

Krishandutt Sharma Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-27-1998

Reported in : 1998CriLJ3520

Judge : Ashok Parihar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : Criminal Misc. Petn. No. 236 of 1998

Appellant : Krishandutt Sharma

Respondent : State of Rajasthan

Advocate for Def. : S.K. Vyas, Public Prosecutor

Advocate for Pet/Ap. : Ram Gopal Purohit, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Ashok Parihar, J.

1. This is a petition under Section 482, Cr.P.C. challenging the order dated 2-8-1996 passed by Special Judge, A.C.D, Cases, Jodhpur.

2. A trap was laid by Dy. S.P. A.C.O.P., Nagaur while the petitioner was posted as B.D.O. in Panchayat Samiti, Ladnu, Distric, Nagpur Investigation was subsequently handed over to the Addl. S.P., A.C.D., Aimer under the direction of D.G.P., Jaipur. After investigation, a final report was submitted before the trial Court. The final report had duly been endorsed by D.G.P A.C.D., Jaipur. The trial Court without discussing the material on record returned back the final report to Investigating Officer to get sanction for prosecution against the petitioner vide order dated 2-8-1996. Hence this petition.

3. The only question to be determined in the present petition is whether the trial Court could have asked the Investigating Agency to get the sanction for prosecution.

4. After considering the submissions made at the Bar. I have carefully gone through the material on record and also the judgment cited by the counsel for the petitioner .

5. The Investigating Officer after investigation have given a detailed final report in the matter as 'unoccurred' vne cdw. The trial Court could have either accepted the final report or even rejected it after giving reasons for the same. However, in the present case, the impugned order of the trial Court is absolutely vague. Moreover there could not have been any direction for getting the sanction for prosecution once the investigating agency having found no case against the petitioner.

6. Giving sanction for prosecution is exclusive domain of the concerning authorities. The Courts cannot issue any mandatory direction in this regard as has been held by Apex Court in case of Mansukhlal Vithaldas Chauhan v. State of Gujarat, AIR 1997 SC 3400 : 1997 Cri LJ 4059.

7. The Apex Court in the above case has held that is for the sanctioning authority to apply its own independent mind for the generation of genuine satisfaction whether prosecution had to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it for taking a decision one way or other. Such discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its

discretion should be shown to have not been affected by any extraneous consideration.

8. The Court further observed that if it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority 'not to sanction' was taken away and it was compelled to act mechanically to sanction the prosecution.

9. In case of *Abhinandan Jha v. Dinesh Mishra* and connected appeals reported in AIR 1968 SC 117 : 1968 Cri LJ 97, the Apex Court has held that there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge sheet, when a final report have been submitted. The Magistrate may or may not accept the report and take suitable action according to law. However, he cannot impinge upon jurisdiction of the police, by compelling them to change the opinion so as to accord with his view. The Court further observed that the formation of the said opinion by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

10. In the present case, after thorough investigation when the final report have been submitted by the Investigating Officer, there was no occasion for the trial Court to return the same for getting sanction for prosecution. Thus, the impugned order is not sustainable in the eye of law.

11. Accordingly, the impugned order dated 2-8-1996 passed by Special Judge, A.C.D. Cases, Jodhpur is set aside. However, the matter is remanded back to the trial Court for passing afresh speaking order on the final report submitted by the Investigating Officer.