

Jan Mohd. and anr. Vs. the State of Rajasthan and anr.

Jan Mohd. and anr. Vs. the State of Rajasthan and anr.

SooperKanoon Citation : sooperkanoon.com/766690

Court : Rajasthan

Decided On : Mar-13-1995

Reported in : 1995(1)WLN446

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Criminal Misc. Petition No. 173 and 403 of 1993

Appellant : Jan Mohd. and anr.

Respondent : The State of Rajasthan and anr.

Disposition : Petition dismissed

Judgement :

Rajendra Saxena, J.

1. Petitioner Jan Mohd. has filed petition under Section 482 Cr.PC against the order dated 23.9.1989 passed by the learned Munsif & Judicial Magistrate, Makrana whereby after conducting enquiry under Sections 200 and 202 Cr.PC on the Criminal complaint filed by Abdul Rehman, he took cognizance against Jan Mohd. for the offences under Sections 147,323,336,341/149 IPC and against co-accused persons Mohd. Rafi, Narayan, Hanuman and Mangu for the offences under Sections 147,323,341 read with Section 149 IPC and ordered for issuance of summons against the said accused persons.

2. Petitioner Abdul Rehman has filed petition under Section 482 Cr.PC against the order dated 18.4. 1988 passed by the learned Munsif & Judicial Magistrate, Makrana in F.R. No. 88/86, Police Station, Makrana, whereby the said Final Report was accepted.

3. Since both the petitions arise out of the same incident and are inter-connected, those are being disposed of by this common order.

4. Briefly the relevant facts are that on the report of Abdul Rehman dated 26.7.1986, a Criminal Case No. 156/86, Police Station, Makrana was registered against Jan Mohd., Kabir Narayan Hanuman Mali and Mangu for an incident which occurred on 26.7.1986. After investigation, the Police submitted Final Report. No. 88/86 which was accepted by the learned Munsif & Judicial Magistrate, Makrana by his order dated 18.4.1988. It appears that the notice of the F.R. was sent to the complainant Abdul Rehman but same returned unserved and the learned Magistrate without hearing the complainant accepted the said F.R. Thereafter, on 30.5.1988, Abdul Rehman filed a criminal complaint against the aforementioned accused petitioner and other co-accused persons in respect of the same incident dated 26.7.1986. The learned Magistrate examined Abdul Rehman under Section 200 Cr.PC and his witnesses Pokar Ram and Mohd. Safi under Section 202 Cr.PC and vide impugned order dated 23.9.1989 took cognizance against petitioner Jan Mohd. and other accused persons.

5. The contention of Shri N.S. Bhati is that once the learned Magistrate had accepted the F.R., which was a judication or he had no jurisdiction to take cognizance against the petitioner and other accused persons on the basis of the criminal complaint filed Abdul Rehman which was belated. He has also asserted that before taking cognizance, the learned Magistrate ought to have issued notice to the petitioner. In support of his contention he has placed reliance on *Kishan Lal v. State of Rajasthan* 1991(16) R.CrC 619.

6. In my considered opinion, both the arguments submitted by Shri Bhati are misconceived and must abort.

7. In *Gopal Vijay Verma v. Bhuneshwar Prasad Sinha and Others* 1983 SCC (Cri.) 110, 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 a police report. Therefore, acceptance of F.R. is no bar for taking cognizance about the same incident by the Magistrate under Section 190(1) Cr. PC, if on the criminal complaint and after holding enquiry under Sections 200 and 202 Cr.PC he finds prima facie some offence is made out.

8. In *Janki Prasad v. State of Rajasthan & Others* (1991(16) R.Cr.C 584) a similar view has also been taken by this Court.

9. In the case on hand, the notice of the F.R. was not served on complainant Abdul Rehman and the learned Magistrate without affording him an opportunity of hearing, had accepted the F.R.

10. In *Bhagwant Singh v. Commissioner of Police and Another* : 1985 CriLJ1521 , the Apex Court has held that in case where the Magistrate to whom a report is forwarded under Section 173(2) Cr.PC decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the final report, Therefore, in such circumstances the order accepting the Final Report without affording an opportunity of hearing to complainant Abdul Rehman was also bad and as such complainant Abdul Rehman was well within his rights to file a criminal complaint separately. He had also given satisfactory explanation for the delay in filing the criminal complaint. In such circumstances, the first contention of Shri Bhati is hereby repelled.

11. In *Kishon Lal's case* (supra), it has been held, that dismissal of complaint or accepting negative report or discharging of accused is a judicial order determining rights of the parties and such an order can be challenged in revision., However, as per provisions of Section 401(2) Cr.PC, the right of the accused of being heard during the revision proceedings is mandatory. There cannot be two opinions about this principle of law but it is not at all necessary to issue notice to the accused by

the Magistrate before taking cognizance on a criminal complaint filed before him. Therefore, Kishan Lal's case is not at all applicable in this case.

12. On merits, I have carefully perused the statements of Abdul Rehman and his witnesses and therefrom reasonable grounds existed to believe that petitioner Jan Mohd. has committed offences under Sections 147,323,336, 341 read with Section 149 IPC. Therefore, the learned Magistrate has not committed any illegality in taking cognizance against the petitioner for the said offences.

13. The upshot of the above discussion is that the petition filed by Jan Mohd. stands dismissed, while the petition filed by Abdul Rehman against acceptance of the F.R. is allowed. Since on the criminal complaint filed by Abdul Rehman cognizance against the accused-petitioner has already been taken, therefore, now it is not necessary to issue notices to him for 'the F.R.

14. The record of the lower court be sent back. The parties are directed to appear before the learned CMJ Judge (Junior Division) and Judicial Magistrate, Makrana on 17.5.1995 for further proceedings.