

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Misc. Criminal Case No. 12928 OF 2015****Balbeer Singh Dandotiya & Ors.****-Vs-****State of M. P. & Ano.**

Shri Vaibhav Shrivastava, Advocate with Shri V.D. Sharma, counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent No.1/State.

Shri Pradeep Katare, counsel for the respondent No.2.

ORDER
(19/01/2017)

This petition has been filed under Section 482 of CrPC against the order dated 03.01.2009 by which the cognizance was taken against the applicants and against the order dated 18.05.2010 by which charges under Sections 395, 324/149 of IPC and under Section 11, 13 of MPDVPK Act were framed and also for quashing the entire criminal proceedings pending against the applicants.

2. The facts necessary for the disposal of this case are that on 24.05.2008, the respondent No.2 Devendra Dandotiya lodged a report in Police Station Kotwali, Morena against the applicants and other co-accused persons alleging that there is an election enmity between him and Balveer Dandotiya and because of that he was having personal grudge against the respondent No.2. Today i.e., 24.05.2008 when he was coming back to his house along

with one Lalla on his motorcycle from warehouse road and when he reached in front of Bunty Street, there Balveer Dandotiya, who was armed with gun, Radhe who was armed with farsa, Shanti, who was armed with iron rod, Devendra, Ajay were armed with lathis and Manua and Gopal Dandotiya were empty handed surrounded him and started abusing. When the complainant objected to such an act, then Radhe Dandotiya with an intention to kill the complainant caused an injury on his head by means of *farsa*, as a result of which, he sustained injury on the back of his head and blood started oozing out. Shanti caused an injury by iron rod on his left shoulder, Devendra caused a *lathi* injury on his left shoulder, Balveer Dandotiya assaulted by the butt of gun, as a result of which, he sustained injury on his jaw. Second blow was given by Balveer by the butt of gun on his chest, Manua, Gopal and Ajay caught hold of him and started assaulting him by fists and blows, as a result of which, he sustained injury on his body. During quarrel his chain and money also fell down. Lalla went to his house in order to call his brother. The incident was witnessed by Bharat and Tinku Dandotiya. All of the accused were saying that today they have dealt with the complainant and now they will deal with his family members.

3. After conducting the investigation, the police filed a charge-sheet on 22.09.2008 against applicant No.5, Manish Dandotiya, applicant No.6 Devendra Singh Dandotiya @ Lalla and applicant No.7 Ajay Dandotiya for offences punishable under Sections 341, 294, 324, 323/34 of IPC. Further in view of the report given by SDO (P) Morena on 25.07.2008 to the effect that the applicant No.1 Balveer Singh Dandotiya, applicant No.2 Radhey Lal @ Radhe Shyam, applicant No.3 Shanti Lal and applicant No.4 Gopal

Dandotiya were not present on the spot, therefore, they were not charge-sheeted.

4. On 25.08.2008, the respondent No.2 filed a criminal complaint against the applicants for offences punishable under Sections 307, 294, 324, 147, 148, 149, 392 and 394 of IPC and under Section 11, 13 of MPDVPK Act. In support of the complaint, the complainant got the statement of himself and his witnesses recorded under Sections 200 & 202 of CrPC. By order dated 03.01.2009, considering the allegations made in the complaint as well as the statements of the witnesses, the Court took cognizance of offences under Sections 392, 392/149 of IPC and under Section 11, 13 of MPDVPK Act. Against the order dated 03.01.2009, a petition under Section 482 of CrPC was filed before this Court which was registered as M.Cr.C. No.1799/2009. The said petition was finally disposed of by this Court by order dated 24.09.2009 which reads as under:-

“In the present case, police has already filed challan and the case is pending against the petitioner. In the facts and circumstances of the case, petition of the petitioner is disposed of with a direction that the learned Court below shall try the complaint case and the case arising out of the police report.”

Thus, considering the fact that after filing of the complaint, the police has already filed charge-sheet against some of the accused persons, therefore, this Court considering the provision of Section 210 (2) of CrPC directed that the learned court below shall try the complaint case and the case arising out of the police report. Admittedly, this order was allowed to attain finality. Thus, it is clear that the order dated 03.01.2009 passed by the Trial Court, by which cognizance of offences punishable under Sections 392, 392/149 of IPC and under Section 11, 13 of MPDVPK Act, were

taken, was affirmed by this Court by passing a final order dated 24.09.2009 in M.Cr.C.No.1799/2009. Thereafter, it appears that an application i.e., M.Cr.C.No. 6889/2009 was filed for re-hearing in M.Cr.C.No.1799/2009, however, as per the statement made in paragraphs 5 & 6 of this petition, the said petition was dismissed.

5. Thereafter, by order dated 18.05.2010, the Trial Court framed charges under Sections 395, 324/149 of IPC and under Section 11, 13 of MPDVPK Act. Against this order, the applicants filed a criminal revision before this Court which was registered as Cr.R.No.610/2010. It appears that this Court granted a liberty to the applicants to file an application for recalling the order of framing charges on the ground of technical irregularity. Accordingly, an application was filed alleging *inter-alia* that as the complaint has been entertained against the applicants No.1 to 4, therefore, the charges could not have been framed unless and until the statement of witnesses are recorded as provided under Section 244 of CrPC. However, the contention so raised by the applicants before the Trial Court was rejected by the Trial Court by order dated 15.09.2015. The legality and the correctness of this order has not been challenged by the applicants in this petition. However, as it is mentioned in the petition that the entire proceedings pending before the Trial Court be quashed, therefore, the procedure adopted by the Trial Court is considered.

6. Admittedly, after the cognizance was taken by the Trial Court by order dated 03.01.2009, a petition under Section 482 of CrPC (M.Cr.C.No.1799/2009) was filed before this Court. The said petition was dismissed in the light of the provision of Section 210 (2) of CrPC. Another petition under Section 482 of CrPC (M.Cr.C.No.8700/2011) was filed

against the order dated 18.05.2010 by which the charges were framed. All the contentions which were available to the applicants to challenge the order of framing charges were raised in their petition under Section 482 of CrPC (M.Cr.C.No.8700/2011). As their submission with regard to inadequacy of evidence for framing charges under Sections 395, 324/149 of IPC and under Section 11, 13 of MPDVPK could not find favour, therefore, the technical objection was raised with regard to the procedure which was followed by the Trial Court for framing charges without recording the statements under Section 244 of CrPC. Further, in the light of the order passed by this Court in M.Cr.C.No.8700/2011, an application was filed before the Trial Court taking a specific objection that when a cognizance of offence is taken on the criminal complaint filed by the complainant then before framing charges, the Court should have adopted the procedure as laid down under Section 244 of CrPC. As the statements of the witnesses were not recorded under Section 244 of CrPC and the liberty of cross-examining the witnesses was not given to the applicants, therefore, no charges could have been framed against the applicants. The controversy involved in the present case is no more in dispute.

7. Section 210 of CrPC reads as under:-

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the

proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

8. Section 210 (2) of CrPC provides that where the Magistrate has already taken the cognizance of an offence upon the charge-sheet, then the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

9. When this Court by order dated 24.09.2009 passed in M.Cr.C.No.1799/2009 had already directed the Trial Court to proceed as per the provisions of Section 210 (2) of CrPC then it would be clear that both the cases are to be tried as if they have been instituted upon the police report. Under these circumstances, the contention of the applicants that before framing charges against the applicants No.1 to 4 on the basis of complaint filed by the complainant, the Trial Court should have adopted the procedure as laid down in Section 244 of CrPC, cannot be accepted. Under these circumstances, this Court is of the view that no procedural illegality was committed by the Trial Court while framing charges in the case by following the procedure as if both the cases have been instituted upon the police report.

10. It is next contended by the counsel for the applicants that at the time when the charges were framed, the case was not argued by the Public Prosecutor but it was argued by the counsel for the complainant and, therefore, the entire proceedings are vitiated.

11. It is submitted by the counsel for the applicants that as per the provisions of Section 225 of CrPC, the trial is to be conducted by the Public Prosecutor and as per the provisions of Section 226 of CrPC, it is for the Public Prosecutor to open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

12. From the order-sheet dated 18.05.2010 of the Trial Court, it is clear that the presence of the Public Prosecutor is not recorded. Thus, there is some force in the contention of the applicants that on 18.05.2010, the arguments were advanced by the counsel for the complainant on the question of framing charges.

13. Section 227 of CrPC provides that upon consideration of the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused.

14. Section 228 of CrPC provides that after considering the material and arguments, if the Judge is of the view that there is ground for presuming that the accused has committed the offence, then the charges shall be framed in writing against the accused. Thus, it is clear that charges are framed by the Court under Section 228 of CrPC. There is nothing on record to suggest that on 18.05.2010 any objection was raised by the counsel for the applicants with

regard to non-appearance of the Public Prosecutor. Furthermore, it is not the case of the applicants that before framing of charges, they were not heard. Thus, in the considered view of this Court, if on the day when the charges were framed the Public Prosecutor was not present and after hearing the counsel for the complainant as well as applicants and after considering the material available on record, if the Court has come to the conclusion that there is sufficient evidence to frame charges against the applicants, then it cannot be said that the proceedings dated 18.05.2010 are vitiated.

15. From the order-sheet dated 18.05.2010 of the Trial Court, it is clear that along with the counsel for the applicants, the counsel for the complainant was also heard, therefore, under these circumstances, it cannot be said that the order dated 18.05.2010 is vitiated only on the ground that the Public Prosecutor was not present in the Court at the time of arguments on the question of framing of charges.

16. As regards the submission of the counsel for the applicants about the inadequacy of evidence for framing charges is concerned, as the applicants have challenged the order dated 03.01.2009 before this Court by filing M.Cr.C.No.1799/2009 and as they had also challenged the order dated 18.05.2010 by which the charges were framed, in the considered view of this Court, the applicants cannot be allowed to reagitate the matter on merits again and again by filing successive petitions under Section 482 of CrPC. If the applicants were of the view that there is no sufficient material available on record so as to frame charges against them then they should have argued the same in M.Cr.C.No.8700/11.

17. From the order dated 17.07.2012 passed in M.Cr.C.No.8700/2011, it appears that the matter was remanded back on technical irregularity. This means, that the applicants had given up their challenge to the order framing charges on the ground that there is no sufficient material available on record to frame charges against them.

18. Further, the application which was filed by the applicants before the Sessions Court in compliance of the order dated 17.07.2012 passed in M.Cr.C.No.8700/2011 was dismissed by order dated 15.09.2015. While deciding the said application, the Trial Court has also taken into consideration the provisions of Section 8 of MPDVPK Act which provides that the case is to be tried as per the provisions of CrPC as Sessions Trial.

19. Under these circumstances, considering the provisions of Section 210 of CrPC as well as under Section 8 of MPDVPK Act, 1981, this Court is of the considered view that the Trial Court did not commit any mistake while rejecting the application filed by the applicants for recalling of the order of framing charges.

20. It is important to mention here that the order dated 15.09.2015 has not been challenged by the applicants in this petition. The prayer clause of petition reads as under:-

“अतः माननीय न्यायालय से विनम्र प्रार्थना है कि आवेदकगण की ओर से प्रस्तुत आवेदन पत्र अन्तर्गत धारा 482 द.प्र.सं. का स्वीकार किया जाकर अधिनस्थ न्यायालय श्री शिवकांत गोयल जी (विशेष न्यायाधीश मुरैना) के समक्ष लंबित विशेष सत्र प्रकरण क्र.2/09 (परिवाद पत्र) बउनमान देवेन्द्र डण्डौतिया विरुद्ध बलवीर सिंह आदि में दिनांक 03.01.2009 को आवेदकगण के विरुद्ध लिया गया संज्ञान तथा दिनांक 18.05.2010 को आवेदकगण के विरुद्ध धारा 395, 324, 149 भादवि तथा धारा 11/13 एम.पी.डी.व्ही.पी.के. एक्ट के तहत विरचित आरोप तथा अधिनस्थ विचारण न्यायालय के समक्ष आवेदकगण के विरुद्ध संचालित समस्त कार्यवाही अपास्त किये जाने का आदेश पारित करने की कृपा करें।”

21. Thus, it is clear that the applicants have merely challenged the orders dated 03.01.2009 and 18.05.2010

against which the petitions under Section 482 of CrPC were already filed and the order dated 03.01.2009 was affirmed by this Court by passing an order dated 24.09.2009 in M.Cr.C.No.1799/2009 and a direction was given to proceed further as per the provisions of Section 210 of CrPC. Similarly, the order dated 18.05.2010 was also impliedly affirmed by this Court by passing order dated 17.07.2012 passed in M.Cr.C.No.8700/2011 in which a liberty was given to the applicants to point out the procedural illegality clearly shows that the applicants cannot be allowed to re-agitate the same grievance again and again by filing successive petitions under Section 482 of CrPC.

22. In absence of challenge to order dated 15.09.2015 passed by the Trial Court and in view of the provisions of Section 210 of CrPC and Section 8 of MPDVPK Act, this Court is of the view that the Trial Court has not committed any procedural illegality while framing charges against the applicants. Accordingly, this petition fails and is hereby dismissed.

(G.S. AHLUWALIA)
Judge
(19.01.2017)

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