

Ramniwas Vs. Munni Devi and anr.

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Court : Rajasthan

Decided On : Aug-28-1992

Reported in : 1993(3)WLC524; 1992WLN(UC)163

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Misc. Petition No. 764 of 1992

Appellant : Ramniwas

Respondent : Munni Devi and anr.

Judgement :

N.L. Tibrewal, J.

1. The accused-petitioner Ramniwas has filed this petition under Section 482 Cr.P.C. with a prayer to quash the order dated 5.11.1990 of Munsif & Judicial Magistrate, Bari, whereby cognizance for the offences under Sections 456 & 376 IPC was taken against him.

2. In brief, the facts of the case are that initially a complaint was filed by the non-petitioner No. 1 Smt. Munni Devi, which was forwarded under Section 156(3) Cr.P.C. to S.H.O., PS-Bari for investigation. On this complaint, crime No. 227/89 was registered under Sections 376, 456 & 328 IPC. After investigation, a negative report under Section 169 Cr.P.C. was submitted by the police to the effect that the

non-petitioner No. 1 had made deliberate false report and no such incident took place as mentioned in the complaint. The police also came to the conclusion that she had herself taken the poisonous tablet. The complainant non-petitioner, then, again filed a complaint before the Munsif & Judicial Magistrate, Bari on 21.7.89 in protest to the final report submitted by the police and prayed that cognizance be taken. Thereafter, the Magistrate recorded the statements of the complainant Munni Devi, her husband Lajjaram and Suresh Chand Sharma and issued process to summon the petitioner by a bailable warrant on being satisfied that there was sufficient ground for proceeding against him for the offences under Sections 456 & 376 IPC, vide order dated 5.11.90. The revision preferred by the petitioner was also dismissed by the learned Addl. Sessions Judge, Dholpur, vide order dated 6.4.92. Hence, this petition under Section 482 Cr.P.C. has been filed.

3. The contention of learned Counsel for the petitioner is two-fold. Firstly, that the learned Magistrate did not take into consideration the final report submitted by the police and the statements and other material collected during investigation. Second submission is, that the complainant Smt. Munni Devi was admitted in the hospital at Kampu (Distt. Gwalior) after taking poisonous tablet, which is kept in the foodgrains to protect them from being damaged by the insects, and when her condition became serious, the doctor of the hospital intimated at the Police Station, Kampu for recording her dying declaration. On this communication, the statement was recorded by the police officer, in which, she did not narrate the story of rape and giving the poisonous tablet by the accused petitioner in her mouth by force.

4. It is true that whenever an investigation is made by the police, and cognizance is subsequently taken on a complaint, the concerned Magistrate is expected to consider the report of the police given after investigation. Though, this may not be a requirement of Section 203 or 204 Cr.P.C. Chapter XV of the Code of Criminal Procedure deals the procedure about complaints made to the Magistrate. Whenever such complaint is made to a Magistrate, he is required to examine on oath the complainant and the witness present, if any. Section 202, then, provides for an inquiry into the case either by the Magistrate or a police officer or by such other person on direction of the Magistrate for the purpose of deciding whether or

not there is sufficient ground for proceeding. Sections 203 & 204(i) are relevant for our consideration and the same are reproduced as under:

203. Dismissal of complaint. - If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process. - (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

5. From a reading of Sections 203 & 204, it transpires that either for dismissal of the complaint under Section 203 or for issuance of process under Sub-section (i) of Section 204, the Magistrate is required to take into consideration the statements on oath of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202 Cr.P.C. As already stated, the inquiry under Section 202 can be made by the police on the direction of the Magistrate, but, this inquiry does not include the investigation made by the police under Chapter XII of the Code, i.e. the investigation made by the police after registration of case for a cognizable offence under Section 154 Cr.P.C.

6. Section 210 deals the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. For the sake of convenience, it is reproduced as under:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence. - (1) When in a case instituted

otherwise than on a police report (hereinafter referred to as a complaint case). It is made to appeal to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate, shall state the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

7. A reading of the aforesaid provision makes it clear that it is aimed to avoid separate trials or inquiries for the same offence. Sub-section (1) is aimed to avoid simultaneous inquiry by a Magistrate and an investigation by the police in relation to the same offence. The purpose of staying the complaint case is to enable the Magistrate to have the benefit of the police report which would be submitted after the investigation of the police case and further to avoid simultaneous inquiry under Chapter XV of the Code. Sub-section (2) further makes it clear and provides that after submission of the police report under Section 173 and on such report, cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. In other words, if the accused persons are common in the complaint case and the police report in relation to any offence, and cognizance is taken by the Magistrate against any person on the police report who is also an accused in the complaint case, then, the Magistrate is required to inquire into or try together the complaint case and the case arising out of the police

report as if both the cases were instituted on a police report. This is only to avoid the anomalies arising from taking cognizance of the same offence more than once and also the simultaneous inquiry and trial for the same offence. It may be further explained by illustration. Suppose the police submits a report against two of the accused persons, while in the complaint case, besides those accused persons against whom the police report has been made, there are other accused persons and the Magistrate takes cognizance on the police report against those two persons only named by the police, then, for the remaining accused persons, the inquiry or trial shall be made along with the case instituted on the police report. In such a situation, whenever any inquiry is made by the Magistrate to form an opinion whether process should be issued against the left out accused persons or not, he must take into consideration the police report as well as the evidence collected in the course of investigation, as both the cases stand amalgamated. From the entire evidence, including the evidence collected by the police in investigation, the Magistrate is required to form an opinion whether there is ground to proceed against the other accused persons who were left out by the police.

8. But, in relation to the cases covered by Sub-section (3) of Section 210, the position may be different. Sub-section (3) applies when the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on the police report. In this situation, he is required to proceed with the inquiry or trial which was stayed by him in Sub-section (1) in accordance with the provisions of the Code. The inquiry in a complaint case is made under Chapter XV of the Code and this inquiry is independent to the police report. For issuing process in such inquiry, the relevant evidence is the statements of the complainant and of the witnesses and the result of the inquiry or investigation (if any) made under Section 202 of the Code. An investigation made under Chapter XII after registration of a case under Section 154 Cr.P.C. is not relevant either for the dismissal of the complaint or for issuance of process. No doubt, the Magistrate may also take into consideration the police report but, the provisions of the Code do not make it incumbent for a Magistrate to take into consideration the police report in a case covered by Sub-section (3) of Section 210 Cr.P.C.) The order of issuing process by a Magistrate, even, without consideration of a police report, in such a case cannot be said to be contrary to the provisions of

the Code.

9. So far the present case is concerned, admittedly, the Magistrate did not take cognizance of the offence on the police report and the case is covered by Sub-section (3) of Section 210. The Magistrate has issued process after recording the statements of the complainant and of the witnesses under Section 202 Cr.P.C. and on the basis of their statements, he formed an opinion that there is sufficient ground for proceeding in the case. In doing so, in my opinion, no illegality has been committed by him. Even otherwise, as it appears from the order of the Addl. Sessions Judge, the police report was taken into consideration by the Magistrate before issuing process.

10. The matter may be examined from another angle also. Against the order of the Magistrate issuing process against the petitioner, a revision was preferred and the same was dismissed by the learned Addl. Sessions Judge. Section 397 expressly prohibits to entertain a second revision by the same person. The provisions of Section 482 Cr.P.C. cannot be permitted to be exercised to circumvent the express bar created under the statute. Then, the petitioner will have an opportunity to make his objections/submissions before the concerned court at the time of framing charge/charges. At this state, he can produce any document, including the statements recorded by the police during the police investigation or any inquiry made by the police, Police Station, Kampu (Distt. Gwalior) on a report made by the doctor. After production of those documents he may get the admission or denial of the same under Section 294 Cr.P.C. Section 294 Cr.P.C. reads as under:

294. No formal proof of certain documents.-

(1) Where any document is filed before any court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed.

Provided that the Court may, in its discretion, require such signature to be proved.

11. If the genuineness of such document is not disputed by the prosecution, such document can be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. In that situation, the concerned court shall take into consideration all those documents to form an opinion whether any offence is made out against the petitioner, for presuming that he has committed an offence. This is the procedure which a court of law has to adopt on a complaint case which is covered by Sub-section (3) of Section 210 Cr.P.C. The petitioner can, therefore, submit all such statements or other documents on which he wants to place reliance to show that no prima facie case is made out against him for having committed any offence. The court is bound to consider all the documents at the stage of framing charges if their genuineness is not disputed by the prosecution.

12. Presently, no interference is called for in the matter. The petition is, therefore, disposed of as indicated above.