

Parveen Kumar and anr. Vs. the State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-21-1996

Reported in : 1996(1)WLN312

Judge : A.K Singh, J.

Appeal No. : S.B. Criminal Misc. Petition No. 113 of 1986

Appellant : Parveen Kumar and anr.

Respondent : The State of Rajasthan and anr.

Disposition : Petition dismissed

Judgement :

A.K. Singh, J.

1. This petition under Section 482 Cr.P.C. has been filed against the order dated 6.3.1986 passed by the learned Additional District and Sessions Judge, Rajsamand in Criminal Revision Petition No. 45/1985. It appears that Criminal Revision Petition No. 45/1985: Parveen Kumar and Anr. v. Paras Ram was filed against the order dated 7.6.1985 passed by the learned Additional Chief Judicial Magistrate, Rajsamand. in Criminal Case No. 105/1985 ; Paras Ram v. Parveen Kumar and Ors. By the impugned order dated 7.6.1985 the learned Additional Chief Judicial Magistrate issued process against the petitioners under Section 204

Cr.P.C. in a case instituted on a complaint filed by non-petitioner No. 2 alleging commission of offences punishable under Sections 330 and 342 I.P.C.

2. The facts of the case may be summarised as under-On 7.10.1984 non-petitioner No. 2 Paras Ram lodged a first information report at the Police Station, Rajsamand. In that report he alleged that on 5.10.1984 when he went to his field he was caught by Shyamraj, Jagdish Watchman, B.L. Gupta, Security Officer Chopra, Vijai Singh and Kedar Nath who alleged that he has committed theft of a machine. It was also alleged that he was forcibly taken to a room in the Club where he was subjected to third degree treatment for the purpose of obtaining from him the information about the machine. He was illegally confined and beaten and after some time he was taken to his field where he was left unattended. When he regained his senses in the morning about 8 A.M. and thereafter he was taken to the Hospital as his condition was bad. The police registered a case under Sections 147, 330, 323 and 342 IPC on the basis of the report submitted by non-petitioner No. 2. After usual investigation a report under Section 173 Cr.P.C. was submitted by the police in the court of Additional Chief Judicial Magistrate, Rajsamand. In that report the police alleged that offences under Sections 330 and 348 IPC were prima facie proved against Banarasi Lal, Vijaj Singh, Kedar Nath and Shyamraj. Learned Additional Chief Judicial Magistrate, Rajsamand took cognizance of the offences and commenced proceedings against the above mentioned four accused persons. In the police report submitted under Section 173 Cr.P.C. the police did not make any allegations against the petitioners Parveen Kumar Chopra and Jagdish Watchman. Non-petitioner No. 2, therefore, submitted an application before the learned Additional Chief Judicial Magistrate, Rajsamand praying that the court should proceed against Parveen Kumar and Jagdish Watchman also. The petition submitted by the non-petitioner No. 2 was treated as a complaint and cognizance of the offences mentioned therein was taken under Section 190(1)(a) Cr.P.C. Non-petitioner No. 2 Paras Ram was examined on oath and after conducting an enquiry under Section 202 Cr.P.C. the learned Additional Chief Judicial Magistrate issued process against the petitioners Parveen Kumar and Jagdish Watchman for having committed offences punishable under Sections 330 and 342 IPC. This order was passed on 7.6.1985. Feeling aggrieved by the order dated 7.6.1985 the petitioners filed a revision petition No. 45/1985.

3. In the revision petition several grounds were taken for challenging the order passed by the learned Additional Chief Judicial Magistrate.. The learned Additional District and Sessions Judge, Rajsamand after taking into consideration the facts of the case as well as the relevant provisions of law dismissed the revision petition by the order dated 6.3.1986. Hence this petition Under Section 482 Cr.P.C. for quashing the order of the learned Additional District and Sessions Judge, Rajsamand and the order dated 7.6.1985 passed by the learned Additional Chief Judicial Magistrate, Rajsamand.

4. Learned Public Prosecutor has raised a preliminary objection to the maintainability of this petition under Section 482 Cr.P.C. His objection is to the effect that once a revision petition under Section 397 Cr.P.C. has been rejected by the Sessions Court a petition under Section 482 Cr.P.C. is not maintainable.

5. Learned counsel for the petitioners has submitted that a petition under Section 482 Cr.P.C. is maintainable even in those cases where a revision petition under Section 397 Cr.P.C. has been rejected by the Court of Sessions because there may be cases where a revision petition filed before the Court of Sessions may not be disposed of in accordance with law and the Sessions Court may pass an order which may amount to abuse of the process of the Court or in respect of which it may become necessary for this Court to exercise the powers under Section 482 Cr.P.C.

6. In my opinion, Section 482 Cr.P.C. being an independent provision cannot be read as subject to the provisions relating to revision under Section 397 Cr.P.C. The object behind conferring inherent powers on the High Court under Section 482 Cr.P.C. is to enable the High Court to pass suitable orders where the High Court is satisfied that for the purpose of preventing the abuse of the process of the Court or for giving full effect to the orders passed under the Code or for securing the ends of justice it is necessary to exercise the inherent powers. Nothing is more important for the court of justice than the ends of justice and therefore, having regard to the object for which the inherent powers under Section 482 Cr.P.C. has been conferred on this Court it would not be proper to hold that a petition under Section 482 Cr.P.C. cannot be filed in any case in which a revision petition under

Section 397 Cr.P.C. has been rejected by the Court of Sessions. At the same time it has to be appreciated that the object of Section 482 Cr.P.C. is not to carve out short cuts for the purpose of giving relief to any party by adopting a course which renders the express provision of law ineffective or redundant. The inherent powers conferred by Section 482 Cr.P.C. cannot be exercised where there are express provisions of law prescribing any certain course of procedure for the purpose of investigation, enquiry or trial. Therefore, ordinarily if a revision petition has been dismissed by the Court of Sessions and there is nothing to indicate that the order passed by the Court of Sessions amounts to abuse of the process of the Court, it would not be proper to exercise the powers under Section 482 Cr.P.C. because the exercise of powers under Section 482 Cr.P.C. in the cases would amount to exercising a revision against the order passed by the Court of Sessions under Section 397 Cr.P.C. In view of the above mentioned reasons a petition under Section 482 Cr.P.C. by a party to a case does not appear to be legally barred but in each case the exercise of powers under Section 482 Cr.P.C. would depend on the satisfaction of the Court that necessity for exercise of inherent powers has been well established. The objection raised by the learned Public Prosecutor against the maintainability of this petition is, therefore, decided accordingly.

7. Learned counsel for the petitioners has submitted that since a challan under Section 173 Cr.P.C. had been filed against the co-accused the learned Additional Chief Judicial Magistrate, Rajsamand could not treat the application of the non-petitioner No. 2 as a complaint and, therefore, he could not proceed to hold an enquiry under Section 202 Cr.P.C. nor he could have issued process against the petitioners by the impugned order dated 7.6.1985.

8. In my opinion, this objection is groundless. Clauses (a), (b) and (c) of Sub-section (1) of Section 190 Cr.P.C. empower the Magistrate to take cognizance of an offence on the basis of a complaint or a police report or information received from a person other than a police officer or on the basis of personal knowledge of the Magistrate. There is nothing in the Criminal Procedure Code to indicate that a Magistrate taking cognizance of an offence on the basis of the police report submitted under Section 173 Cr.P.C. is debarred from taking cognizance of the offences on the basis of a complaint. Section 210 Cr.P.C. itself contemplates the

taking of cognizance on the basis of a complaint if the police has omitted to submit a challan against some of the accused persons. It is true that when a Magistrate takes cognizance of an offence he takes cognizance of offence only and not of the offenders and after taking cognizance of the offence it is the duty of the Magistrate to find out as to who the offenders are and to proceed against them (See *Raghuvansh Dubey v. State of Bihar* : 1967 CriLJ1081 . The duty to find out as to who are the offenders can be performed by the Magistrate by conducting judicial enquiry. The enquiry in cases instituted on complaint can be conducted under Section 202 Cr.P.C. and an enquiry in cases instituted on a police report submitted under Section 173 Cr.P.C. can be conducted by going through the documents as well as the report submitted by the police after investigation. In what manner the enquiry is to be conducted in cases instituted under clause (c) of Sub-section (1) of Section 190 Cr.P.C. is not expressly provided anywhere in the Code. It is true that in view of the provisions of Section 165 of the Evidence Act the Magistrate can examine any party or witness for the purposes of ascertaining the truth at any stage of the enquiry or trial. In cases instituted on a police report submitted under Section 173 Cr.P.C. what the Magistrate can do is to peruse the police report and the documents submitted along with the police report and come to the conclusion whether any offence has been committed and if so by whom. He may call any witness as a Court Witness at that stage but ordinarily it is not expected of him that he would examine any witness before issuing process against the accused persons because the report under Section 173 Cr.P.C. is a report submitted after completion of the investigation. In view of the above scheme of the Code in cases instituted on a police report if the Magistrate after perusing the police report and the documents submitted with it comes to the conclusion that certain persons appeared to have committed the offence then he may proceed against them under Section 204 Cr.P.C. After proceeding under Section 204 Cr.P.C. (f) during the trial the evidence is produced to indicate additional accused then he may proceed against the additional accused under Section 319 Cr.P.C. in cases where the police officer who conducted the investigation has not been able to collect sufficient evidence against the accused persons other than those sent by him to the Magistrate, the complainant is not helpless. In such cases, the complainant has a right to move the competent court by submitting a complaint within the

meaning of Clause (a) of Sub-section (1) of Section 190 Cr.P.C. and the Magistrate would be within his rights to take cognizance of the offence or offences on the basis of such complaint and conduct an enquiry under Section 202 Cr.P.C. to find out whether the additional accused named in the complaint have or have not committed the alleged offences. If he finds that the allegations against them are not established he may reject the complaint under Section 203 Cr.P.C. but if he comes to the conclusion that against the additional accused named in the complaint there is sufficient ground to proceed against them he is duty bound to proceed against them under Section 204 Cr.P.C. I, therefore, do not find any force in the submission that the learned Additional Chief Judicial Magistrate, Rajsamand had no jurisdiction to take cognizance case on the basis of the complaint filed by the non-petitioner No. 2.

9. The next submission of the learned counsel for the petitioners is that In the criminal case Instituted on the police report submitted under Section 173 Cr.P.C. Vijay Singh, Banarsi Lal, Shyamraj and Kedarnath were tried under Sections 330 and 348 I.P.C. During the trial the non-petitioner No. 2 was examined as a prosecution witness No. 1 and on 18.4.1988 his statement was recorded. In that statement he alleged that four accused persons named above forcibly took him to the Club and there caused him beating with shoes and sticks and when they were beating him Chopra Saheb and Jagdish Watchman (petitioners) reached there and have objected to the beating and Chopra Saheb asked the above named four accused persons to stop beating and in fact the petitioner were responsible for securing a release of non-petitioner No. 2. It is submitted by the learned counsel for the petitioners that this statement of non-petitioner No. 2 made, on 18.4.1988 during the trial of Criminal Case No. 233/84 clearly shows that the petitioners did not take any part in the alleged offences and that they are Innocent and, therefore, it would be in the interest of justice that the proceedings instituted against the petitioners on the complaint filed by the non-petitioner No. 2 should be quashed In exercise of the powers vested in this Court under Section 482 Cr.P.C.

10. Learned Public Prosecutor has opposed the prayer made by the learned counsel for the petitioners.

11. I have given due consideration to the submission made by the learned counsel for the parties. It is true that in the statement dated 18.4.1988 recorded during the trial of criminal cases No. 233/1984 instituted on the basis of the police report the non-petitioner No. 2 has given a statement which goes to show that the petitioners did not take part in the commission of the offences alleged by him. But it is equally true that in the complaint case No. 105/85 when the non-petitioner No. 2 was examined on 11.4.1985 he made allegations against the petitioners to the same extent and in the same manner in which he made allegations against the other accused who were challenged by the police. There are, thus, two statements of the non-petitioner No. 2, the first statement was recorded on 11.4.1985 which prima facie shows that there are sufficient ground to proceed against the petitioners and the second statement was recorded on 18.4.1988 which appears to give an Impression that the petitioners did not take any part in the alleged offences. The crucial question therefore is (hat in view of the .statement given by the non-petitioner No. 2on 4.1988 during the trial of criminal case No. 233/84 instituted on a power report, the order dated 7.6.1985 and subsequent proceedings in the case Instituted on the complaint of non-petitioner No. 2'should be quashed in exercise of the powers conferred by Section 482 Cr.P.C.

12. I am afraid, the prayer made by the learned counsel for the petitioners cannot be accepted. When the learned Additional Chief Judicial Magistrate, Rajsamand passed the order dated 7.6.1985 he had before him the statement given by the non- petitioner No. 2 on 11.4.1985. This statement was recorded under Section 202 Cr.P.C. On 7.6.1985 the learned Additional Chief Judicial Magistrate-, Rajsamand did not have before him the statement made on 18.4.1988 by the non-petitioner No. 2. Since the statement dated 11.4.1985 prima facie discloses sufficient ground to proceed against the petitioners, it cannot be said that the learned Additional Chief Judicial Magistrate, Rajsamand committed any mistake in passing the impugned order dated 7.6.1985.

13. Once it is held that the order dated 7.6.1985 does not suffer from any legal infirmity, nor it amounts to abuse of the process of the Court, it would be improper for this Court to quash that order under Section 482 Cr.P.C.

14. Faced with this legal position, the learned counsel for the petitioners submitted that in view of the statement made by the non-petitioner No. 2 on 18.4.1988 in Criminal Case No. 233/84 it would be a sheer wastage of time if the proceedings instituted on complaint are permitted to be continued in the lower Court. He has, therefore, urged that this Court should make use of the statement given by the non-petitioner No. 2 on 18.4.1988 and in view of that statement this court should quash the proceedings of the lower Court for the purpose of securing justice to the petitioners. The course suggested by the learned counsel for the petitioners is not warranted by any provisions of law. In a complaint case after the issue of process under Section 204 Cr.P.C. in a warrant case the complainant has a statutory right to produce his evidence under Section 244 Cr.P.C. This right cannot be denied to him. The statement recorded under Sections 200 and 202 Cr.P.C. cannot be used as a substantive piece of evidence during the trial. Therefore, the complainant and his witnesses have to be examined afresh in presence of the accused under Section 242 Cr.P.C. If the accused persons want to challenge their veracity they can cross-examine them and for the purpose of impeaching their credibility if there is any previous statement, which is inconsistent with any statement made in the Court in presence of the accused such previous statement may be used for contradicting the witnesses under Section 145 of the Evidence Act. On being contradicted by a previous statement a witness may try to explain the alleged contradiction. If his explanation is satisfactory the Court may hold that the alleged contradiction has been satisfactorily explained and it does not adversely affect the testimony of the witness but if the alleged contradiction is not satisfactorily explained the Court may draw an inference under Section 114 of the Evidence Act that the witness has made Improvements and his testimony is unreliable. whether in part or fully. Unless he; alleged contradiction is put to the witness under Section 145 of Evidence Act, the accused cannot make use of the contradiction between a previous statement and the statement made in the court during the trial. The principles of natural justice as much apply to the witnesses as apply to the party to the case. Therefore in cases where any party has an opportunity to contradict a witness under Section 145 of the Evidence Act if such party wants to use the alleged contradiction for discrediting the witness it would be necessary for the party to act under Section 145 of the Evidence Act so that the witness may get

an opportunity to admit: or deny the alleged previous statement and to explain the alleged inconsistency. A party who fails to draw attention of the witness to a contradictory statement made by the witness on the earlier occasion may not be permitted to assert that the witnesses are unreliable' on the ground of alleged contradiction, because in such cases the party who deliberately omits to draw the attention of the witness to the alleged contradictory statement may be presumed to be wanting him courage to act in accordance with Section 145 of the Evidence Act and adverse inference may, therefore, be drawn against that party and it may be inferred that either the previous statement was not made by the witness or that there is no real contradiction between the statement made in the court and the previous statement. In the complaint case instituted on complaint of non-petitioner No. 2 the stage for examination of the complainant and his witnesses under Section 244 Cr.P.C. has yet not reached. Under Section 244 Cr.P.C. the non-petitioner No. 2 who is the complainant in that case has a statutory right to examine himself and his witnesses and this right cannot be denied to him. After his examination-in-chief is recorded, if there is a contradiction between the statement made in examination-in-chief and in the previous statement he may be contradicted under Section 145 of the Evidence Act by the petitioners. This would give the non-petitioner No. 2 an opportunity to explain the alleged contradiction and it would be the function of the Court trying the case to find out whether the testimony of the complainant and his witnesses is or is not successfully impeached by the alleged contradiction. At this stage it cannot be anticipated as to what statement the non-petitioner No. 2 would be giving in the complaint case. It is not possible for this Court to anticipate whether the accused persons will or will not draw the attention of the non-petitioner after his examination-in-chief is recorded to any previous statement and it is also not possible for this Court to anticipate what explanation the non-petitioner No. 2 would be giving before the trial court on being confronted with his previous statement. Suffice it to say, that for the purpose of trial of the complaint case the substantive evidence would be the statement made by the complainant and his witnesses under Section 244 Cr.P.C. The earlier statements made by the non-petitioner No. 2 and his witnesses whether before the Investigating Officer or before any other Court or Tribunal would not be substantive piece of evidence for the purpose of trial of the complaint case.

Therefore, the prayer that the statement dated 18.4.1988 of non- petitioner No. 2 should be taken into consideration by this Court In exercise of the powers vested under Section 482 Cr.P.C. and the proceedings instituted on complaint should be quashed, cannot be accepted.

15. Lastly it is urged by the learned counsel for the petitioners that every accused person has a fundamental right to early disposal of the case which means that he has got a fundamental right against unnecessary harassment by a criminal prosecution and, therefore, In view of Article 21 of the Constitution of India the petitioners should be saved from harassment which is likely to be caused to them by undergoing a trial in the complaint case as there is no possibility of their conviction in view of the statement dated 18.4.1988 of the non-petitioner No. 2. The argument is attractive on principle. It may be conceded that every citizen has got a fundamental right under Article 21 of the Constitution of India against unnecessary prosecutions started against him. The fundamental right enshrined in Article 21 of the Constitution is not an absolute right because Article 21 itself indicates that life as well as personal liberty of a citizen can be curtailed in accordance with the procedure established by law. Therefore, if there is a valid law prescribing a procedure and the authorities exercising their powers under such law or are not abusing their power and are acting in furtherance of the object for which the powers have been conferred on them then the citizen cannot make any grievance that the exercise of the powers by public authorities is resulting in unnecessary curtailment of his personal liberty under Article 21 of the Constitution. The State being the guardian of life, personal liberty and properties of all the citizens of the country are duty bound to create and maintain a system in which the life, liberty and properties of the citizens are not unnecessarily encroached upon by any one. Those who commit crimes interfere with the system and it is the duty of the State to take cognizance of the crimes to find out who the offenders are and to punish them so that such crime may not be repeated. It is for this purpose that the State is required to create the agency of police and agency of the courts so that the police may investigate into the offences and the courts may conduct judicial enquiry and trial for the purpose of finding out who the offenders are and to punish them. Conferment of powers on the police officers and the Courts has one basic object to protect the system created by laws for protection of life, liberty and

properties of the citizens. Without such powers neither the police officer can perform his duties nor the Courts would be able to do justice. The law, therefore, confers powers and prescribes procedure which should be followed by the authorities for efficient performance of their functions. If the exercise of powers in accordance with the procedure leads to curtailment of any person's personal liberty then it cannot be said that such curtailment is otherwise than according to the procedure established by law and no body can have a grievance that his fundamental rights under Article 21 is curtailed by action according to the procedure established by law. In devising the procedure the legislature utilises the experience collected over a long period, visualises the necessary steps which must be taken by the authorities and also visualises the harms which may occur if certain safeguards are not taken. The object of procedure established by law is, therefore, to serve the purpose for which the law has been enacted and to protect the life, liberty and properties of the citizens by causing least possible inconvenience to the citizens. Therefore, such procedure cannot be abided for the purpose of serving the interest of one or more parties. Viewed in the light of multidimensionality of objects of law and the multidimensionality of life with which such laws are concerned, no party has got a right to assert that to serve its personal ends. The procedure established by law should be avoided. Viewed in this light justice is not merely the fulfillment of desires and needs of certain parties. It is an embodiment of the good having regard to the necessity of serving the interests not only of the individuals but of masses constituted by the common men. Wherever any rule or procedure is avoided for the purpose of giving relief to a single individual or to a limited number of individuals, there is always a danger that large number of persons whose interest are protected by such law may suffer if the law is avoided and a short cut is adopted for giving relief to individuals.

16. Viewed in this light there does not appear to be any justification for quashing the proceedings commenced on the basis of the complaint filed by the non-petitioner No. 2. The law must be allowed to take its own course. The non-petitioner No. 2 who is the complainant should be given an opportunity to produce his evidence under Section 244 Cr.P.C. and then the petitioners will have a right to make such use of the earlier statement of the non-petitioner No. 2 and his witnesses as they may be advised accordingly to law and thereafter it would be

the function of the lower court to decide the case according to law.

17. I am, therefore, not inclined to accept this petition under Section 482 Cr.P.C. It deserves to be rejected and is hereby rejected.

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