

Rampal Vs. State of Rajasthan

Rampal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759841

Court : Rajasthan

Decided On : May-26-1989

Reported in : 1990(1)WLN430

Judge : V.S. Dave, J.

Appeal No. : S.B. Criminal Misc. Petition No. 403 of 1988

Appellant : Rampal

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

V.S. Dave, J.

1. In this miscellaneous petition show-cause notice was issued on 31-5-1988 as to why the petition should not be admitted. The petition has been filed against the order, dated 5-5-1988 passed by learned Munsif and Judicial Magistrate' Ist Class, with a {prayer for quashing the entire proceedings pending in the said court in criminal case State v. Rampal.

2. Brief facts leading to this case are that one Jagannath who has been impleaded as complainant-respondent No. 2 in this case, filed a complaint in the court of Chief Judicial Magistrate, Tonic on 4-1-1982, wherein it was alleged by him that

the complainant is an agriculturist. He on 5-4-78 handed over 11 bags of Jeera weighing 5 quintal and 500 grams and 5 bags of Dhania to accused Rampal. He alleged that he handed over the aforesaid goods with a direction that the goods will be sold only when he (complainant) asks the accused to do so and till then they will be retained in the godown. Along with the complaint, one Bhuwana is also alleged to have placed 12 bags of Jeera weighing 6 quintals on 5-4-1978 and he too gave instructions that the goods would not be sold unless so instructed. It was alleged that accused also issued Amanat Patti receipt of which is an information to the authorities under the Agriculture Produce Market Act about the aforesaid keeping of the goods vide receipt Nos. 152/52 and 152/51. On 22-12-1981 the complainant Jagannath and Bhuwana went to the accused for taking back their goods but he refused to return the same. The complainant thereupon filed complaint with Krishi Upaj Mandi Samiti, Tonk. The latter did not take any action against the accused persons, It was alleged that the accused dishonestly sold the goods without the consents of the complainant and devoured the money and this has been done dishonestly in order to deprive the complainant of his goods and to cause loss to him. It is alleged that the accused has thus, converted the goods to their own use and has committed the offence under ss. 406 and 403 IPC. Case was sent for investigation under s. 156(3) Cr PC. to the Police Station, Kotwali, Tonk where a criminal case was registered against the accused as crime No. 7/82 dated 14-1-1982. The case was investigated in details by the Investigating Officer and he came to the conclusion that the goods had been entrusted to the accused by Jagannath and Bhuwana for the purpose of selling them on commission basis. The goods were sold in accordance with the established practice and the intimation was given of the same to Krishi Upaj Mandi Samiti, particularly because the Firm was located within the Yard defined under Agriculture Produce Market Act It was further known during investigation that since the prices of Jeera and Dhania went up the dispute arose between the parties and the case relates to pure and simple business transaction which has now been given criminal colour. A final report was therefore, submitted by the Police in the court of learned Chief Judicial Magistrate, Tonk who after perusing the report as well as investigation papers and the entire case diary agreed with the opinion formed by the Police and accepted the final report vide his order, dated 1-6-1982. It is pertinent to mention here that

though the final report has been accepted on 16-1982 yet for the reasons best known, on a complaint lodged to the Superintendent of Police, Tonk the latter directed re-investigation without seeking the permission of the court. The Police did another investigation and subsequently filed a charge-sheet against the accused-petitioner Rampal for offence under s. 406 IPC. This charge sheet had not been filed before the learned Chief Judicial Magistrate who had earlier accepted the final report, but was filed in the court of learned Munsif and Judicial Magistrate, Tonk. The learned Magistrate has framed charges against the petitioner and it is this order which has been challenged in this petition. The petitioner has prayed that the impugned order, dated 5-5-1988 be set aside and the entire criminal proceedings should be quashed.

3. An important point has been argued by the learned Counsel for the petitioner that once a case has been investigated on a particular complaint or on registration of case as an FIR, and the Investigating Officer after thorough investigation submits a report, the Magistrate has jurisdiction to deal with it in several ways, i.e., he can accept the final report, he can reject the same and he can direct re-investigation of the case also. While passing the order of any of three types he is under an obligation to peruse the entire investigation papers and apply his judicial mind. An order passed accepting or refusing to accept the final report is thus a judicial order and there is propriety attached to such an order. It is submitted that after a final report has been filed by police and accepted by the Magistrate, it is not open to the Investigating Officer to re-investigate the case and submit a charge-sheet. It is submitted that if this would be permitted, then it will result in chaotic conditions and no sanctity would be attached to a judicial order. It is submitted by the learned Counsel that there is yet another impropriety and that is that the order of the learned Chief Judicial Magistrate accepting the Final Report has been set at naught by a subordinate authority, a Magistrate of the first class. It is submitted that if the complainant was aggrieved by the order of the Chief Judicial Magistrate it was open to him to have requested the learned CJM for directing re-investigation or he should have approached next higher court. It is then submitted on merits that even if the entire complaint is accepted no criminal offence worth the name is made out in as much as dispute is alleged to have arisen during the course of business transaction and matter is of civil nature. It is also submitted that

according to the facts given in the complaint itself perishable good have been given to the petitioner by the complainant on 5-4-1978 and first approach was made by him for return of the goods on 22-12-1981, i.e., after 3-1/2 years, it cannot be conceived of that for 3-1/2 years the complainant had kept the Jeera and Dhania in trust with the petitioner. It was not a short-time transaction as is being convessed it the complaint.

4. In support of his contention whether accepting the final report is a judicial order or not? The petitioner relied on *Mangi Lal v. The State of Rajasthan* [1979 WLN(UC)188]; *Daman Chand v. State of Rajasthan* [RLR 1987(1) 106], *K. Ramasubbu v. The State and mother* 1988 Cr. L.J. 214 and *Kamalapati Trivedi v. The State of West Bengal* : 1979 CriLJ679 On another point as to whether a subsequent charge sheet can be filed or further investigation without permission of the court is permissible or not, the learned Counsel relied on *Ramlal Narang v. State Delhi Admn* : 1979 CriLJ1346 . I earned Counsel also relied on *Udat Ram etc. v. State of Raj.* [1983, RLR 875] to substantiate that it would be desirable that Police should inform the court and seek formal permission to make fresh investigation when fresh facts come to light. Learned Counsel has also placed reliance on *Babu Lal and Anr. v. State of UP*: [1982 Cr. LJ 1020].

5. Learned Counsel for the respondent submits that it is perfect case of cheating in as much as ingredients of cheating are satisfied in the instant case. It is submitted that the poor agriculturists have been cheated of a huge quantity of Dhania and Jeera and goods they placed in trust have been sold out without their permission. It is further submitted that the respondent has placed on record the Amanat-patti patra to show the handing over of the goods to the petitioner and the petitioner has not accounted for the same. This aspect of the case is supported by even documentary evidence on record. It is further submitted that the accused had no right to dispose of the goods without concurrence of the complainant and by doing so they have violated the terms in which the goods were placed in trust and, therefore, he is guilty of the offence of breach of trust. Learned Counsel for the respondent then submits that this Court has no jurisdiction to interfere Under Section 482 Cr. PC when the trial court has taken cognizance of the matter after considering the various facts and circumstances of the case. The submission of

the learned Counsel is that High Court should not interfere at an interlocutory stage of a criminal proceeding pending in a subordinate court. Reliance has been placed on P. Vijaya Pal Reddy and Ors v. The State (Govt. of India); : 1978 CriLJ1702 J.P Sharma v. Vinod Kumar Jain and On; : 1986 CriLJ917 Amar Nath and Ors. v. State of Haryana and Ors. : 1977 CriLJ1891 , Thiru V. Thanigachalam v. State of Tamil Nadu:) : 1976 CriLJ1756 , Municipal Corp. of Delhi v. Purshottam Dass and Ors. : [1983]3SCR762 , R P. Kapoor v. State of Punjab : 1960 CriLJ1239 and State of West Bengal v. S.N. Basak : [1963]2SCR52 on the question that police has not precluded from further investigating into the case and filing a fresh charge-sheet. The learned Counsel places reliance on Ram Lal Narang v. State (supra).

6. I have gone through the entire record of the case, impugned order of the learned Magistrate, dated 5-5-1988 and the case law cited by the learned Counsel for the parties.

7. Regarding the case law cited by the learned Counsel for the respondent whether interference should be done at interlocutory stage or not and as to whether Under Section 482 Cr.PC this Court should interfere I have discussed the parameters within which this Court should exercise the jurisdiction Under Section 482 Cr.PC. This has been done in Vimla Agrawal v. State, S.B. Cr. Misc. Petition No. 175/88 decided on 8-10-1988 which have been laid down as under:

(1) where the First Information Report, even if accepted as true, discloses no reasonable suspicion of the commission of a cognizable offence; or there is a complete bar for taking cognizance in the manner prescribed;

(2) where the materials subsequently collected in the course of an investigation further disclose no such cognizable offence at all;

(3) where the continuation of such investigation would amount to an abuse of power by the Police thus necessitating interference in the ends of justice; and

(4) that even if the First Information Report or its subsequent investigation purports to raise a suspicion of a cognizable offence, the High Court can still quash if it is

convinced that the power of investigation has been exercised malafide.

Since most of the cases cited above had already been quoted, in my humble opinion it is not essential to discuss all these cases in this cast, because some basic questions of law are also involved in this case touching the jurisdiction besides the point whether the case is of civil nature or not, such as (i) whether the order accepting the final report is a judicial order and if so whether provisions of Section 167(8) Cr.PC can be invoked by the Police without seeking permission of the Magistrate concerned who has accepted the Final Report, (ii) whether second complaint on the same subject matter would amount to circumventing the order of the Presiding Officer who has already accepted the final report, and (iii) as to whether when the earlier order accepting Final Report has been passed by the Chief Judicial Magistrate should a Magistrate pass on Order taking cognizance of the matter should be placed before the same Magistrate; and (iv) whether the proceedings are of civil nature?

8. Before appreciating the aforesaid points in my opinion it would be essential to mention certain details at the cost of repetition. The entrustment of goods was on 5-4-1978 and for the first time goods were demanded back on 22-12-1981 and complaint was filed on 4-1-1982. The complaint was sent to police Under Section 156(3) Cr. PC and a final report was given which was given which was accepted on 1-6-1982. Thereafter a complaint was filed to the Superintendent of Police who ordered further investigation without seeking fresh permission from any court and then a charge sheet was filed wherein the impugned order was passed on 5-5-1988. In the back-ground of the aforesaid details it has to be considered as to whether the order, dated 1-6-1982 was a judicial order. The complainant when filed the complaint on 4-1-1982 according to the charge-sheet itself the final report No 3/82 'Adam Vakua' (civil nature) was filed which was accepted on 1-6-1982 and it was Superintendent of Police who directed further investigation. This order, dated 1-6-1982 recorded categorical opinion of the learned Magistrate based on thorough investigation of the Police and the opinion fomed by the Police Officer that the dispute between the parties is of civil nature and dispute has arisen due to rise in the price of the articles. Such an order clearly is a judicial order because it has been laid down by their Lordships of the Supreme Court in Kamalapati Trivedi

v. The State of West Bengal (supra) in para 32 as under:

Sections 169 and 170 do not talk of the submission of any report by the Police to the Magistrate, although they do state what the Police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate (Section 169) (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the Police is to be submitted to the Magistrate under Sub-section (1) of Section 173. Sub-section (3) of that section further provides that in the case of a report by the police that the accused has been released on his bond (which is the situation envisaged by Section 169), the Magistrate shall make 'such order for the discharge of such bond or otherwise as he thinks fit'. Now that are the courses open to the Magistrate in such a situation? He may, as held by this Court in *Abhinandan Jha v. Dinesh Mishra* : 1968 CriLJ97 .

[1] agree with the report of the Police and file the proceedings; or

[2] not agree with the Police Report; and

[a] order further investigation, or

[b] hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of;

The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof. But then the problem to be solved is whether the order passed by the Magistrate pertains to his executive or judicial capacity. In my opinion, the only order which can be regarded as having been passed by the Magistrate in his capacity as the supervisory authority in relation to the investigation carried out by the Police is the one covered by the course 2(a). The order passed by the Magistrate in each of the other two courses, that is, (1) and 2(b) follows a conclusion of the investigation and is a judicial order determining the rights of the parties (the State on the one hand and the accused on the other) after the application of his mind. And if that be

so, the order passed by the Magistrate in the proceeding before us must be characterised as a judicial act and therefore, as one performed in his capacity as a Court.

Reliance can also be placed on *Mangi Lal v. The State of Raj. and Anr.* 1979 WLN (UC) 188, *Damad Chand v. State of Raj.*; 1987 (1) RLR 106 and *K Ramasubbu v. The State and Anr.*; 1988 Cr. L.J. 214. It can therefore, safely be held that acceptance of final report was not an administrative order but was a judicial order. This judicial order could only have been set aside by the next higher court but the same could not be circumvented by starting another investigation by the Superintendent of Police and if the Police wanted to re-investigate the matter, then it ought to have sought permission of the learned Magistrate who accepted the final report. My learned brother Hon'ble Agrawal, J. in *Udai Ram etc. v. State of Rajasthan*: 1983 RLR 875 has held as under:

Shri Goyal has, however, submitted that the said principle would apply only to those cases where the Police has filed charge sheet and the Magistrate has taken cognizance on the basis of the charge sheet and the matter is pending before the Magistrate and that it would not apply to cases where the Police had submitted a final report. In my view, there is no reason to make such a distinction. The power of the Police to make a further investigation into a matter is available to the Police in all cases where a report under Section 173 Cr.PC has been submitted before the Magistrate irrespective of the fact whether the police has submitted the charge sheet or whether it has submitted a final report. All that can be said is that in cases where the Police has submitted a final report and the Magistrate has passed an order accepting the final report, it is expected that the Police, before reinvestigating the matter, should seek the permission of the order passed by Magistrate who had passed the order accepting the final report because the order passed by the Magistrate accepting the final report is a judicial order, and in view of the said judicial order it would not be proper on the part of the Police to start fresh investigation unless the order passed by the Magistrate accepting the final report is set aside by a higher court on the relevant circumstances are placed before the Magistrate who has passed the order accepting the final report and the permission of the said Magistrate for further investigation is obtained.

Same is the view of the Madras High Court taken in *Namasivayam v. State* 1982 CrL. LJ 707. I am also fortified with my view by the decisions reported in *K. Ramasubbu v. The State and Anr.* (supra) and *Damad Chami v. State of Raj.* (supra). Such attitude of the Police Officer of reinvestigating the case without seeking permission of the court is to be seriously deprecated. A change of the officer, In-charge of a Police Station or change of Superintendent of Police in the District does not ipso facto mean re-investigating of the case. This sort of approach is rather dangerous and would open the flood gates for making approaches by influential parties either way. There is yet another aspect of the matter and that is that in case a charge sheet was to be submitted it should have been submitted before the CJM who had accepted the final report earlier so that he could apply his mind properly. Filing the charge-sheet before another Magistrate who is lower in rank than the CJM who had accepted the final report by circumventing the law, cannot least be permitted.

9. Coming to the merits of the case some of the facts in this case are not disputed, namely, the entrustment is of 5-4-1978 on which date Jeera and Dhania had been given in trust to the accused persons by the complainant and one Bhuwana, then it was for the first time on 22-12-1981 that the complainant and Bhuwana had gone to the accused for asking the goods and it was on their refusal that they filed a complaint to the authorities under the Agriculture Market Produce Act and ultimately filed a complaint on 4-1-1982 Thus admittedly the complaint had been filed after more than 3-1/2 years of the entrustment. It cannot be disputed for a moment that when the goods are placed by the agriculturists with the commission agent or traders in Krishi Upaj Mandi it is given on trust as Amanat and Amanat-patti Patra, a memo of security issued which too is on record but still the question is whether placing perishable goods, namely, agriculture produce with the trader can be kept for an indefinite period without any specific instructions and if the trader has sold them in between, whether any criminal liability can be fastened. In my opinion it will be too much to expect from a trader to keep in trust an agriculture produce for more than 3 years for want of raising market because in that case he will be guilty of holding the agriculture produce. When the goods are meant for sale they are in transit and during this transit it is with this middle man that the goods are placed for onward sale. Traders in Krishi Upaj Mandi are not the persons

who are running cold storages or godowns for keeping the goods on rent in safe custody. I can conceive of the cases where on specific instructions an agriculturist places his goods in trust with trader' on a specific condition that he will place them in safe custody for a particular period and for which he will be paying rent for the place where the goods are kept and if the goods are not returned as such on demand, it can be said that it is a case of criminal breach of trust- But in cases where goods are meant for sale brought to the Mandi, given to the traders and the agriculturist would not go for asking the goods for 3 years and assuming that the trader has sold it without the consent of cultivator it cannot be said for a moment that he had committed criminal breach of trust It could be a case for breach of contract or claiming damages for selling the goods on a lower price if was to be meant for selling it on higher price, but by no stretch of imagination criminal liability can be attached to the act of the trader beyond a reasonable period. It is a matter of common knowledge that spices like Jeera and Dhania are perishable goods and cannot be kept indefinitely in store by a trader unless or otherwise they are treated with preservative. The complaint does not disclose that the same were meant for preserving but it only shows that he had taken it to the Mandi and had given to the trader. Thus in case the same has not been returned it could be a case for claiming the money of the Jeera and Dhania rather than bringing this to criminal court. It is a case of the nature of civil proceedings. Thus, on merits also, in my opinion, no criminal case prima facie is made out in the circumstances of this case and it will be sheer waste of time and energy of the court in continuing with such litigation.

10. The result is that I accept the application, get aside the order of the learned Munsif and Judicial Magistrate, Tonk, dated 5-5-1988 and quash the proceedings.