

Dadamchand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-25-1986

Reported in : 1987(1)WLN69

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Criminal Misc. Petition No. 356 of 1984

Appellant : Dadamchand

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. M.M. Singhvi

Disposition : Petition allowed

Judgement :

Kanta Bhatnagar, J.

1. This petition under Section 482 of the Code of Criminal Procedure has been filed against the order dated July 6, 1984 passed by the Additional Sessions Judge, Udaipur on the report filed by one Kanji, Sarpanch Pal Sarada, on May 24, 1972 before the Superintendent of Police Udaipur regarding the illegality committed in distribution of grain by Gram Seva Sahakari Samiti, Pal Sarada, by its Manager Rooplal and Dadamchand, who without being authorised misused the permit regarding Jawar, Maize and Wheat in the year 1 969-70, The police after

investigation filed challan against the Manager Rooplal under Section 402 I.P.C. and requested the Court that as no case against Dadamchand was made out he may be released under Section 169 of the Code of Criminal Procedure. The final report so given against petitioner Dadamchand was accepted by learned Munsif and Judicial Magistrate Salumber on December 6, 1978. Though challan was not filed against petitioner Dadamchand, the Additional Public Prosecutor submitted an application on December 8, 1981 praying for taking cognizance against him. The learned Magistrate by the order dated May 31, 1982 took cognizance of the offence under Section 419 I.P.C. against the petitioner Dadam Chand. Petitioner Dadamchand challenged the legality of the order in the Court of Sessions Judge, Udaipur. The case on transfer reached the Court of Additional Sessions Judge, Udaipur who by the order dated July 6, 1984 dismissed the revision petition.

2. Feeling dissatisfied by the order of the learned Additional Sessions Judge, Udaipur, the petitioner Dadamchand has invoked the inherent power of this Court by filing the petition under Section 482 of the Code of Criminal Procedure.

3. Mr. M.M. Singhvi, learned Counsel for the petitioner has challenged the order of the learned Magistrate, as confirmed by the revisional Court, on the ground that the learned Magistrate has legally erred in taking cognizance against the petitioner when the final report filed by the Police had already been accepted. Mr. Singhvi emphasized that a judicial order cannot be set aside by the Court passing it. According to Mr. Singhvi, after the police filing the report Under Section 169 of the Code of Criminal Procedure and the Court accepting the same, the Court had become functus officio and no order inconsistent with that order could have been passed. To substantiate his contention Mr. Singhvi placed reliance on the principle enunciated in the case of *Mangilal v. The State of Rajasthan* and Anr. 1979 WLN (UC) 88

4. The learned Public Prosecutor controverted these contentions and submitted that the order passed by the learned Magistrate accepting the final report was an administrative order and could have been recalled at any time if in the opinion of the Court the case against the petitioner was prima facie made out. The learned Public Prosecutor referred to the decision of this Court in the case of *Ramswaroop*

v. The State 1951 RLW 83 where in the order passed on a report under Section 173 of the Code of Criminal Procedure was held to be an administrative order. According to the learned Public Prosecutor the case referred to by the learned Counsel for the petitioner being the subsequent authority has rightly been not followed by the learned Additional Sessions Judge passing the impugned order.

5. The main point involved in the case is whether the order of the learned Magistrate accepting the final report was an administrative order which could be revoked at any moment or it was a judicial order making the concerned Magistrate functus officio and as such the subsequent order dated May 31, 1982 is illegal.

6. To understand the position of law and the principle enunciated on the point it is necessary to look to the principles enunciated in certain cases referred to by the learned Counsel for the parties.

7. In the case of Ramswaroop v. The State 1951 RLW 83 the Police sent a final report to the S.D.M. after completing the investigation, to the effect that no case was made out against the accused. The S.D.M., while striking out the case off the file, sent a report to the District Magistrate for his information as the accused was a public servant. Thereupon the District Magistrate ordered the Police to submit a challan against the accused and also issued a process for his arrest. The question about the nature of the order passed by the S.D.M. striking the case off the file came for consideration and it was held that it was an executive order. The order of the District Magistrate asking the police to submit the challan was considered to be a judicial order because he had also issued process against the accused. The District Magistrate was held competent to revise the executive order of the S.D.M. and it was not considered necessary for him to send the case back for further investigation and submit the charge-sheet.

8. In the case of Pukhraj v. Sesmal 1961 RLW 6 the matter related to the prosecution for the offence Under Section 211 I.P.C. The principle enunciated was that when a report is made to the police charging any of the persons with the commission of the offence and the police after investigation finds that report to be false and gets the report cancelled under the provisions of Section 173 Cr. P.C. the Magistrate receiving the information and accepting it does not act as a Court

and that the act of the Magistrate accepting the police report does not give rise to judicial proceedings. The offence of false charge preferred before the police in respect of which the report was made, cannot be said to have been committed in relation to the proceedings before a Court and a complaint of the Court is not necessary for prosecution of the offender Under Section 211 I.P.C.

9. The other view expressed in certain authorities is that the order passed by the Magistrate on a report by the Police that no offence is made out against the accused is a judicial order.

10. In the case of *J.D. Boywalla v. Sorab Rustomji* AIR 1941 Bom 294 on the receipt of a complaint, police started investigation and arrested a person and released him on bail and subsequently applied to the Court to have the bail enlarged and an order to that effect was made. After investigation the police eventually made a report to the Magistrate saying that, as no offence has been disclosed against the person, he be discharged and his bail bond cancelled. The question arose as to whether the Magistrate acted judiciously and for taking action Under Section 211 I.P.C. complaint by a Magistrate was necessary. It was held that the Magistrate could act upon the report of the police officer without further inquiry and the order of the Magistrate was a judicial order. That the alleged false charge was made in or in relation to a proceeding in Court and for proceeding against the complainant under Section 211, I.P.C., a complaint before the Magistrate was necessary.

11. In the case of *State v. Vipra Khimji* AIR 1952 Saurashtra 67 it was observed as under:

Where information relating to the commission of a cognizable offence is given to an officer in charge of a police station Under Section 154 Cr. PC and is followed by investigation by him, he is bound Under Section 173(1) to forward his final report to a Magistrate empowered to take cognizance of the offence on a police report. An order passed by the Magistrate on such report would dispose of the complaint made to the police. That order is not merely an administrative order but a judicial order of the Court.

12. It was further observed that the Magistrate passing an order on a final report of the police, sent after the investigation Under Section 173 Cr. P.C. should be deemed to be a Court passing a judicial order disposing of the information given to the police. In view of that opinion it was held that the sub-Divisional Magistrate is required to file a complaint in respect of the offence Under Section 211 I.P.C. and in the absence of such a complaint the proceedings launched against the informant are without jurisdiction.

13. In the case of *Kamlapati v. State of W.B.* : 1979 CriLJ679 the meaning of the expression in relation to any proceeding' in Section 195(1)(b) came for consideration before their Lordships of the Supreme Court. In that case a complaint was registered by one T against P and others at police station. Warrants were issued for the arrest of the accused. All of them surrendered before the Court. The Magistrate released them on bail. The police held an investigation culminating in a report which was submitted to the SDJM Under Section 173. The contents of the report made out the complaint to be false and included a prayer that the accused 'may be released from the charge.' The SDJM agreeing with the report passed an order discharging the accused. Thereafter a complaint before SDJM was filed by P accusing T of the commission of offences under Sections 211 & 182 of the Penal Code by reason of the latter having lodged with the police the false complaint. Summons were issued and T appeared in response thereof. T presented a petition to the High Court at Calcutta praying therein that the proceeding pending against him before the SDJM be quashed in as much as the latter was debarred from taking cognizance of the offence Under Section 211 in the absence of a complaint in writing of the SDJM himself in view of the provisions of Clause (b) of Section 195(1) Cr.P.C. It was held that the complaint against T was in respect of an offence alleged to have been committed in relation to a proceeding in Court and that in taking cognizance of it the SDJM acted in contravention of the bar contained in Clause (b) of Section 195(1), as there was no complaint in writing of the SDJM himself. In view of the provisions of Clause (b) of Section 195(1) Cr. P.C. it was held by their Lordships of the Supreme Court as under:

As the order releasing P on bail and the one ultimately discharging him of the offence complained of amount, to proceedings before a Court, both the orders resulted directly from the information lodged by T with the police against P and in this situation there is no getting out of the conclusion that the offence under Section 211 I.P.C. must be regarded as one committed in relation to those proceedings. This requirement of Clause (b) of Section 195(1) is also therefore, fully satisfied. It was further observed that the order of bail passed by a Magistrate also decides the rights of the State and the accused and is made by the Magistrate after the application of his mind and therefore in the discharge of his judicial duties which factor constitutes it an act of a Court.

14. The question involved in the case of Mangilal v. The State of Rajasthan and Anr. 1979 WLN (UC) 88 was similar to the one involved in the case on hand. In that case the order of acceptance of final report was not considered to be an administrative order and therefore the order recalling that order was held to be without jurisdiction. The argument of the learned Public Prosecutor that the two decisions of this Court viz. Ramswaroop v. The State 1951 RLW 83 and Pukhraj v. Sesmal 1961 RLW 6 were not taken into consideration by the learned Single Judge deciding the case of Mangilal v. State of Rajasthan and Anr. 1979 WLN (UC) 88 has no force. The reason is that Hon'ble Jain, J. while deciding the case of Mangilal v. State and Anr. 1979 WLN (UC) 88 has placed reliance on the principle enunciated not only in the decision of the Division Bench of Allahabad High Court in the case of Nirmal Singh v. The State of Uttar Pradesh and Ors. (1979) Cr. LJ 226 but also on the observations of the Supreme Court in the case of Abhinandan Jha v. Dinesh Mishra : 1968 CriLJ97 and expressed that the observations in para 12 of the report go to support the view that the Magistrate has to act judicially while dealing with the final report submitted by the police.

15. In the light of the observations of the Supreme Court his Lordship held that it cannot be said that the order of acceptance of final report is an administrative order.

16. In the case on hand the Magistrate had passed the order of bail. The investigation culminated in the report that the allegations made against the

petitioner were found to be false. The report so submitted was accepted by the Magistrate. The order of discharge was passed in favour of the petitioner. When an order of bail is passed it is done after application of mind. Similarly after receiving the report from the police the Magistrate applies his judicial mind to arrive at a conclusion as to whether to accept the report or to send it to the Police for further investigation. The principle enunciated in the case of Mangilal v. The State of Rajasthan and Anr. 1979 WLN (UC) 88 based on the observations by the highest Court of the country is fully applicable to the facts and circumstances of the present case. I am therefore of the opinion that the order dated December 6, 1978 passed by the learned Magistrate was a judicial order.

17. The next question arising for determination is whether there can be any justification for the learned Magistrate to recall that order by the order dated May 31, 1982. A Magistrate has no power to recall any judicial order. The case regarding the powers of the Magistrate in that regard came for consideration before their Lordships of the Supreme Court in the case of Bindeshwari Prasad v. Kali Singh (9) and it was held as under:

There is no provision in Cr.P.C. empowering a Magistrate to review or recall a judicial order passed by him. Inherent powers under Section 561A are only given to High Court and unlike Section 151 CPC subordinate criminal courts have no inherent powers.

18. Having come to the conclusion that the order passed on December 6, 1978 accepting the report of the Police that no offence is made out against the petitioner was a judicial order, the natural consequence would be that the order dated May 31, 1982 taking cognizance against the petitioner amounting to recalling of the order dated December 6, 1978 was without jurisdiction and amounts to an abuse of the process of Court requiring interference by this Court.

19. Consequently, the petition under Section 482 of the Code of Criminal Procedure is allowed. The order dated May 31, 1982 passed by the Munsif and Judicial Magistrate is set aside and proceedings in pursuance of that order are quashed.

