

Than Singh and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Feb-11-1991

Reported in : 1991(1)WLN395

Judge : B.R. Arora, J.

Appeal No. : S.B. Cri. Misc. Peti. No. 499 of 1989

Appellant : Than Singh and anr.

Respondent : State of Rajasthan and anr.

Judgement :

B.R. Arora, J.

1. This miscellaneous petition has been filed by the petitioners against the order dated November 30, 1989, passed by the Additional Sessions Judge, Barmer, by which the learned Additional Sessions Judge framed the charge against the petitioners under Section 436, IPC.

2. Once Kewal Chand, on April 2, 1983, lodged a First Information Report at Police Station Barmer, to the effect that he was informed by Harchand that his hut has been burnt by some unknown persons, and the fire was extinguished by Laxman Ram and Chandana Ram. The police, after necessary investigation, presented the Final Report in the matter. After submission of the Final Report, Kewal Chand filed

a complaint against the petitioners on July 11, 1983 in the Court of Chief Judicial Magistrate, by his order dated July 23, 1983, accepted the Final Report submitted by the Police, as according to the learned Magistrate no case was made-out against the accused-petitioners from the police investigation. He however, directed that the complaint already filed by the complainant will continue. He after accepting the Final Report, recorded the statement of the witness under Sections 200 & 202, Cr. PC and thereafter, by this order dated November 11, 1983, took cognizance against the petitioner under Section 436, IPC and committed the accused to stand their trial in the Court of the Additional Sessions Judge, Barmer.

3. At the time of framing the charges, an objection was taken by the learned Counsel for the accused that as the Final Report was accepted by the learned Magistrate in the same after hearing the complainant, therefore as the Magistrate became functus officio in taking the cognizance against the petitioners and, therefore, the order dated November 11, 1983 passed by the learned Magistrate taking cognizance against the petitioner, is wholly without jurisdiction and the petitioner, is wholly without jurisdiction and the whole proceeding, initiated in pursuance to the order dated Nov. 11, 1983 by which the learned Magistrate took cognizance against the eye of law and deserves with the contention raised by the learned Counsel for the petitioners and by the order dated November 30, 1989, framed the charges the petitioners under Section 436, IPC. It is against this order, framing the charges that the petitioners have, also, prayed that the proceedings initiated in pursuance to the order dated November 11, 1983 passed by the learned Chief Judicial Magistrate, Barmer, may, also, be quashed.

4. I have heard the learned Counsel for the petitioners and the learned Public Prosecutor and perused the order passed by the learned Additional Sessions Judge, Barmer.

5. It is not in dispute that the learned Magistrate accepted the Final Report submitted by the police by his order dated April 17, 1983, and kept the complaint pending, which he was not competent to do. The learned Magistrate should have decided all these cases together, viz., the complaint filed by the complainant and the case instituted on the First Information Report. When once the learned

Magistrate has accepted the Final Report submitted by the investigating agency, he became functus officio and had no jurisdiction to continue with the proceedings in the complaint case. The case of the petitioners is fully covered by the judgment of this Court rendered in the case of Vishnu Mauriya v. The State of Rajasthan and Anr. decided on May 17, 1989, wherein it has been observed as under:

In my opinion, this approach on the part of the learned Magistrate was not correct. On 2nd September, 1987, when the counsel for the complainant was present he was heard and the protest petition was also there, then he should have disposed of both the matters simultaneously instead of deciding the matter in piece-meal. A reading of the order dated 2nd September, 1987, shows that counsel for the complainant was present, he was heard on the protest petition and thereafter the learned Magistrate passed a detailed speaking order, accepting the final report notwithstanding the protest petition. That shows that the counsel for the complainant had an occasion to address the learned Magistrate on the basis of the material before him and on that basis the learned Magistrate found that there is no substance in the protest petition and he accepted the final report. At the same time he posted the matters for recording the statement Under Sections 200 & 202, Cr. PC that was not proper on his part. Either he should have, record the statement of the witnesses Under Sections 200 and 202 Cr. PC & after recording the statement he should have clubbed them together with the final report and passed an order disposing both of them together, but the learned Magistrate has adopted an entirely third mode that he heard the learned Counsel for the complainant on his protest petition as well as on the final report and accepted the final report and then again he deferred the matter for recording the statement under Sections 200 and 202, Cr. PC. This mode adopted by the Magistrate is not warranted at all. Therefore, the learned Magistrate once having accepted the final report, after hearing the complaint, could not have proceeded to record the statement under Sections 200 and 202, Criminal Procedure Code.

6. In this view of the matter, this miscellaneous petition, filed by the petitioners is allowed. The order dt. November 30, 1989, passed by the Addl. Sessions Judge, Barmer, as well as the proceedings pending in the Sessions Case No. 43 of 1989 (State v. Than Singh and Ors.) are quashed.

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