

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1833 OF 2011

Darshan Singh Saini ..Appellant

versus

Sohan Singh and another ..Respondents

WITH

CRIMINAL APPEAL NO. 1834 OF 2011

J U D G M E N T

Jagdish Singh Khehar, J.

Criminal Appeal No. 1833/2011

The respondent Sohan Singh was an employee of the appellant-Darshan Singh Saini. According to Sohan Singh, he was engaged by the appellant in hotel Geetanjali Guest House, which the appellant owned at Baddi, in the State of Himachal Pradesh. Based on the services rendered by the respondent, certain emoluments which were due to the respondent, were allegedly not paid to Sohan Singh by the appellant. It was also asserted at the behest of the respondent, that on occasions, when he demanded the arrears of salary payable to him, he was threatened by Darshan Singh Saini, that in case the appellant ever set eyes on the respondent-Sohan Singh, he will be killed.

The respondent is stated to have made a complaint in respect of the threatening conduct of the appellant-Darshan Singh Saini (and his father-Beli Ram). On coming to know about the complaint made by the respondent, it is the assertion of Sohan Singh, that the appellant - Darshan Singh Saini, abused him in the name of his mother and sister on 15.1.2008, as also on account of the fact,

that he belonged to the scheduled caste. Besides being abused, it was also sought to be asserted by Sohan Singh, that the appellant - Darshan Singh Saini slapped the respondent, and gave him fist-blows, after holding his neck, and pushing him to the ground. It was also the contention of the respondent-Sohan Singh, that in the aforesaid incident, the father of the appellant - Beli Ram supported Darshan Singh Saini. According to the respondent-complainant, the respondent could be saved in the above abusing and assaulting incident, only on account of the intervention of Bhagat Ram and Chet Ram.

It was also sought to be asserted, that the animosity between the parties is based on the fact, that the appellant and his father believed, that the respondent-Sohan Singh, did not support them during the State Assembly elections, in 2007.

It is also apparent from the pleadings of this case, that according to the respondent, the police did not interfere, when the respondent repeatedly visited the police station, to lodge his complaint. It is therefore, that the respondent - Sohan Singh lodged a written complaint on 24-01-2008, before the Learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, Himachal Pradesh.

The appellant-Darshan Singh Saini, approached the High Court under Section 482 of the Criminal Procedure Code, when he was summoned by the Judicial Magistrate, First Class, Nalagarh, District Solan, Himachal Pradesh through an order dated 06-02-2009. A perusal of order dated 06-02-2009 reveals, that the appellant was summoned under Sections 341 and 506, read with Section 34 of the

Indian Penal Code.

The High Court, by the impugned order dated 08-04-2010, while partly accepting the prayer of the appellant, quashed the proceedings initiated against the appellant under Sections 341 and 506 of the Indian Penal Code, but arrived at the conclusion, that there was reasonable ground to proceed against the appellant under Section 323 of the Indian Penal Code.

It was the vehement contention of the learned Counsel for the appellant, that the impugned order passed by the High Court is not acceptable in law, on account of the fact, that cognizance in the matter could not have been taken against the appellant, on account of the period of limitation depicted under Section 468 of the Code of Criminal Procedure. In this behalf, it was the pointed contention of the learned Counsel for the appellant, that whilst the instant incident was of 15-01-2008, cognizance thereof was taken on 06.02.2009. This contention of the learned Counsel for the appellant was premised on the fact, that though the complaint had been made on 24-01-2008, cognizance thereof was taken beyond a period of limitation of one year (on 06-02-2009).

We have considered the aforesaid contention advanced at the hands of the learned Counsel for the appellant. It is apparent from the submissions advanced by the learned Counsel for the appellant, that he is calculating limitation by extending the same to the order passed by the Judicial Magistrate, First Class, Nalagarh, on 06.02.2009. The instant contention is wholly misconceived on account of the legal position declared by a Constitution Bench of this Court in Sarah Mathew vs. Institute of Cardio Vascular

Diseases, (2014) 2 SCC 62, wherein in para 51, this Court has held as under :

"51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that *Bharat Kale* which is followed in *Japani Sahoo* lays down the correct law. *Krishna Pillai* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

In the above view of the matter, we are satisfied, that keeping in mind the allegations levelled against the appellant by the respondent, the date of limitation had to be determined with reference to the date of incident and the date when the complaint was filed by the respondent. Since the complaint was filed by the respondent on 24-01-2008, with reference to an incident of 15.01.2008, we are of the view, that Section 468 of the Criminal Procedure Code would not stand in the way of the respondent, in prosecuting the complaint filed by him.

The second contention advanced at the hands of the learned Counsel for the appellant was based on the fact, that no cognizance was taken by the Judicial Magistrate, First Class, Nalagarh, against the appellant under Section 323 of the IPC, and as such, it was not permissible for the High Court to have initiated proceedings against the appellant, under Section 323 of the IPC, whilst accepting the contention of the appellant to set aside the proceedings initiated by the Judicial Magistrate, First Class,

Nalagarh under Sections 341 and 506 of the IPC read with Section 34 thereof (vide order dated 6.2.2009).

It is not possible for us to accept the instant contention, principally on the basis of Section 216 of the Code of Criminal Procedure, which postulates that it is open to "any court" to alter or add to any charge, at any time before the judgment is pronounced.

In the above view of the matter, we find no merit in this appeal, and the same is accordingly dismissed.

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Insofar as the connected appeal filed by the respondent - Sohan Singh is concerned, who claims that charges be framed against Darshan Singh Saini and his father Beli Ram, under the provisions of the Scheduled Castes and Scheduled Tribes (Atrocities and Prevention) Act, we are of the view that the High Court was fully justified in rejecting the aforesaid prayer, on account of the fact that Sohan Singh did not indicate in his complaint dated 24-01-2008, and also in the statement made by him, before the Judicial Magistrate, First Class, Nalagarh, that the appellant Darshan Singh Saini belongs to an upper caste. We, therefore, find no justification in interfering with the impugned order, on this score also.

The instant appeal is accordingly dismissed.

.....J.
[JAGDISH SINGH KHEHAR]

NEW DELHI;
JULY 23, 2015.

.....J.
[ADARSH KUMAR GOEL]

ITEM NO.102

COURT NO.4

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1833/2011

DARSHAN SINGH SAINI

Appellant(s)

VERSUS

SOHAN SINGH & ANR.
(with appln. (s) for stay)

Respondent(s)

WITH

CrI.A. No. 1834/2011
(With appln(s) for stay)

Date : 23/07/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. Ravi Bakshi, Adv.
In CrI.A.No.1833/ Mr. Yash Pal Dhingra, Adv.
2011 and for
respondent in
CrI.A. No.1834/2011

For Respondent(s) Ms. Minakshi Vij, Adv.
In CrI.A.No.1833/
2011 and for
appellant in
CrI.A. No.1834/2011

J U D G M E N T

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed
judgment, which is placed on the file.

(Renuka Sadana)
Court Master

(Parveen Kr. Chawla)
AR-cum-PS