

Ramjas and ors. Etc. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-25-1999

Reported in : 1999CriLJ3626; 2000(1)WLC328

Judge : G.L. Gupta, J.

Acts : [Constitution of India](#) - Article 356; Indian Penal Code (IPC) - Sections 114, 147, 148, 149, 323, 336, 342, 379, 394 and 447; Code of Criminal Procedure (CrPC) , 1974 - Sections 145, 146, 197, 197(1), 197(2), 197(3), 200 and 202; Arms Act - Sections 27; Preventive Detention Law

Appeal No. : Crl. Misc. Petns. Nos. 413, 415, 468 and 473 of 1998

Appellant : Ramjas and ors. Etc.

Respondent : State of Rajasthan

Advocate for Def. : J.R. Beniwal, Adv. for Respondent No. 2 and; A.K. Upadhyay, Public Prosecutor

Advocate for Pet/Ap. : H.S. Kharlia,; Kulwant Sigh and; H.M. Saraswat, Advs

Disposition : Petition dismissed

Judgement :

ORDER

G.L. Gupta, J.

1. Through the above mentioned 4 miscellaneous petitions the petitioners have challenged the order dt. 18-5-98 passed by the learned Judicial Magistrate, Nohar whereby he took cognizance against them under Sections 323, 342 and 394, IPC.

2. The facts, Non-petitioner No. 2 Chhabeela Ram filed a private complaint on 26-3-98 in the Court of Judicial Magistrate, Nohar, stating that he was active worker of Shiv Sena Unit of Nohar Rawatsar and that he had exposed the conspiracy of the police and administrative officers through newspapers that they were grabbing the Government land worth crores of rupees on which they (petitioners) had given allurements to him that he stopped pursuing the matter, and they would arrange a plot of land for him free of charge and had threatened him that he would face the consequences if he did not deter. It was stated that on 23-3-98 the complainant had gone to village Thirana for buying she-buffalo and at about 7-7-30 p.m. when he was at the house of Sukhdas, Ramjas SHO and five police officials went there in a Jeep, gave beatings to him and took him away forcibly at Nohar Police Station, from where they took him to the office of Shiv Sena and asked him to open lock and after he opened the lock they collected all the papers relating to the land grabbing and took away. It was further stated that, in the night, the complainant was kept at the Police Station, and was given beatings by the six police officials, his moustaches were uprooted and chillies were put in his anus and at that time Shri K. L. Badetia, S.D.M. was also at the Police Station who asked the police officials to give beatings to him, so that he (complainant) would forget making complaints. It was also stated in the complaint that on 24-3-98 the complainant was produced before the S.D.M. and there Shri K.L. Badetia, S.D.M. hurled abuses at him and refused his medical examination.

3. On the complaint, the Magistrate recorded the statements of the complainant, Manoj, Duldass Swami, Munshi Khan, Bhaniram, Sukhram, Rajendra and Sitaram Mishra. After considering the evidence produced before him, the Magistrate passed the impugned order whereby he held that there was material on record to 'proceed against Ramjas, Ramkumar, Hakam Ali, Ast Ali, Fateh Mohd. and Niranjana under Sections 323, 342 and 394, IPC and against K. L. Badetia under

Section 323 read with Sections 114 and 504, IPC. He directed that the four police officials and the two private persons be summoned by warrant of arrest and Shri K. L. Badetia be summoned by summons.

4. Mr. Kulwant Singh, learned counsel for four police officials, contended that protection under Section 197, Cr.P.C. is available to the police officials under Government Notification No. S. O. 89 dt. 31-7-74 published in Rajasthan Gazette dt. 2-8-74, as they were charged with the maintenance of public order and therefore, cognizance could not be taken against them without the sanction of the State Government. He pointed out that the proceedings under Sections 145 and 146, Cr.P.C. had been initiated against the complainant and others, and therefore, the police officials were acting in the discharge of their official duty when they arrested the complainant.

5. Mr. Kharlia, learned counsel for Badetia, contended that Badetia being the S.D.M. is the officer not removable from his office save by or with the sanction of the State Government and cognizance could not be taken against him without the sanction of the State Government under Section 197, Cr.P.C. Even on assuming, that this petitioner had abused the complainant while sitting as S.D.M., he urged, there was relationship of his duty and the act, and therefore, protection under Section 197, Cr.P.C. is available to him. His further contention was that Niranjana has been falsely implicated in the case and he had no cause to be present at the Police Station. Relying on the cases of Suresh Kumar v. Pandey Ajay Bhushan (1997) 9 JT (SC) 365 : 1998 Cri LJ 1242 and Pepsi Foods Ltd. v. Special Judicial Magistrate (1997) 8 JT (SC) 705 : 1998 Cri LJ 1, he contended that the summoning of an accused in a criminal case is a serious matter and the Magistrate should not have summoned the petitioners only on the basis of the statements of complainant and his witnesses and it was the duty of the Magistrate to have fully scrutinised the material on record.

6. Mr. Saraswat, learned counsel for Eateh Mohd. adopted the argument advanced by Mr. Kharlia.

7. On the other hand, learned Public Prosecutor and Mr. Beniwal, learned counsel for the complainant argued that on the evidence recorded under Sections 200 and

202, Cr.P.C. the Magistrate was satisfied that the accused-petitioner had committed the offences, and therefore, this Court should not interfere in the order. It was contended that it could not be the duty of the police officials to give beatings to the complainant, or that of the S.D.M. to hurl abuses on the complainant. It was canvassed that the police officials were not charged with the maintenance of public order when they committed the offence and therefore, protection under the notification issued under Sub-section (3) of Section 197, Cr.P.C. is not available to the four police officials. It was urged that on 23-3-98 when the complainant was taken and given beatings and the papers were removed from the office of Shiv Sena there was no case pending against the complainant, and therefore, the four police officials had not acted in the discharge of their duty.

8. I have given the matter my thoughtful consideration. The bone of contention is plot of land which belonged to Krishi Upaj Mandi. It was sold by one Pappu alias Chandrabhan to Kuldip on 30-12-96 and thereafter Pappu sold the same plot to Ram Kumar. He again sold the plot to Vijay Kumar on 11-3-98. The complainant's case is that he had exposed the transactions of sale of Government land stating that there was widespread conspiracy between the police and the administrative officers, by way of news item published in the newspapers.

9. First, it is to be seen whether protection under Section 197, Cr.P.C. is available to four petitioners who are police officials because of the Government Notification S. O. 89 dt. 31-7-74.

10. The relevant provisions of Section 197, Cr. P.C. are reproduced hereunder:--

197. Prosecution of Judges and public servants.-- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction--

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs

of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government :

Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression 'State Government' occurring therein, the expression 'Central Government' were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The. State Government may, by notification, direct that the provisions of Sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression 'Central Government' occurring therein, the expression 'State Government' were substituted.

(3-A) x x x x

(Emphasis supplied)

11. Under Sub-section (1) of Section 197, Cr.P.C. protection is available only to a Judge or a Magistrate or a public servant who is not removable from his office save by or with the sanction of the Government. It was frankly conceded by learned counsel for the petitioners that the appointing authority of the petitioners, who are police officials, is not the State Government and for his removal orders of the State Government are not required. Thus, protection is not available to them under Sub-section (1) of Section 197, Cr.P.C. Their case also does not fall under Sub-section (2), as they were not the members of the Armed Forces.

12. Under Sub-section (3) the State Government is empowered to issue notification for the members of the Force, charged with the maintenance of Public Order. In exercise of the power conferred under this sub-section the State Government had issued notification dt. 31 -7-74, which reads as follows:--

S.O. 89.-- In exercise of the powers conferred upon it under Sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973, the State Government hereby direct that the provisions of Sub-section (2) of the said Section shall apply to police officials, of all ranks, charged with the maintenance of public order, where ever they may be serving.

(Emphasis supplied)

13. A reading of the notification makes it clear that the provisions of Sub-section (2) of Section 197, Cr.P.C. have been made applicable to such of the police officials who are charged with the duty of maintenance of Public Order. It is obvious that the provisions of Sub-section (2) are not applicable to those police officials who are charged with duties other than maintenance of Public Order.

14. The question is what is Public Order? The word 'Public Order' has not been defined in the Code of Criminal Procedure. However, the scope and meaning of the words 'Public Order' can be understood by the provisions of Chapter X of the Code of Criminal Procedure.

The heading of Chapter X is 'Maintenance of Public Order and Tranquillity.' The subject matter of this chapter consists of (a) unlawful assemblies, (b) public nuisances, (c) urgent cases of nuisance or apprehended danger and (d) disputes as to immoveable property. It is obvious that if a member of the Police Force is asked to discharge duties on any of the subject matters of Chapter X, it will be said that he is charged with the duty of maintenance of 'Public Order'.--

15. A police official is required to perform multifarious duties such as maintenance of law and order, patrolling, execution of the process issued by the Court, providing assistance to the citizens in emergency etc. It is not possible to accept that a police official always performs the duty of maintenance of Public Order. It is

only in grave situation that the police official is charged with the duty of maintenance of 'Public Order'. The duty to maintain law and order arises out of the Chapters XI & XII of the Code of Criminal Procedure, wherein the police is supposed to! prevent the commission of a cognizable offence, arrest the persons if the offence is committed, register the case and make investigation. Some times, a member of the police force is asked to perform such duties which are not normally the duties of the police. If a member of the force performs such other duties or the duties under Chapters XI & XII of the Code of Criminal Procedure, it cannot be said that he is engaged on the duty of maintenance of Public Order. In other words if a police official is asked to handle the problem of 'law and order', it cannot be said that he is charged with the maintenance of 'Public Order'. There are several offences under the Penal Code such as theft, cheating, assault which do not violate or affect Public Order but only 'law and. order'. Such offence affects only specific individual as distinct to the public at large. So, if a police official is asked to investigate the offences of above categories or is asked to arrest the accused of that offence, it cannot be said that he is charged with the duty of maintenance of Public Order. It is obvious that while performing such duty he is concerned with the maintenance of law and order.

16. The Apex Court in relation to matters under the Preventive Detention Law had an occasion to interpret the term 'Public Order'. In the case of State of U. P. v. Hari Shankar Tewari, AIR 1987 SC 998 : 1987 Cri LJ 840, it was observed as follows (paras 7 and 8):--

Conceptually there is difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. Therefore, one has to turn to the facts of each case to ascertain whether the matter relates to the larger circle (public order) or the smaller circle (law and order).

In the case of Gulab Mehra v. State of U.P., AIR 1987 SC 2332 : 1988 Cri LJ 168 it was observed as follows (paras 17 and 20):

An act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to

particular individuals or a group of individuals it breaches the law and order problem, but if the effect and reach and potentiality of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes breach of the public order....Thus whether an act relates to law and order or to public order depends upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order.

The principle was reiterated in the case of *State of U.P. v. Kamal Kishore Saini*, AIR 1988 SC 208 : 1988 Cri LJ 405.

17. It is thus crystal clear that if a member of police force is asked to perform duties of patrolling in the area or serving the process on some person or persons or arrest an accused etc. it will be said that he performs official duty in relation to maintenance of law and order. On the contrary, if a police official is asked to control the mob from committing breach of prohibitory orders issued under Section 144, Cr.P.C. it will be said that he is charged with the maintenance of Public Order.

18. It is significant to point out that in (2) wherein the provis subsectionion is for the members of the Armed Forces of the Union, the words 'while acting orpurporting to act in the discharge of his official duty' have been used, whereas in Sub-section (3) these words 'while acting or purporting to act in the discharge of official duty' have been omitted. Instead, the words used are 'charged with maintenance of Public Order'. The jntention of the legislature is evident when instead of using words 'official duty', the words 'maintenance of public order' have been used in Sub-section (3). The words 'Charged with maintenance of Public Order' do not have the same meaning as that of the words 'while acting or purporting to act in the discharge of his official duty'. One may be discharging his 'official duty' yet it is not necessary that he is charged with the maintenance of the 'Public Order'.

19. In the instant case, the allegations are that the four police officials had gone to arrest the complainant and had taken him to the Police Station and given beating and had also taken him to the office of Shiv Sena from where certain papers were

removed. It is obvious that the four petitioners were not charged with the duty of maintenance of public order at the time of occurrence. That being so, they are not entitled to have the protection of Section 197, Cr.P.C, and therefore, no sanction for prosecution is required.

20. On the basis that a complaint was filed by the S.H.O., P.S., Nohar on 24-3-98 before the S.D.M. against complainant Chhabeela Ram and six others as party No. 1 and Fateh Mohd. and three others as party No. 2, it cannot be held that the act of the petitioners (police officials) was in relation to their duty. On 23-3-98 there was no complaint. The complaint was filed on the next day; and therefore, it cannot be said that there was. relationship of the act with the duty of the police officials on 23-3-98.

21. Pointing out that on 17-3-98 on the report lodged by Vijay Kumar, F.I.R. No. 61/98 under Sections 147, 148, 149, 323, 336, 379,447, IPC and 27 of the Arms Act was registered at Police Station, Nohar and again on 23-3-98 F.I.R. No. 66 was registered on the report of Vijay Kumar against the complainant and others under Sections 147, 148, 149 and 447, IPC, it was argued that Ramjas had acted in discharge of duty when he arrested the complainant and kept him in the Police Stations.

22. When a police official proceeds to investigate the matter in a case, it cannot be said that he is charged with the maintenance of public order. The investigation of a case is related to the duty of the maintenance of law and order, and therefore, on the basis of the cases registered on the F.I.Rs. lodged by Vijay Kumar, the petitioners (police officials) cannot claim protection of Section 197, Cr.P.C. It is different thing that they may raise a defence at the trial that the act was done in exercise of their duty.

23. The allegations against K. L. Badetia are that he was present at the police station on the night intervening 23-3-98 and 24-3-98 and he had asked the police officials to give beatings to the complainant, so that he forgot to make complaints and on 24-3-98 he had abused the complainant while sitting in his office when the complainant was produced before him. The learned Magistrate has accepted the evidence of the complainant and his witnesses. Apparently, it cannot be said that

the S.D.M. was acting in relation to his duty when he visited the police station in the night and asked the police officials to teach lesson to the complainant. So also, at this stage it is difficult to accept that the act of abusing by the S.D.M. while sitting in his office to the complainant was related to his duty. It is only after the case proceeds and the facts appear on record then it can be decided as to whether there was relationship between the act and the duty of the S.D.M.

24. In the case of Pukhraj v. State of Rajasthan AIR 1973 SC 291 : f3 Cri LJ 1795, it has been held that mere fact that the accused proposes to raise a defence of the act having purported to be done in exercise of duty will not itself be sufficient to justify the case being thrown out for want of sanction and facts subsequently coming to light during the course of the trial may establish the necessity for sanction. It is apposite to read para 3 hereunder:--

3. We must also make it clear that this is not end of the matter. As was pointed out in Sarjoo Prasad v. King Emperor, 1945 FCR 227 : AIR 1946 FC 25 : 1946 (47) Cri LJ 838 referring to the observations of Sulaiman, J. in Hori Ram Singh's case 1939 (40) Cri LJ 468 : AIR 1939 FC 43 (supra) the mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient to justify the case being thrown out for want of sanction. At this stage we have only to see whether the acts alleged against the 2nd respondent can be said to be in purported execution of his duty. But facts subsequently coming to light during the course of judicial inquiry or during the course of the prosecution evidence at the trial may establish the necessity or not may have to depend from stage to stage. The necessity may reveal itself in the course of the progress of the case (see observations in (1955) 2 SCR 925 : AIR 1956 SC 44 : 1956 Cri LJ 140 (supra). In (1971) 1 SCR 317 : AIR 1970 SC 1661 : 1970 Cri LJ 1401 (supra) also it was pointed out that it would be open to the appellant (the 2nd respondent in this case) to place the material on record during the course of the trial for showing what his duty was and also that the acts complained of were so inter-related with his official duty so as to contract the protection afforded by Section 197, Cr.P.C.

25. If Mr. Badetia, petitioner satisfies the Court during the course of trial that the act was done in execution of duty, the trial Court would be well within its powers to stop the trial of the case against him and refuse to proceed further without the sanction under Section 197, Cr.P.C. but at this stage on the basis of the alleged defence the prosecution cannot be quashed.

26. There is material on record that Fateh Mohd. and Niranjana were also present at the Police Station when the police officials had given beatings to the complainant. It is also alleged that when the complainant was asked to sit in the Jeep, the two petitioners were also there and they had also gone with the police party to the office of Shiv Sena from where the papers were removed. On the basis of the evidence produced before the Magistrate, it cannot be said that the Magistrate has erred in summoning the two petitioners in the case.

27. Now, it is to be seen that as to how the following observations of the Supreme Court in the case of Pepsi Foods 1998 Cri LJ 1 (supra) help the petitioners at p. 8 of Cri LJ :--

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

28. The facts of the case were that the cpm-complainant had purchased a bottle of beverage under the brand 'Lehar Pepsi' which was found to be adulterated. The

complainant, therefore, filed complaint against the Vendor as also manufacturer of the 'Lehar Pepsi'. The Magistrate summoned M/s. Pepsi Food Limited as the manufacturer of the beverage, though the name of M/s. Pepsi Food Limited was not mentioned as manufacturer on the top cap of the bottle and there was nothing on record to show that the appellants of that case were having licence of the beverage and they were the manufacturers thereof. Neither in the complaint nor in the primary evidence recorded it was stated as to how the complainant could say that the appellants had manufactured the alleged bottles or its contents. It is on these facts that the Apex Court allowed the special leave and quashed the complaint and the proceedings against the appellants. The case is thus clearly distinguishable. In the instant case, there is evidence on record that all the petitioners had taken part in the occurrence/s. It is not a case where the Magistrate has not passed a reasoned order. The Magistrate has considered the evidence produced before him, and therefore, it cannot be said that he has not carefully scrutinised the evidence brought on record. Of course summoning of an accused in a criminal case is a serious matter but when it is done by the Magistrate on the basis of the evidence produced before him no objection can be taken against the order.

29. In the case of Suresh Kumar 1998 Cri LJ 1242 (supra) what the Apex Court has opined is that an accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority. As already stated, for the present there is no material on record on which it can be said that there was relationship of the act of the accused with his duty. If at the subsequent stage of the case such material is produced before the Magistrate he shall be well within his powers to hold that cognizance could not be taken against the petitioner without sanction under Section v, Cr.P.C. On the basis of the authority of Suresh Kumar (supra) it cannot be held that cognizance could not be taken against Mr. Badetia without the sanction of the State Government.

30. Consequently, there is no merit in the petitions and they are hereby dismissed.

