

STATE v MANU CHANDRA (HAA0005D of 2005S)

HIGH COURT — APPELLATE JURISDICTION

5 SHAMEEM J

18, 21 February 2005

10 **Criminal law — criminal procedure — act with intent to cause grievous harm — guilty plea — no facts read — no information on nature, extent or consequences of assault — relationship between parties unknown — charge laid not reconcilable — Criminal Procedure Code s 163 — Penal Code s 224(a).**

15 The Respondent unlawfully wounded the complainant with a telephone wire. The charge was laid and read and the Respondent entered a plea of guilty. The court record showed the complainant and the Respondent reconciled. The court then gave the Respondent a warning and stayed the proceedings for 12 months. The State appealed against the order for the stay of the sentence. The Respondent objected to the validity of the appeal proceedings since no facts had been outlined nor agreed to. The State agreed to this objection.

20 **Held** — The stay proceeding was clearly erroneous. The evidence established that no facts were read, so the court had no information as to the nature, extent or consequences of the assault. Moreover, the court did not know if the parties were related. Furthermore, the charge laid under s 224(a) of the Penal Code was not reconcilable even if the parties were related. Hence, the stay proceeding was quashed and the matter was remitted to the Magistrates Court for rehearing considering the guilty plea of the Respondent.

25 Appeal dismissed.

No cases referred to.

P. Bulamainaivalu for the State

N. Lajandra for the Respondent

30 **Shameem J.**

Ruling:

This was an appeal by the State against an order for the stay of sentence in respect of the following charge:

35 *Statement of Offence*

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to s 224(a) of the Penal Code, Cap 17.

Particulars of Offence

40 MANU CHANDRA s/o Harish Chandra, on 29 July 2004, at Samabula in the Southern Division, with intent to do some grievous harm to PREMILA DEVI d/o Subarmani, unlawfully wounded the said Premila Devi d/o Subarmani with a telephone wire.

45 However, at the hearing of the appeal, counsel for the Respondent raised a preliminary objection, that the entire proceedings were flawed because no facts had been outlined, nor agreed to and that therefore the staying of proceedings could not have been ordered.

State counsel agreed with him. This is the ruling in respect of the preliminary objection.

50 The charge was laid on 31 August 2004. On 1 September 2004, the Respondent said he wanted to exercise his right to counsel. On 19 October 2004, the charge was read and the Respondent pleaded guilty to it. The matter was adjourned to

15 November. The record then reads: “The complainant is here and she confirms their reconciliation.” The court then warned the Respondent, and stayed the proceedings for 12 months.

5 Section 163 of the Criminal Procedure Code, under which it appears the learned magistrate acted, provides:

10 In the case of any charge or charges brought under any of the provisions of subsection (1) of section 197 or of section 244 or of section 245 or of subsection (1) of section 324 of the Penal Code, the court may, in such cases which are substantially of a person or private nature ... and which are not aggravated in degree, promote reconciliation and encourage and facilitate the settlement in an amicable way of the proceedings, on terms of payment of compensation or on other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.

15 It is not clear why the learned magistrate exercised his power to stay proceedings in this case. There is nothing in the record to indicate that the proceedings were of a personal or private nature or that the assault was not aggravated. Indeed charges under s 224 of the Penal Code are not reconcilable. The charge suggests that the alleged assault was perpetrated by a telephone wire. If the resulting injuries were serious, this would not be a suitable case for reconciliation, even if the parties were related and even if the charge had been one of common assault.

20 In any event, we do not know if the parties were related.

If this was a case of domestic violence, then more care should have been exercised to ensure that justice was done. Even in the most serious of cases, women who are the victims of domestic violence are under considerable pressure to reconcile with the accused. It is the court’s duty to ensure that such pressure does not result in an injustice because of the weak bargaining power that women have in society and in the family. In such cases, the facts must be read, medical certificates tendered and the complainant questioned about the outcome she really desires from the court system. If she has received permanent or serious injury, the matter should proceed to trial without use of the s 163 reconciliation procedure.

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In this case, no facts were read so the court had no information of the nature, extent or consequences of the assault. Nor did the court know about the relationship between the parties. Further, the charge laid was not reconcilable. In the circumstances, the court could not have proceeded to stay the proceedings.

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The stay being clearly wrong, it is quashed and remitted to the Magistrates Court for rehearing on the basis of the guilty plea.

Appeal dismissed.

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