

Abhishek Saxena vs The State Of Uttar Pradesh on 28 November, 2023

Author: C.T. Ravikumar

Bench: Sanjay Kumar, C.T. Ravikumar

1

2023 INSC 1088

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3628 OF 2023
(Arising out of SLP(Crl.) No. 1431/2020)

ABHISHEK SAXENA

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

O R D E R

Leave granted.

1. This appeal is directed against the order dated 23.10.2019 passed by the High Court of Judicature at Allahabad in Criminal Misc. Application No. 471 of 2018.

2. FIR No. 839 of 2016 was registered at Sector 49 Noida, Police Station against the appellant, his parents and relatives on 4.9.2016 alleging commission of offences under Sections 323, 363, 384, and 406 of the Indian Penal Code. The charge sheet was subsequently filed on 22.8.2017 in respect of commission of offences under Sections 323, 384 and 406 I.P.C. Thereafter the accused, including the appellant herein, filed an application under Section 482 CrPC seeking quashment of the FIR and the consequently filed chargesheet and the summoning order dated 19.09.2017 issued thereafter. As per the impugned order, the High Court declined to exercise the power under Section 482 CrPC and consequently dismissed the petition qua the appellant.

3. Heard learned Senior Counsel appearing for the appellant and the learned panel counsel for the State of Uttar Pradesh. Though notice was issued and served on the second respondent, she has chosen not to appear and contest the matter.

4. As noticed hereinbefore, after the investigation, chargesheet was filed in respect of offences under Sections 323, 384 and 406 of the I.P.C. The first respondent has also filed counter affidavit. We have carefully gone through the materials on record. Having gone through the chargesheet, and the other material on record, we could not find necessary ingredients to attract the offences under Sections 323, 384 and 406 of the I.P.C. qua the appellant.

5. As relates the allegation of commission of offence under Section 323, IPC besides the bald statement 'when I asked these people about my daughter, they beat up me' no material whatsoever to support the allegation causation of hurt is available on record much less voluntary causation of hurt. So also, about the demand of a sum of Rs. 20 Lakhs from her father after about 15 days from 12.06.2016 from the house of second respondent's father in Bareilly, the second respondent (the complainant) in her statement dated 25.09.2016 given to the Investigating Officer, submitted that she did not get registered an FIR or file any complaint in Bareilly. That apart, the unrefuted position of facts revealed from the materials on record is that the appellant herein has already filed a petition for dissolution of his marriage with the second respondent-complainant and also Application No.13/2016 under Sections 7, 10 and 17 of the Guardians & Wards Act, 1890 (for short 'G&W Act') for declaring him as the guardian of the person of the minor daughter by name 'Anwesha Saxena', before the learned Principal Judge, Family Court, Gautam Budh Nagar in Uttar Pradesh, on 16.05.2016. FIR No. 839/2016 was registered against the appellant, his parents and relatives on 04.09.2016 on the complaint of the second respondent only on 04.09.2016.

6. Further relevant aspects for the purpose of consideration of the case on hand are that in the Application No. 13/2016 filed under 'G&W Act' as early as on 16.05.2016 the Appellant has mentioned clearly that the minor daughter 'Anwesha Saxena' is in his custody and beside him, his parents, persons named therein, who are respectively her Nana, Nani, Mama and Mami, are also residing in the house where the daughter 'Anwesha Saxena' ordinarily resides. It is months thereafter that the second respondent filed the complaint causing registration of FIR No. 839/2016 and filing of chargesheet. Add to it, it is relevant to note that in the FIR registered on 04.09.2016 the date of incident is shown as 12.06.2016 at 03.00 AM and date of information is shown as on 04.09.2016 at 09.30 AM and the delay in investigation is recorded as the delay in submitting information by the complainant i.e., the second respondent herein. In the written complaint by the second respondent- complainant, the typed copy of which is produced in this proceeding, it is stated that on 12.06.2016 at about 03.05 PM in the afternoon, the appellant, his parents and relatives had caused disappearance of 'Kumari Anwesha' and when asked about the daughter they assaulted her, threw her out from flat No. 4663 in the clothes which she was then wearing and jewellery weighing about 400 gms and Rs. 05,00,000/- in cash; were snatched from her. Furthermore, it is stated therein that the accused persons sent different persons and relatives to the applicant's father Dr. Anil Gupta and demanded a sum of Rs. 20,00,000/- as ransom. In her statement attached to the FIR, produced in this proceeding, she stated that on 12.06.2016 the appellant, his parents and relatives cause disappearance of her daughter and on being asked about her they had beaten her up and snatched golden jewellery and her own savings of Rs. 50,000/-.

7. As the High Court did not endeavour to consider whether the chargesheet submitted showed prima facie case under Sections 323, 384 and 406, IPC for voluntarily causing hurt, for extortion

and for criminal breach of trust, we think it inevitable to undertake such a consideration as in the facts and circumstances while called upon to exercise the power under Section 482, CrPC the High Court was legally bound to see if allegations/accusations constitute any offence or not. As relates the alleged commission of offence under Section 323, IPC besides the bald statement of the second respondent- complainant 'when I asked those people about my daughter, they beat up me' no other material whatsoever is on record. In short, there is no material on record to support the alleged causation of hurt. Though the first respondent filed a counter affidavit nothing is stated / produced in regard to the said alleged offence.

8. Bearing in mind the aforesaid materials on record we have carefully perused them and the chargesheet to ascertain whether they disclose the ingredients to attract the offences under Sections 323, 384 and 406, IPC qua the appellant.

9. As noted earlier, except the statement that 'they beat up me' by the complainant no material whatsoever is available on record in regard to the commission of the said offence. The incident allegedly occurred on 12.06.2016. In the recorded statement of the second respondent-complainant or in the counter affidavit filed by the first respondent there is not even a whisper that after the incident she went to a doctor or underwent any kind of treatment. Needless to say, that there is no statement – at least that injury report was prepared. In this context, it is also to be seen in respect of the incident, the FIR got registered only on 04.09.2016, that too much after the filing of petition No. 13/2016 by the appellant herein. Above all, as noted earlier, basic ingredients to constitute an offence under Section 323, IPC is lacking in the chargesheet.

10. As relates the alleged commission of offence under Section 384, IPC there can be no doubt that to attract the said offence the following twin ingredients are to be satisfied:

- (i) Intentionally putting a person in fear of injury to himself or another;
- (ii) Dishonestly inducing the person so put to deliver to any person any property or valuable security.

In the absence of such ingredients/accusations in the chargesheet to constitute the said offence it cannot be said a prima facie case of commission of offence under Section 384 is made out therein.

11. Now, we will consider the accusation of commission of offence under Section 406, IPC. The essential ingredients to constitute an offence under Section 406, IPC are as follows:

- (i) Entrusting any person with property or with any dominion over property;
- (ii) the person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation –

(i) of any direction of law prescribing the mode in which such trust is to be discharge, or;

(ii) of any legal contract made touching the discharge of such trust In the absence of basic ingredient of entrustment of property and dishonest usage or disposal of any such property to satisfy the offence punishable under Section 406, IPC in the present case, the charge of commission of the offence thereunder also cannot be attracted.

12. In the circumstances obtained as above, we are of the considered view that no useful purpose is likely to be served by allowing criminal prosecution against the appellant to continue based on the aforesaid chargesheet as ingredients of all the aforementioned offences are wanting in this case. We have no hesitation to hold that the High Court has clearly fallen in error in not invoking the powers under Section 482, CrPC to quash the proceedings qua the appellant.

13. We are, therefore, inclined to allow this appeal. Consequently, the order dated 23.10.2019 passed by the High Court in Criminal Misc. Application No. 471 of 2018 qua the appellant is quashed and set aside. Consequently, FIR dated 4.9.2016 bearing Case Crime No. 839 of 2016 as also the chargesheet filed in Case Crime No. 839 of 2016 under Sections 323, 384 and 406 of the I.P.C. and the summoning order dated 19.09.2017 in case No.2986 of 2017 passed by the learned IInd Additional Chief Judicial Magistrate, Gautam Budh Nagar, U.P., stand quashed, qua the appellant herein.

Pending application(s), if any, stands disposed of.

.....J. (C.T. RAVIKUMAR)J. (SANJAY KUMAR) NEW DELHI;

NOVEMBER 28, 2023

ITEM NO.40

COURT NO.14

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 1431/2020

(Arising out of impugned final judgment and order dated 23-10-2019 in A482 No. 471/2018 passed by the High Court Of Judicature At Allahabad) ABHISHEK SAXENA Petitioner(s) VERSUS THE STATE OF UTTAR PRADESH & ANR. Respondent(s) IA No. 28647/2020 - EXEMPTION FROM FILING O.T.) Date : 28-11-2023 This petition was called on for hearing today. CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR HON'BLE MR. JUSTICE SANJAY KUMAR For Petitioner(s) Mr. Vinod Prasad, Sr. Adv.

Mr. Ajay Kumar Srivastava, AOR Mr. Dharendra Kumar, Adv.

Mr. Bijender Singh, Adv.

Mr. Devvrat Rana, Adv.

Mr. Pawan Tyagi, Adv.

Mrs. Sanno Kumar, Adv.

Ms. Jyoti Tiwary, Adv.

For Respondent(s) Mr. Divyesh Pratap Singh, Adv.

Mr. Rajat Singh, AOR Mr. Chandra Shekhar Suman, Adv.

Mr. Sarthak Chandra, Adv.

Mr. Arun Pratap Singh Rajawat, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

Appeal is allowed in terms of the signed reportable order, which is placed on the file.

Pending application(s), if any, stands disposed of.

(DR. NAVEEN RAWAL)
ASTT. REGISTRAR-cum-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)