Sessions Judge for the offence punishable under section 182 Indian Penal Code is therefore, not in accordance with law."

13. Vide order dated 21.11.2023, Mr.Rajesh Mahajan, learned counsel was appointed as Amicus Curiae, who submits that during the course of trial of the said case, the appellant was examined as PW-12. He admitted to have made the complaint in his handwriting, which was exhibited in said trial as Ex. PW 12/A, but he did not support the prosecution case that he had witnessed the incident of murder as alleged in his handwritten complaint. He, however, owned up his such complaint.

14. He further submits that while acquitting the accused persons in the said case for offence punishable u/s 302/34 IPC, the learned ASJ directed his prosecution for offences punishable u/s 193 to 195 IPC, in which he was held guilty.

15. The question for consideration before this Court is limited to the extent as to whether the FIR which is, based on written complaint, can be said to be a substantive piece of evidence or not.

16. Mr. Mahajan, however, submits that Chapter XI of IPC deals with False Evidence and Offences against Public Justice. The provisions of Section 191 and Explanation 2 of the same are relevant in the present case in addition to Sections 192, 194 and 195 and on conjoint reading of This is a digitally signed order.

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17. We are also seized with application for suspension of sentence and since the present appeal needs consideration on the question as mentioned above, therefore, at this stage, we hereby suspend the sentence of the appellant during the pendency of the appeal. Consequently, the appellant be released on bail, if not required in any other case, on his furnishing a bail bond of Rs.25,000/- with one surety of like amount to the satisfaction of the learned trial Court concerned.

18. Copy of order be transmitted to the learned trial Court and to the concerned jail authorities for compliance.

19. Application stands disposed of.

20. Since the question of law is involved, therefore, let this appeal be listed for 'Final Hearing' on 20.03.2024.

21. Mr. Mahajan, learned Amicus shall continue to assist this Court and would also elucidate about applicability of Section 194 or Section 195 of the IPC in view of the facts and circumstances of the present case.

SURESH KUMAR KAIT, J MANOJ JAIN, J JANUARY 24, 2024 kct/ab This is a digitally signed order.

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