

R4
SLP(Crl.)No. 4149 OF 2000

ITEM No.64

Court No. 4

SECTION II
A/N MATTER

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 (Crl.) No. 4149/2000

(From the judgement and order dated 08/05/2000 in CRLM 1355/2000
of The HIGH COURT OF DELHI AT N. DELHI)

PANKAJ AGGARWAL & ORS.

Petitioner (s)

VERSUS

STATE OF DELHI & ANR.

Respondent (s)

(With Appln(s). for c/delay in filing SLP and stay)

Date : 12/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE U.C. BANERJEE

For Petitioner (s) Mr.I.C.Jain,Mr.Ajay Jain & J.Jain,Advs.for
Ms. Abha R. Sharma,Adv.

For Respondent (s) M/s Ashok Bhan,Ajay Agarwal and D.S.Mehra,Advs

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

.....L.....I.....T.....T.....T.....T.....J.
.SP2

Delay condoned.
Leave granted.
The Appeal is disposed of.

.SP1

(Y.P.Dhamija) (Suneet Bala Sharma)@@
AA
COURT MASTER COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.279/2001@@
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(arising out of SLP(CRL) No. 4149/2000)

Pankaj Aggarwal & Ors. ..Appellants

Vs.

State of Delhi & Anr. ..Respondents

O R D E R@@
EEEEEEEEEE

.....L.....I.....T.....T.....T.....T.....J.
.SP2

Leave granted.

The accused is the appellant. On the basis of FIR lodged by the driver of DTC Bus, the investigation was carried and the police finally filed charge-sheet under Sections 186, 332 and 353/34 of the Indian Penal Code. The Magistrate, however, took cognizance of the offence and framed charges under Sections 186 and 332/34, IPC. The accused then moved the High Court under Section 482 Cr.P.C. alleging that in view of Section 195 of the Code of Criminal Procedure, cognizance under Section 186 IPC as well as under Section 332 IPC could not have been taken. The High Court having rejected the application, the accused is before us.

Mr. Jain appearing for the accused appellant contended that in view of Section 195 of the Code of Criminal Procedure, the Magistrate could not have taken cognizance of the offence under Section 186 IPC as it is barred under ...2/-

-2-

Section 195(1)(a)(i). He further contended that even the cognizance under Section 332/34 IPC also would be barred as the offence under Section 332 IPC is a cognate offence, and therefore the entire proceeding is bad. Mr. Jain also further contended that the allegations made and the materials available on record do not make out any offence for which the accused has been charged. It is contended on behalf of the respondents that though cognizance could not have been taken under Section 186 IPC in view of the provisions contained in section 195 (1)(a)(i), but there is no infirmity with the order taking cognizance under Section 332 IPC inasmuch as the ingredients of offence under Sections 332 and 186 IPC are distinct and the Magistrate did not commit any error in taking cognizance of the offence under Sections 332/34, IPC. Mr. Jain in course of his arguments relied upon three decisions of different High Courts. 1996 Current Criminal Reports 257 of Delhi High Court, 1991(1) Recent Criminal Report 192 of Punjab High Court as well as 1975 CCR 575 of the Patna High Court. In the Punjab High Court judgment, the provisions of Sections 186 and 332 IPC have been analysed and the judgment undoubtedly supports the contentions of Mr. Jain. But in view of the judgment of this Court in AIR 1966

SC 1775 where the Court has analysed the provisions of Section 353, IPC and 186, IPC and held that the two are distinct offences and the quality of the offence is also3/-

-3-

different, we are of the opinion that judgment of the Pujab High Court is not correct in law and has taken a view contrary to the law laid down by this Court. What has been stated earlier in the aforesaid case in relation to the provisions of Section 353, IPC would equally apply to the provisions of Section 332 of the IPC. This being the position, we are unable to accept the contention of Mr. Jain that the provisions of Section 195(1)(a)(i) bars taking cognizance of Section 332/34, IPC. We, however, agree with Mr. Jain that the order taking cognizance of section 186 of the IPC is bad in law and attracts the mischief of Section 195. In the aforesaid premises, we quash the criminal proceedings so far as the charge under Section 186 IPC is concerned and direct that the criminal proceedings would continue so far as the charge under section 332/34, IPC is concerned.

The appeal is disposed of accordingly.

.SP1

.....J.
(G.B. PATTANAİK)

New Delhi,
March 12, 2001

.....J.
(U.C. BANERJEE)