Rahima Vs. State

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Court : Rajasthan

Decided On : Oct-04-1968

Reported in : 1969CriLJ831; 1968()WLN45

Judge : D.S. Dave, C.J.

Appellant : Rahima

Respondent : State

Judgement :
ORDER

D.S. Dave, C.J.

1. This is a revision application by one Rahima against the order of the-Additional Sessions Judge, Udaipur, dated 6.11.67, upholding the order of the Magistrate First Class, Bhim, dated 20.1.67.

2. The facts giving rise to this application may be briefly stated as follows:

The Up-Zila Vikas Adhikari, Udaipur, sent a report dated 19.7.65 to the Assistant Secretary, Enquiry Wing (Panchayat) Rajas-than, Jaipur, to the effect that on 6.5.65 Shri B.K. Binju, Up-Zila Vikas Adhikari, made an inspection of the Panchayat and found that a cash balance of Rs. 580.02 P. was shown in the cash book, but when the-cash was checked, the said amount was not found at the office. The petitioner, who was Sarpanch at that time, was reported to have

informed the Inspecting Officer that the said amount was placed at his house and he sent one man to bring it from that place. When that man did not return by the time the inspection was over, the Inspecting Officer went to the petitioner's house and when the petitioner was called upon to show that amount, he expressed his inability and told the Inspecting Officer that he had converted it to his own use. It was requested that action be taken against the Sarpanch under Section 17(4) of the Rajasthan Panchayat and Nyay Panchayat (General) Rules, 1961.

A copy of this report was also sent to the Superintendent of. Police, Udaipur, with a request that an investigation may be directed forthwith and the Sarpanch be prosecuted for criminal breach of trust. This report was forwarded to the Station House Officer, Bhim. After investigation, the Investigating Officer presented what is known as a 'final report' before the Munsiff Magistrate, Bhim, on the ground that the State had not granted sanction for prosecution of accused Rahima. After perusing that report, the Magistrate passed an order on 20.1.67 to the effect that the sanction of the State for Rahima's prosecution under Section 409, I.P.C. was not necessary and he directed the Circle Officer, Bhim, to put up a challan against the accused Rahima for an offence under Section 409 I.P.C. within ten days. Aggrieved by this order, accused Rahima presented a revision application which was heard by the Additional Sessions Judge, Udaipur. Three points were raised on behalf of the accused before the said Court. It was firstly argued that the Magistrate was wrong in holding that no sanction was necessary. It was next urged that the refusal of the Government to grant sanction for the prosecution of the accused amounted to withdrawal of prosecution under Section 494 Criminal P.C. Lastly, it was contended that the Magistrate had no authority to direct the police to submit a challan. All the three contentions were repelled by the learned Additional Sessions Judge and the revision was dismissed. It is against this order that the present application is directed.

3. Learned Counsel for the petitioner has not pressed' in this Court the first two points which were raised before the Additional Sessions Judge, He has confined his arguments to the question that on receipt of a final report the Magistrate had no authority to direct the police to put up a challan. It is also contended that the view expressed by the Additional Sessions Judge on the strength of a decision of

this Court in State v. Heera 1965 Raj LW 352 : AIR 1966 Raj 233, no longer holds good because of the pronouncement of their Lordships of the Supreme Court to the contrary in Abhinadan Jha v. Dinesh Mishra : 1968 CriLJ97 .

4. In 1965 Raj LW 352 : AIR 1966 Raj 233, referred to above, it was held by a Division Bench of this Court that

in a case where a final report is submitted by the police, the Magistrate in his judicial capacity can direct the Public Prosecutor to conduct the case and for that purpose direct the police to submit a charge sheet.

5. Learned Counsel for the petitioner is correct in saying that the view of the learned Judges in the said case that on the presentation of a final report by the police, the Magistrate can direct it to submit a charge-sheet, no longer holds good in view of the observations made by their lordships of the Supreme Court in : 1968 CriLJ97 , cited above. In that case, their Lordships reviewed all the relevant provisions of the Code of Criminal Procedure and the conflicting views of different High Courts and then proceeded to observe as follows:

We have already referred to the scheme of Chapter XIV, as well as the observations of this Court in Rishbud and Indersingh's case : 1955 CriLJ526 that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack nor can only such powers be implied. There is certainly no obligation, on the Magistrate to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still, suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police to take cognizance under Section 190(1)(c) of the Code. That provision, in our opinion, is obviously Intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives (sic) information about the

commission of and offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190(1)(c), on the ground that; after having due regard to the final report and the police records placed before Him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial is that of the officer-in-charge of the police station and that opinion determines whether the report as to be under Section 170, being a 'charge-sheet', or under Section 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under Section 169, or under Section 170, depending upon the nature of the decision. Such a function has been left to the police under the Code

It is clear from the above observations of their Lordships of the Supreme Court that although it is open to the Magistrate to take cognizance of the offence under Section 190 Criminal P.C. even after the perusal of the final report, but he has no jurisdiction to direct or compel the police to submit a charge-sheet i.e., the challan against the accused?-Learned Counsel for the petitioner is, therefore, correct to the extent that the order of the Magistrate to the effect that the police should put up a challan against the accused for an offence under Section 409 I.P.C. is not maintainable.

6. The, revision application is, therefore, allowed and the order of the Magistrate dated 20.1.67 directing the police to put up the challan is set aside.