

Richpal Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-02-1992

Reported in : 1993CriLJ3735

Judge : N.K. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 164 and 482;
Indian Penal Code (IPC) - Sections 34, 114, 166, 330, 342, 376 and 511

Appeal No. : Cr. Misc. Petition No. 297/91

Appellant : Richpal Singh

Respondent : State of Rajasthan

Advocate for Def. : I.R. Choudhary, Adv. and; H.R. Panwar, P.P.

Advocate for Pet/Ap. : M.D. Purohit and; Anand Purohit, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.K. Jain, J.

1. This misc. petition Under Section 482, Cr. P.C. is directed against the order dt. 25-5-89 passed by learned Munsif and Judicial Magistrate, Ist Class, Merta

whereby he has taken cognizance against the petitioner Under Sections 342, 34, 330, 166, 376/114, 376/511 and 114, I.P.C.

2. Briefly stated the facts of the case are that the complainant Ramlal while in custody sent complaints against the petitioner and some other police officials including Dy. S. P. Premnath Soni alleging that these persons tortured him and his brother-in-law Narayan and also stated that he was made to have sexual intercourse with his mother Moolki and his brother-in-law Narayan was thrown on his sister-in-law Patashi to commit sexual intercourse. Thereupon, a first information report No. 152/88 was recorded against the petitioner and investigation was conducted by several police officers. A charge-sheet was filed against the petitioner and some other police officials Under Section 330/34, I.P.C. The petitioner and the other co-accused Premnath moved applications before the learned Court below stating that from the challan papers no case is made out against them. The learned Magistrate, while dismissing the applications vide his order dt. 25-5-89 took cognizance against the petitioner as aforesaid. Hence, this misc. petition.

3. Mr. Purohit, learned counsel for the petitioner submits that a false and concocted complaint has been filed against the petitioner by the complainant to save himself and the press media high lighted the matter. He also submits that the learned trial Court without considering the evidence available on record and also without considering the reports submitted by D.I.G. C.I.D. (Vigilance) and S.P. C.I.D. (CB) took cognizance against the petitioner Under Sections 342, 34, 330, 166, 376/114, 376/511 and 114, I.P.C. beyond the challan papers which has resulted into abuse of the process of the Court particularly when the cognizance taken against the main accused Premnath has already been quashed. He, therefore, prays that the impugned order taking cognizance against the petitioner deserves to be set aside under the inherent powers of this Court. He has placed reliance on *Matajog Dobey v. H. C. Bhari*, AIR 1956 SC 44: (1956 Cri LJ 140).

Mr. Panwar, learned Public Prosecutor submits that no interference is called for in the order of taking cognizance against the petitioner.

Heard learned counsel for the parties and perused the record very carefully.

4. It is no doubt true that the learned Magistrate is competent to take cognizance against accused if there is a prima facie case and if the learned Magistrate does not find any case against the petitioner, he may discharge the accused at appropriate stage. Generally, this Court is slow to interfere with the order of taking cognizance in a petition Under Section 482, Cr. P.C. But if the Magistrate has taken cognizance without considering the material on record and no case is made out to convict the accused on the basis of material then certainly to prevent the abuse of the process of the Court this Court can quash the cognizance under the inherent power of this Court.

5. In the instant case on the complaint of one Ramlal, a first information report No. 152/88 was registered on 15-10-88 for the incident taken place before ten months evidence Under Section 161, Cr. P.C. of several witnesses were recorded by Shri R. N. Gaur, S.P. CID (CB) Camp Merta viz. statement of Ramlal was recorded on 15-10-88, statement of Jagdish Singh was recorded on 19-10-88, statements of Moolki, Chothu, Narayan, Patashi were also recorded on 29-10-88, statement of Ganesh was recorded on 19-11-88, of Keshia on 30-10-88, Sugansingh on 15-11-88, Jora Ram Bagaria on 9-12-88, Himmat Singh and Gopi Singh's statement were recorded on 18-10-88, Kaluram on 20-11-88, Gangaram on 9-12-88, Nazir Khan on 18-10-88, Jora Ram on 16-11-88. On the basis of newspaper report in a public interest litigation bearing D.B.C.W. Petition No. 3316/88, a Division Bench of this Court vide its order dt. 3-11-88 directed to take evidence of some witnesses Under Section 164, Cr. P.C. In pursuance of the said direction statements of several witnesses Under Section 164 were recorded.

6. The complainant Ramlal in his statement has stated that on 6-11-87 Richpal Singh, S.H.O. Merta City came to his village and took his brother Chothu, brother-in-law Narayan and himself to P. S. Merty City. He has also stated that Richpal Singh and constable Purkharam along with other two three constables gave him beating. He has also stated that the police brought his mother Moolki and his sister Induria alias Gyarshi to the police station. He has further stated that in place of his sister they brought his sister-in-law Patasi and kept his mother and sister-in-law at Thana for a night. Chothu was also beaten. He has further stated that his brother-in-law Narayan and sister-in-law Patasi were kept in a 'Kothri' and doors were

closed. He has also stated that he and his mother Moolki were beaten by Richpal Singh and constable Purkharam in a 'Kothri' by belts. He has stated that in a beating given to him earlier by police he received an injury on his left calf and on that injury red spices and petrol were spread and thereafter he and his mother Moolki were stripped of their clothes and he was thrown on his mother. He has made some more allegation against the petitioner and other constables. The other witnesses Jagdish Singh A.S.I, has stated that from 7-11-87 to 14-11-87 he remained at Thana. He has also stated that he did not beat Ramlal. He has further stated that he never saw any police personnel beating Ramlal or his mother. Ganesh a relative of Ramlal complainant has stated that for a period of 10-15 days he remained at Thana. He has also stated that the mother of the complainant Moolki and his sister-in-law Patasi were not brought to Thana. One Kesia Bagaria, who is said to be the father-in-law of the complainant has also stated that he did not hear about any misbehaviour having been done with his daughter or any other person and he came to know only through newspapers report. Sugan Singh, who is said to be the neighbour of the complainant in his statement has stated that on the date of incident these ladies were seen at the village and this matter was already reported to I.G.P. He has further stated the police personnel did not take these ladies to Merta Thana. Joraram Bagaria has stated that during those days he was present at Thana and did not see mother of the complainant Moolki and his sister-in-law Patasi at Thana. Statement of this witness was recorded by Shri Arun Duggar, DIG (Vig.). Sriram Bagarai another witness who also remained at Thana during those days has also stated that no ladies of Bagaria were seen by him at Thana. Joraram, the then Jailor has stated that no complaint was given to him against police personnel.

A perusal of the evidence on record shows that there are two sets of evidence; one set of evidence given by the complainant party who supports the complaint and the another set does not support the complaint. Now, it is to be seen from the evidence on record that whether there is any material against the petitioner to take cognizance and whether the evidence of the complainant party is reliable or not.

7. After going through the evidence of the complainant party very carefully, I am afraid that their evidence is truthful to take cognizance against the petitioner as

these witnesses are interested witness and there are not only discrepancies in their statements but contradictions. They are not supported either by the witnesses who are their relatives or by any independent witness. According to the complainant the incident of sexual intercourse of himself with his mother, so also of Narayan with Patasi took place in the night whereas according to Narayan who was also subjected to sexual intercourse, the alleged incident took place at dusk. As per Patasi, the alleged victim, the incident took place at 4-5 p.m. One more witness Chothu, brother of the complainant has also supported the incident but according to him Richpal Singh and four to five constables put off his clothes and clothes of his brother Ramlal, brother-in-law Narayan, mother Moolki and his wife Patasi in a room. He has also stated that he was kept standing near by in a naked position and his brother Ramu was asked to commit rape with his mother and Narayan was asked to commit rape with his mother and Narayan was asked to rape his wife Patasi. According to this witness, the alleged incident took place in his presence whereas as stated above according to Ramlal the incident took place in separate Kothri and presence of Chothu has not been shown at the place of occurrence by Ramlal. Mr. Arun Duggar, DIG, CID (Vigilance) in his report after discussing the entire evidence and also the evidence recorded Under Section 164, Cr. P.C. as per direction of this Court has stated that these witnesses are under the influence of Sangharsh Samiti and they refused to give their statement unless members of Sangharsh Samiti are present. It is pertinent to note that during the period from 23-11-87 to 21-9-88, the complainant appeared before the Court 18 times but he did not complain to the Court regarding alleged beating and misbehaviour. Mr. R. N. Gaur, S.P. CID (CB) who was also entrusted with the investigation also did not find any case against the petitioner. As discussed above there are lot of discrepancies in the statement of Ramlal and the other witnesses viz. Moolki, Patasi, Chothu and Narayan who have given parrot like statement. That apart no independent witness has supported the complainant's version rather they have stated that the ladies never visited Thana, therefore, there is no remote possibility of conviction of the petitioner on such material and evidence and if trial is allowed to continue it will amount to abuse of the process of the Court. In view of this, the , cognizance taken against the petitioner for the offence Under Sections 330, 166, 376/114, 376/511 and 114, I.P.C. is not sustainable as there is no

material on the basis of which cognizance taken against the petitioner for the aforesaid offences can be sustained, that too when cognizance taken against Premnath Soni, Dy. S.P., a co-accused has been quashed by this Court on 28-1-1991.

8. Now, remains the cognizance taken against the petitioner Under Section 342/34, I.P.C. A letter dt. 8-10-88 of Premnath Soni, Dy. S.P. addressed to D.I.G. has been placed on record wherein it has been clearly stated that he had arrested Ramlal on 8-11-87 at 6.30 p.m. at Makrana in a double murder case and some gold articles were recovered at his instance and the complainant as not kept in illegal custody but he was on judicial remand. He has stated that mother of Ramlal was not called at Thana. He has also stated that if the accused had any complaint as per news-item published in newspapers, the complainant could have asked him or the Magistrate. In his letter he has expressed his surprise that when he arrested and called Ramlal at Thana then why a complaint against Thanedar has been filed. It is also stated that a conspiracy has been hatched against Thanedar due to castism. It is also stated that the complainant was kept in police custody on the remand obtained by Richpal on his direction on 9-11-87 from learned MJM, Merta till 17th Nov., 87 and for which the complainant cannot make any grievance. There is no evidence on record against the petitioner for keeping the complainant in jail between 6 to 8th Nov., 87. Under these circumstances, it cannot be said that the complainant was illegally detained particularly when Premnath Soni, Dy. S.P. who has taken whole responsibility has already been discharged by this Court in S.B. Cr. Misc. Petition No. 217/89 vide order dt. 28-1-1991 after considering the material on record, therefore, I don't find any reason to allow proceeding against the petitioner as without there being any material and evidence on record, if the impugned order is allowed to stand it will amount to abuse of the process of the Court. Before parting with the case, it may be stated that the police officials are duty bound to treat a person with dignity, befitting to human being and it does not mean that he can be subjected to ill-treatment even during lawful detention. It is expected of the police officials that they should maintain their image accordingly.

9. In the result, this misc. petition is allowed. The order dt 25-5-89 of learned Munsif and Judicial Magistrate, Merta taking cognizance against the petitioner is

set aside.

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