

Order on application under Sec.323 of Cr.P.C.

The learned APP has filed this application seeking to incorporate Sec.397 of IPC by considering the fact that as per the case of the prosecution, the Accused have allegedly used the machet for the alleged commission of the offence.

2. In the application, it is contended that, as per the case of the prosecution, the Ramanagara Rural Police have registered the case against the Accused in their Police Station Crime for the offence punishable under Sec.392 of the IPC. Thereafter, upon completion of investigation final report is submitted.

3. As per the case of the prosecution, on 28-01-2016 at about 10 pm, within the limits of the Ramanagara Rural Police Station on the BM Road on the NH 275 near Madapura gate, while C.W.1 to C.W.3 were traveling in the Indica car bearing Reg.No. KA 05 AE 1071, the Accused persons in furtherance of their common intention to commit robbery, the Accused No.1 came on KA 02 ZH 1786 Royal Enfield Bike, the Accused No.2 came on KA 05 JR 7574 Honda Deo and restrained the former who were in the aforesaid car and threatened them with life by showing them the machet and robber C.W.1 of his Moto Mobile, cash of Rs.5,000/-, original DL and the Indica Car bearing Reg.No.KA 05 AE 1071 and C.W.2 of his Samsung Galaxy Grand 2 Mobile and absconded from the spot.

4. Thus, it is alleged that at the time of the alleged commission of the offence, the Accused persons used the deadly weapon "Machet" and therefore, the offence punishable under Sec. 397 of the IPC is made out against them. In view of the same, it is necessary to incorporate Sec.397 of IPC., and commit the case to the Hon'ble Sessions Court for trial. Accordingly, it is prayed to allow the application.

5. It is seen that despite given sufficient opportunities, there is no objections to the present application filed on behalf of the Accused.

6. Heard the learned APP and the learned Defence Counsel on the present application and perused the materials on record.

7. The following points would arise for the consideration of this court:-

1. Whether application filed on behalf of the prosecution under Sec.323 of Cr.PC., deserves to be allowed ?
2. What Order ?

8. My answers to the above Points are as under:-

Point No.1 : In the Affirmative;

Point No.2 : As per the final order for
the following reasons:-

REASONS

9. Point.1:- Admittedly, the Ramanagara Rural Police have filed the final report against the Accused No. 1 to 4 for the offence punishable under Sec.392 of the IPC.

10. According to the prosecution version, there is involvement of the Accused No. 1 to 4 in the alleged commission of the offence. In this regard, as part of investigation, the statement of the Complainant is recorded by the I.O. The record reveals that the trial of the case is yet to commence by framing the charge against the Accused and during the pendency of the case, the Accused No.4 is dead and the Accused No.1 and 2 are absconding. Only the Accused No.3 is regularly appearing before the court.

11. At this juncture, it is necessary to refer to Sec.397 of the IPC.

Sec. 397 of IPC:- Robbery or dacoity, with attempt to cause death or grievous hurt.

"If at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person or attempt to caused death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

12. At this stage, ***I rely upon the decision of the Hon'ble Apex Court in the case of Ashfaq Vs., State (Government of Delhi) reported in AIR 2004 SC 1253, in which it is held that:-***

“ What is essential to satisfy the word “uses” for the purposes of Sec. 397 of IPC is the robbery begin committed by an offender who was armed with a deadly weapon in the mind of the victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting as the case may be”.

13. The ratio laid down in the said ruling is applicable to the present case, since the weapon in question in the present case is a 'machet', which is undoubtedly a deadly weapon which has the deadly potential. There is a clear reference in the complaint about the usage of the said weapon at the time of the commission of the offence. Indeed, as narrated in the complaint, the Accused persons allegedly showed the machets and robbed them of cash, mobile, DL and their car.

14. **In the case of Phool Kumar Vs., Delhi Administration**, the Hon'ble Supreme Court while interpreting Sec. 397 IPC took notice of the language of Sec.398 IPC, wherein

the words used are interpreted. The Hon'ble Supreme Court has observed that, **for the purpose of Sec. 397 IPC, actual use of the deadly weapon is not required, even brandishing and showing the deadly weapon, so as to instill fear and threat in the mind of the victim, so that he does not resist, fearing danger is sufficient.**

15. Thus, what is essential to satisfy the word "Uses" for the purposes of Sec. 397 IPC is that, the robbery being committed by an offender who was armed with a deadly weapon which was within the vision of the victim, so as to be capable of creating a terror in the mind of the victim and not that, it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be.

16. In the present case, as per the complaint averments, the accused are alleged to have used the machet and thereafter committed the alleged offence, so as to create fear in the mind of the complainant at time of the alleged incident. Therefore, the Prosecution has clearly made out grounds to allow the application. As such, this Point deserves to be answered in the Affirmative.

17. Point No.2: In view of my aforesaid reasons and discussions on Point No.1, I proceed to pass the following:-

ORDER

The application filed on behalf of the prosecution under Sec.323 of Cr.PC., is hereby allowed.

The offence of Sec.397 of IPC., is held attracted to the present case as against the offence of Sec.392 of IPC., as shown in the charge sheet.

Prl. Senior Civil Judge & CJM.,
Ramanagara.