

State Versus Jagdish Singh

Present: Ms.Ramanjit Kaur, APP for the State.
 Accused on bail with Sh.D.S.Lamba,Advocate.

1. Arguments upon charge heard. Record perused. Perusal of file reveals that present FIR under section 379,427,411,34 of Indian Penal Code has been lodged against the accused on the ground that complainant Amrik Singh has got his statement recorded with police officials that he had purchased plot of 9 Biswas from the khewat No.28/28 on 29.11.2011 from Parkash Kaur in name of his mother Amarjit Kaur. His house is situated at the end of the street and he has constructed wall and has installed iron grill on the same. Jagdish Singh accused had purchased plot on 17.01.2008 adjoining to his house from the separate khewat. There is separate passage for the said plot. 8-9 months ago , Jagdish Singhs started constructing his house and he wanted to open the gate of his house in the street, where his house is situated . He asked Jagdish Singh not to open the gate and he has already obtained stay from the court on 16.04.1018 in a civil suit which is still pending in the court . On 21.11.2018 he and his family had gone to attend marriage of his nephew Prabhjot Singh. His aunt (mother-in-law) Surinder Kaur was present in the house. At 8:00 PM

when they came back, Surinder kaur told that at 2:00 PM Jagdish Singh and two unknown persons came and demolished the wall and committed theft of iron grill and bricks of the wall. Thereafter present FIR was lodged and as per confessional statement of Jagdish Singh recorded under section 27 of Indian Evidence Act, iron grill and bricks were got recovered. After completion of the investigation and other formalities attached there to, challan was prepared and presented in the court.

2. Upon presentation of challan and appearance of accused in the Court, copies of challan alongwith documents attached thereto were supplied to him free of costs in compliance with the provisions enshrined in Section 207 Cr.P.C.

3. Ld counsel for accused has argued that accused has not committed any offence and he has been falsely implicated in the present case. Moreover ingredients of offence under section 379,427,411 read with 34 IPC have not been fulfilled by prosecution. So accused is liable to be discharged in the present case.

4. Section 378 of Indian Penal Code defines theft as “whoever , intending to take dishonestly any movable property out of possession of

any person without that person's consent, moves that property in order to such taking, is said to commit theft". In the present case it is the version of the complainant that he had constructed a wall in the street and had installed iron grill which has been demolished by the accused and the grill and bricks have been stolen by him. It is not the version of the complainant that wall was constructed in his own land. Rather complainant in his statement recorded under section 161 Cr.P.C has stated that he has constructed wall in the street. The complainant has not claimed his ownership over the street and has nowhere stated that the street was his private street and was not public street. If the complainant had constructed a wall in the public street, then he himself is wrong doer and he was not in possession of the wall and the grill which was affixed on the wall. The ingredients of offence under section 378 and 379 IPC are not fulfilled as no movable property was taken by accused out of the possession of the complainant. Rather the wall was in the street which was not in possession of the complainant. Though as per the confessional statement of accused under section 27 of Indian Evidence Act, iron gate and 10 bricks were recovered but there is nothing on record that he bricks which were allegedly recovered from the accused were those which were used for construction of wall by the complainant. Moreover only 10

bricks were recovered whereas as per version of the complainant, the accused took away debris after demolishing the wall.

5. In case titled as **“Union of India Versus Parfulla Kumar Samal & ors , AIR 1979 S.C 366,”** it has been held that:- ‘Court has power to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case against accused is made out or not. It has been further held that where material placed before the court disclose the great suspicion against the accused, which has not been properly examined, court will be fully justified in framing a charge and prima facie with the trial. However if two views are equally possible and Judge is satisfied that all the evidence produced before him give rise to some suspicion but not grave suspicion against accused, he will be fully within the right to discharge the accused’. In **“Kanti Bhalla Shah Versus State of West Bengal AIR 2005 SC 522,”** it has been observed by Hon’ble Supreme Court that:- if the trial court decide to frame a charge, there is no legal requirement that he should pass an order specifying the reason as to why he opts to do so. Framing of charge itself is prima facie order that trial Judge has framed the opinion that there is ground for presumption that accused has committed an offence. But Magistrate is required to record the reason for discharge the accused’. In **“Ram Kishan Versus**

State of Rajasthan, RLW 2008(3) (Rajasthan) 2440,” it has been held that:- ‘At the time of framing of charge, court has merely required to evaluate the material and document on record with a view to find out if the fact emerging there from taken at very offence involved, existence of all ingredients constitutently the alleged offence’. In case titled as “Deepak Bhai Jagdish Chander Patel Versus State of Gujrat, decided on 24.04.2019 in Criminal appeal No.714 of 2019”, it has been observed that:- ‘All that is required is that the court should be satisfied that with the material available, case is made out for accused to stand trial. A strong suspicion sacrifices, however a strong suspicion must be noted on some material and material must be such as can to translated into at the stage of trial’.

6. In the present case no prima facie case is made out to frame charge against the accused. Ingredients of offence under sections 379,427,411,34 is not made against the accused. So from the abovesaid observations, accused stands discharge. File is ordered to be consigned to record room.

Pronounced:22.08.2019

(Rakesh Kumar,JW)

(Dr.Gagandeep Kaur),
JMIC/Fatehgarh Sahib,
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