

Vardaram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-19-1988

Reported in : 1989CriLJ724; 1988(2)WLN139

Judge : J.R. Chopra, J.

Appellant : Vardaram

Respondent : State of Rajasthan

Judgement :

ORDER

J.R. Chopra, J.

1. This petition under Section 482 Cr. P.C. has been filed against the order of learned M.J.M., Sumerpur dated 21-1-88 whereby the learned lower Court has taken cognizance against the accused under Sections 315 and 317 I.P.C. on the basis of the police papers filed under Section 173 Cr. P.C. It was contended before the learned lower Court that the DIG has ordered for reinvestigation of this case and so the challan filed against accused Vardaram be returned to the police. That contention was not accepted by the learned lower Court and Mr. Bora appearing for the accused petitioner also does not press that contention. His submission however is that firstly, the learned Magistrate should not have taken cognizance against him without supplying to him copies of the challan papers and secondly he has submitted that when the case against the co-accused is being

reinvestigated, there was no hurry for the Magistrate to have taken the cognizance against the petitioner. He could have waited for another month for the result of the re-investigation. He has also submitted that the police ought to have filed the challan on 18-1-88, the date on which the case was fixed for his presence in the Court as the bail was granted to him by the Court. The challan was however filed in the court on 5-1-88. It was also contended by him that in this case, the police filed an application under Section 169 Cr. P.C. for discharging accused Kheta Ram. The SHO who filed this application for discharging Shri Kheta Ram, later filed a fresh application and submitted that the case is being re-investigated and, therefore, he may not be discharged. If the Magistrate can wait for the result of the re-investigation, as regards his application filed under Section 169 Cr. P.C., he could as well have awaited for the result of the re-investigation so far as the petitioner accused Varda Ram is concerned.

2. I have heard Mr. Bora at length. Mr. Bora has stated that he does not press his contention that the challan papers be returned to the Investigating Officer for re-investigation. Section 173(2) of Cr. P.C. provides that as soon as the investigation is complete, challan has to be filed. Of course Section 170(1) of Cr. P.C. provides that if the accused is in custody of the police, he should be forwarded with the challan to the Court and if he has been released on bail by the police then he has to be informed of the date on which the challan will be filed in the court. Both these contingencies do not arise in this case, as the accused has been released on bail under the orders of the Court concerned and, therefore, provisions of Section 170(1) Cr. P.C. are not applicable to the present case. In this case, the S.H.O. is obliged to file the challan as soon as the investigation was complete, as per the provisions of Section 173(2) Cr. P.C. It was for the Court to have fixed a particular date when the challan papers were filed and that date ought to have been the date the accused was directed to be present in the Court. Section 173(7) provides that if convenient the police officer or the Investigating Officer may supply the challan papers to the accused but there is no compulsion for him to definitely supply these challan papers to him. When the case is challaned before the court, it is the duty of the court to see that before the case is committed the accused gets the copy of the police report and the copies of the challan papers filed under Section 173 Cr. P.C.

3. It is true that taking of the cognizance is a judicial act which has to be performed by the Court but there is no law which prohibits the Courts from taking cognizance of the offence or the case without supplying the copies of challan-papers to the accused. The Court has to ensure that when the accused is brought before it, he must be supplied with the copies of the challan-papers, if such documents and papers are not already supplied to him by the concerned Investigating Officer. In this case, the learned lower Court has ordered that all the copies of the challan papers should be supplied to the accused. For taking cognizance, no reasoned order is necessary. I cannot agree with Mr. Bora that it is essential for the Court to hear the accused before it takes cognizance of the case. The Court may if it deem necessary hear the accused before taking cognizance but there is no mandate of the law by which a criminal Court may be compelled to hear the accused before taking cognizance against him regarding any offence. What is necessary is that the magistrate must apply his mind to the challan papers before taking the cognizance. It is one thing that the magistrate might have thought it proper to await the result of the re-investigation before taking cognizance against this accused but if the magistrate was satisfied from the papers filed before him that a prima facie case is made out against the accused regarding certain offences on the basis of the police papers submitted to him under Section 173, Cr. P.C. there is no legal bar for him to take the cognizance against him under the law. It is a discretionary order and unless any illegality is pointed out, that order cannot be interfered by this Court in this Misc. petition. Moreover, the result of re-investigation cannot affect the proceedings that are already pending before the Court. If after re-investigation, the Investigating Officer considers it fit, to file the challan against the co-accused, he can do so but so far as the present accused is concerned, against whom a challan has already been filed, the Court has to proceed on the basis of that challan. It may discharge the accused on the basis of those papers if they disclose no case for taking cognizance under any offence or it can frame a charge against the accused on the basis of those papers after taking the cognizance. Once cognizance has been taken by the Court, those proceedings can only be withdrawn with the permission of the Court on an application filed by the A.P.P. disclosing suitable grounds for withdrawal of those proceedings. This is the only legal course available to the prosecution after it files the challan against any

accused.

4. Keeping in view all these facts and circumstances of the case, I find no force in this Misc. petition and, therefore, it is dismissed at the admission stage.

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