

Tejmal and ors. Vs. State and anr.

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Court : Rajasthan

Decided On : Aug-21-2006

Reported in : II(2007)DMC475; RLW2007(1)Raj14

Judge : Harbans Lal, J.

Appellant : Tejmal and ors.

Respondent : State and anr.

Disposition : Petition dismissed

Judgement :

Harbans Lal, J.

1. The instant petition under Section 482 Cr.P.C. is directed against the order dated 5.12.2005 passed by the learned Addl. District and Sessions Judge, Kota in Criminal Revision No. 243/2005 whereby the revision has been dismissed and the order dated 22.10.2005 of the learned Judicial Magistrate, Itawa in Criminal Case No. 356/2005 taking cognizance against the petitioners for the offence under Section 498A IPC and summoning them through non-bailable warrant has been upheld.

2. The brief facts of the case are that the complainant non-petitioner No. 2 Radha Bai filed a complaint before the learned Judicial Magistrate, Itawa on 15.6.2004

which was forwarded to the police under Section 156(3) Cr.P.C. for investigation. During the course of investigation, both the parties entered into a compromise and filed a joint application before the investigating officer on the basis of which the negative final report was filed before the Court on 15.10.2004. The final report was accepted by the learned Magistrate on 12.4.2005. However, a protest petition was filed by the complainant non-petitioner No. 2 before the learned Magistrate on 22.10.2005 whereupon the order taking cognizance for the offence under Section 498A IPC and summoning the petitioners through non-bailable warrants was passed. The petitioners preferred a revision petition before the learned District & Sessions Judge, Kota against the said order which was disallowed as indicated above. Hence, this petition.

3. Learned Counsel for the petitioners has contended that the order dated 22.10.2005 of the Judicial Magistrate, Itawa taking cognizance as well as the order dated 5.12.2005 of the learned District & Sessions Judge, Kota disallowing the criminal revision petition are bad in law being against the materials and evidence on record which deserve to be quashed and set aside. The learned Magistrate could not have reviewed its own order dated 12.4.2005 and accepted the final report. The learned Magistrate could not have taken cognizance on the basis of the protest petition after having accepted the final report. The learned Court below has wrongly mentioned in the order that the offence under Section 498A IPC is not compoundable whereas the Hon'ble Apex Court has held in matrimonial matters that if genuine settlement has been arrived at between the parties, the bar on compounding of offences under Section 320 Cr.P.C. shall not come in the way.

4. Learned Counsel for the non-petitioner as well as learned Public Prosecutor has both tried to support the impugned order dated 22.10.2005 whereby cognizance has been taken against the petitioners for the offence under Section 498A IPC. They have pointed out that the final report was accepted without giving notice to the complainant and, therefore, the order accepting final report was nonest. The learned court below having already passed an order restoring the final report on this ground, has not reviewed its order, but has only rectified the factual mistake that came to be committed in this case. Thereafter, the composite order disallowing the final report and taking cognizance for the offence under Section

498A IPC against the petitioner has been passed. They have also submitted that the present petition tantamounts to second revision which is barred under Section 397(3) Cr.P.C.

5. I have considered the rival submissions made at the bar and have also gone through the order of the trial Court as well as that of the revisional court and the relevant documents.

6. It is well settled as held in *India Carat Pvt. Ltd. v. State of Karnataka and Anr.* : [1989]1SCR718 that the Magistrate is entitled to take cognizance of the offence under Section 190(1)(b) Cr.P.C. even if the police report is to the effect that no case is made out against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply its mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) Cr.P.C. and direct the issue of the process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 Cr.P.C. for taking cognizance of the case under Section 190(1)(a) Cr.P.C., though it is also open to him to act under Section 200 or 202 Cr.P.C.

7. Learned Counsel for the petitioner has referred to the case of *Maj. Genl. A.S. Gauraya and Anr. v. S.N. Thakur and Anr.* : 1986 CriLJ1074 , *Bindeshwari Prasad Singh v. Kali Singh* : 1978 CriLJ187 , *Vinod Baid v. State of Rajasthan and Anr.* 2002 (2) RLR 56, *H.S. Bains v. The State (Union Territory of Chandigarh)* : 1980 CriLJ1308 and *State of Kerala v. M.M. Manikantan Nair* 2001 (3) Supreme 526. But in none of these cases, the controversy in the present petition has been dealt with or decided. In none of these cases final report was accepted and the said order was recalled because no notice as was required to be given to the complainant was given to him. Therefore, these authorities do not help the petitioner.

8. Learned Counsel for the complainant non-petitioner No. 2 has relied upon *Goyal Vijay Verma v. Bhuneshwar Prasad Sinha and Ors.* 1983 SCC (Cri) 110 wherein it has been held that the Magistrate is not debarred from taking cognizance on a complaint merely on the ground that he had earlier declined to take cognizance on

police report.

9. In Union Public Service Commission v. S. Papaiah and Ors. IV (1997) CCR 17 (SC) wherein it has been held that admittedly no notice was issued by the Vth Metropolitan Magistrate to the appellant before accepting the final report submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the learned court accepting the final report. It was held that the issue is no longer res-Integra. A three Judge Bench of the Apex Court in the case of Bhagwant Singh v. Commissioner of Police and Anr. : 1985 CriLJ1521 has held that the Magistrate can adopt one of the three courses; i.e. (1) he may accept the report and drop the proceedings, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (3) he may direct further investigation to be made by the police under Sub-section (3) of Section 156. Where he adopts first course, he must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

10. It is well settled that the order taking cognizance is an order against which revision lies and revision has in fact been filed against the order in this case and the same has been disallowed. The instant petition appears to have been filed to circumvent the bar on filing of second revision provided under Section 397(3) Cr.P.C. which is not permissible under the law. The inherent powers of this Court cannot be exercised as a substitute for second revision. No abuse of the process of the Court has been shown nor it is otherwise expedient in the interest of justice to exercise inherent powers of this Court. In this matter, the initial order accepting final report having been passed without giving notice to the complainant informant was nonest and, therefore, no question arose of review of such an order. The second order taking cognizance and rejecting the final report was well within the jurisdiction and powers of the learned Magistrate and no fault can be found in the said order.

11. In this view of the matter, therefore, the instant petition being not maintainable and being without merit and substance deserves to be and is hereby dismissed.

