

**Chanda Devi Vs. State and ors**

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**Court :** Rajasthan Jodhpur

**Decided On :** Dec-19-2013

**Appellant :** Chanda Devi

**Respondent :** State and ors

**Judgement :**

SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(1) IN THE HIGH COURT OF JUDICATURE  
FOR RAJASTHAN AT JODHPUR.

∴

JUDGMENT

∴ S.B.Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.Date of Judgment ∴ 19th December, 2012.

HON'BLE Mr.JUSTICE SANDEEP MEHTA Mr.NL Joshi, for the petitioner.

Mr.AR Nikub, PP.

Mr.MK Garg, for the respondents..BY THE COURT : Heard learned counsel for  
the parties.

The instant revision has been filed by the petitioner against the order dated 5.2.2010 passed by the Judicial Magistrate, FiRs.Class, Churu in Complaint No.576/2000 (310/2007) whereby the respondents no.2 to 4 have been discharged from the offences under Sections 323, 342, 327, 354, 363, 368, 386 and 120B IPC.

The said order has been affirmed by the Sessions Judge, Churu in revision vide order dated 10.3.2011.

Succinctly stated the facts of the case are that petitioner Chanda Devi filed a complaint on 6.7.1998 in the SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(2) Court of Chief Judicial Magistrate, Churu against the present respondents and one Mohan Lal, Circle Inspector with the allegation that on 15.6.1998, while she was at her house, 3-4 police officers including Mohan Lal Circle Inspector and Hidayat Khan, A.S.I.in uniform came to her house.

She alleged that she was forcibly boarded in a jeep and taken to an unknown place and was assaulted there.

Thereafter she was brought to Kotwali, Churu.

The accused no.1 and 2 namely, Govind Narayan Sharma and Rampal Swami were present at the Kotwali.

They slapped her and gave her foul abuses.

Accused Govind Narayan gave her abuses and tried to extract information about the money which she had allegedly taken from Aamla Prasad.

The complainant replied that she had not taken any money from Aamla Prasad.

On this, Govind Narayan and Rampal Swami became enraged and told Mohan Lal to throw her down.

Mohan Lal, C.I., allegedly stripped the complainant and Govind Narayan, Rampal Swami and Hidayat Khan started assaulting her with a wooden plank.

She suffered serious injuries on her private parts also.

She further alleged that when she did not confess regarding having taken money from Aamla Prasad, all the accused beat her so much that she became unconscious.

When she regained consciousness in the afternoon, she was lying in a room and nearby two female constables were sitting.

Her salwar was blood stained and SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(3) she was bleeding from the wounds.

In the evening, she was locked at an unknown place.

She further alleged that on 16.6.1998, she was again taken to Kotwali and was beaten brutally.

She further alleged that on 17.6.1998, her husband was also brought and they both were thrown on the lawn and were assaulted.

The respondents forcibly tried to recover the money which was taken out from Malkhana by Aamla Prasad.

The brutal acts of the accused continued till 20.6.1998.

On 19.6.1998, Hidayat Khan and A.Mr.Ram came and forcibly took their signatures on blank papers for the purpose of showing an agreement to sell the complainant's land to Hidayat Khan for a consideration of Rs.95,000/- as well as showing the sale of two buffaloes to A.Mr.Ram at the rate of Rs.10,000/-.

The complainant further alleged that Mohan Lal took a sum of Rs.1,10,000/- from Hidayat Khan and A.Mr.Ram and then, she was again locked up.

The complainant's children informed the other family members on which the complainant's brother in law Rati Ram came to Churu and filed a complaint in this regard to the Sessions Judge, Churu.

On coming to know of this complaint, the complainant and her husband were taken to Dudwa Khara and were confined secretly in a room.

Thereafter, under the impression that Sessions Judge, Churu would make inspection of Kotwali, the accused persons prepared false SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(4) documents showing that the complainant and her husband were arrested on 20.6.1998 and then they were presented before the A.C.J.M., Ratangarh on 21.6.1998.

The A.C.J.M., Ratangarh remanded the petitioner and her husband to police custody for three days.

Thereafter, the complainant's son Subhash and Jeth (brother-in-law) Rati Ram filed a complaint with the Chief Minister, Home Minister, Human Rights Commission, D.I.G.Police Range, Bikaner, D.G.P., Jaipur and District Collector, Churu etc.but no action was taken on the same.

On 24.6.1998, the complainant was presented in the Court of C.J.M., Churu and on that day, she allegedly exhibited her injuries as well as her blood stained salwar to the learned Magistrate.

The complainant's lawyer filed an application for her medical examination on which the medical jurist examined the complainant and found the existence of number of injuries on the body of the complainant, but because of influence of the police, the injury report was not prepared.

The complainant ultimately prayed that cognizance be taken against the accused and they be punished for their atrocities.

Various documents including the medical report of the complainant were filed along with the complaint.

The complaint was proceeded with under Sections 200 and 202 Cr.P.C. and ultimately, the learned Magistrate by order dated 18.10.2000 proceeded to take cognizance and SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(5) summoned the accused for the aforesaid offences.

The accused Hidayat Khan and Mohan Lal challenged the order issuing process by filing two different revisions and the revisional court i.e. the Additional Sessions Judge, Churu proceeded to reject the revision filed by Hidayat Khan by order dated 2.11.2002 but accepted the revision filed by accused Mohan Lal, C.I., by order dated 17.6.2003 giving him the benefit of Section 197 Cr.P.C. and the order issuing process against him was quashed.

The accused respondents no.2 to 4 also challenged the order issuing process by filing a revision but the revisional court considering the revision to be time barred rejected the same on 29.6.2008.

In the meantime, the petitioner Chanda Devi challenged the order passed by the revisional court in favour of the CI Mohan Lal by filing a revision petition before this Court being S.B. Criminal Revision Petition No.762/2003.

This Court vide order dated 11.5.2007 proceeded to reject the revision filed by complainant Chanda Devi holding that the prosecution of respondent Mohan Lal was not permissible in absence of prosecution sanction as warranted under Section 197 Cr.P.C. Thereafter, pre-charge evidence was recorded at the trial and the learned Magistrate by his order dated 5.2.2010 proceeded to frame charges against the accused SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(6) respondents for the offences under Sections 323, 342, 327, 354, 363, 368, 386 and 120B IPC.

The respondents challenged the order framing charge by filing revision which came to be heard and decided by order dated 10.3.2011.

The revisional court accepted the revision holding that the case of the respondents was not distinguishable from that of Mohan Lal.

The revisional court also held that as the order taking cognizance against Mohan Lal was quashed by the learned revisional court earlier and as the said order of the revisional court in the case of Mohan Lal was also affirmed the High Court, the order framing charges against the respondents could not be sustained as the charges were identical against Mohan Lal and the respondents herein.

Aggrieved by the orders of the revisional court, the instant revision petition has been filed by the petitioner/complainant challenging the order dated 10.3.2011 passed by the revisional court quashing the order framing charge against the respondents no.2 to 4.

Learned counsel for the petitioner contended that despite the fact that Mohan Lal's cognizance order had been quashed earlier by the revisional court, the complainant was not precluded from proving her case against the other accused.

It is submitted that the necessary ingredients of the offences for which the charges have been framed SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(7) against the respondents, are prima-facie disclosed against them and, therefore, the trial court rightly framed charges against the respondents.

Learned counsel vehemently submitted that the revisional court has committed grave error in reversing the well reasoned order passed by the learned Magistrate.

Per contra, learned counsel for the respondents contended that in this case, the matter is no longer res- integra.

On identical allegations which have been levelled by the petitioner against the respondents no.2 to 4, the process was issued against Mohan Lal, C.I., who was arrayed as the principal accused in the complaint.

The order issuing process against Mohan Lal was quashed by the revisional court and the order has attained finality because the revision petition filed against the

said order has also been rejected by this Court thereby affirming the revisional court's order passed in favour of Mohan Lal.

It is submitted that the case of the present respondents is on a better footing than Mohan Lal.

It is, therefore, urged that the revision petition filed by the complainant deserves to be rejected.

Learned public prosecutor has supported the arguments advanced by the respondents and stated that in this case, the respondents are public servants and for the acts done under the discharge of their official duties, they SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(8) are entitled to privilege of sanction before any prosecution is launched against them.

Upon a consideration of the arguments advanced at the bar and after going through the order impugned and the material available on the record, the short question which arises before this Court is that once the prosecution of accused Mohan Lal against whom graver allegations were levelled, has been quashed by the competent court and the same has also been affirmed by this Court, whether there remains any scope for accepting the argument that the respondents no.2 to 4 should be permitted to be prosecuted?.

As has been discussed above and as is apparent from the allegations of the complainant in her complaint, the case of the complainant against Mohan Lal was having a greater gravity than that against the respondents no.2 to 4.

Mohan Lal was given the benefit of Section 197 Cr.P.C.by the revisional court and the order passed by the revisional court giving such benefit has attained the stamp of finality by this Court's order dated 11.5.2007 passed in revision petition no.762/2003 filed by the complainant.

As such, permitting the prosecution of the respondents now on the same allegations would lead to a situation of absolutely anomaly.

Undoubtedly, the respondents no.2 and 3 were holding such public offices by virtue of which, they were SB Criminal Revision Petition No.233/2011 Chanda Devi.

versus State of Rajasthan & ORS.(9) removable only by the State Government.

Though the respondent no.4 Hidayat Khan ASI was not holding such a rank but he was acting under the directions of Mohan Lal, Govind Narayan and Ram Pratap.

Once the respondents no.2 and 3 - Govind Narayan and Ram Pratap are given the benefit of sanction, the prosecution of the respondent no.4 Hidayat Khan also cannot be permitted as he was acting under the directions of his superior ORS. In view of the above discussion, this Court has no hesitation in holding that the prosecution of the respondents no.2 to 4 is absolutely uncalled for and the revisional court has rightly held that the respondents no.2 to 4 were entitled to the benefit of the umbrella of Section 197 Cr.P.C. and has, therefore, justifiably quashed the order of the Magistrate framing charges against them.

The upshot of the above discussion, the instant revision petition fails and is hereby rejected.

Record be sent back forthwith.

(SANDEEP MEHTA).J.

S.Phophaliya

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