

Durga Dutt and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Aug-23-1994

Reported in : 1995(1)WLC114; 1994(2)WLN533

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Cr. Misc. Petition No. 121 of 1993

Appellant : Durga Dutt and ors.

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

Rajendera Saxena, J.

1. This petition filed Under Sections 482 Cr. P.C. has been preferred against the order dated 2.2.93 passed by the learned Addl. Sessions Judge, Churu, whereby he dismissed accused petitioner's revision petition as time barred against the order date 8.6.92 of the learned Munsif & Judicial Magistrate, Churu taking cognizance of offences Under Sections 147, 323, 324, 452 & 149 IPC against them.

2. State in succinct, the relevant facts are that on the report of complainant-Non-petitioner Hira Lal, Crime No. 85/90 was registered against the accused petitioners at Police Station, Kotwali, Churu for the offences Under Sections 147, 148, 323,

452 & 149 IPC. The police after investigation submitted a final report on 30.4.90 holding that the complainant had deliberately lodged a false report. The I.O. also proposed to file a criminal complain against the complainant for the offence Under Section 182 IPC. The complainant filed a protest petition on 6.6.90, wherein he specifically alleged that accused-petitioner Chunni Lal being an employee in the office of the Superintendent of Police, Churu, had influenced the investigation, that from his statement as well as the statements of injured Smt. Prem Devi & Hira Lal and other eye witnesses, which were duly corroborated from medical injury report, accusation against the accused-petitioners was fully made out. The learned Magistrate after hearing the parties and perusing the Final Report, the evidence collected by the Investigating Officer as also the case diary of the cross case to wit Crime No. 86/90 registered against the complainant Hira Lal, held that there were sufficient grounds for believing that the accused-petitioners Ramawatar, Nemi Chand and Durga Dutt had voluntarily inflicted hurt to complainant Hira Lal and Smt. Prem Devi and, as such by his order dated 26.2.91 took cognizance against the aforementioned three accused petitioners only for the offence Under Section 323 IPC and summoned them. Those three accused-petitioners appeared in the court and on 8.6.92 the learned Magistrate Under Section 251 Cr. P.C. stated the substance of the accusation for the offence Under Section 323 IPC against them, who denied the indictment and claimed trial. The learned Magistrate also ordered for issuance of summons to ensure the attendance of the prosecution witnesses. However, on the same day, the learned Magistrate made a further Post Scrip Order that after perusing the file, prima facie, offences Under Sections 147, 323, 324, 452 & 149 IPC appeared to have been made out against all the seven accused petitioners. He, therefore, took cognizance against them for the said offences and also ordered for issuance of summons against the remaining four accused-petitioners. Aggrieved by that order, revision petition No. 42/92 was filed by the accused-petitioner on 21.9.92 before the learned Sessions Judge, Churu. They also separately filed an application Under Section 5, Limitation Act alongwith the affidavits of Chunni Lal and Ramawatar for condonation of delay. The learned Sessions Judge without deciding the said application filed Under Section 5, Limitation Act, vide his impugned order dated 2.2.93, dismissed the revision petition treating the same to be time barred. Hence this petition.

3. Mr. A.K. Rajvanshi, the learned Counsel for the complainant-Non-petitioner has raised a preliminary objection that by means of this petition, the petitioners have in fact & in substance challenged the correctness, legality and propriety of the order dt. 8.6.92 passed by the learned Magistrate, which has been affirmed by the learned Sessions Judge, hence a second revision petition is statutorily barred Under Section 397(3) Cr. P.C., therefore, this petition under the garb of Section 482 Cr. P.C. is legally not maintainable.

4. In my considered opinion, the preliminary objection is misconceived and must abort. Firstly, this is not a second revision petition, which of course is barred Under Section 397(3) Cr. P.C. On the other hand, the petitioners have filed this petition Under Section 482 Cr. P.C. for invoking the inherent power of this Court on the ground that the impugned order dated 8.6.92, which was subsequently passed by the learned Magistrate, taking cognizance against four other co-accused persons and also taking cognizance for more offences against the three accused-petitioners Ramawtar, Nemi Chand and Durga Dutt, is patently without jurisdiction and in clear contravention of the provisions of Section 319 Cr. P.C. and that the learned Sessions Judge did not care to decide their revision petition on merits and dismissed the same without disposing off their application filed Under Section 5, Limitation Act of therefore, the impugned orders amount to abuse of the process of the court. Thus, the petitioners have prayed for invoking inherent powers of this Court.

5. Secondly, in *Kana Ram v. State of Rajasthan & Ors.* (1993 Cr. L.R (Raj.) 103), the Full Bench of this Court after interpreting the provisions of Sections 482 & 397(3) Cr. P.C. have held that the provisions of Section 397(3) Cr. P.C. do not limit or affect the inherent powers of this Court Under Section 482 Cr. P.C, that the said inherent powers can be exercised for either of the three purposes specifically mentioned in that section namely (i) to give effect to any order under the Criminal Procedure Code; or (ii) to prevent abuse of the process of any court; or (iii) otherwise to secure the ends of Justice. However, a note of caution has been added that in exercising the inherent powers, this court should exercise self restraint and that the said power should be exercised very sparingly for their purposes enumerated in Section 482 Cr. P.C. and when in a given cast, the

conscience of the court is shaken. Thirdly, in the case in hand, the learned Sessions Judge did not decide petitioners application for condonation of delay and dismissed that revision treating the same as time barred, which amounts to abuse of the process of Court. Frothily, Important and substantial question of law are involved in this petition as to whether after the Magistrate once taking cognizance Under Section 190(1)(b) Cr PC on the report submitted by the police, and stating the substance of accusation to the accused persons Under Section 251 Cr. P. C. and without recording any evidence can further take cognizance on the same police report for more offences against the accused and against other persons and whether the impugned order date 8.6.92 of the Magistrate amounts to abuse of the process of the court? Moreover, the inherent powers of this court Under Section 482 Cr PC of this Court are undisputably independent of its revisional powers. Hence this petition filed Under Section 482 Cr PC is legally maintainable and the preliminary objection raised by Mr. Rajvanshi is hereby repelled.

6. I have heard the learned Counsel for the parties and the learned Public Prosecutor at length and carefully perused the record of the lower Courts.

7. In Mahendra Kumar v. State of Rajasthan (1984 RLW 172), the Chief Judicial Magistrate after persuing the police report Under Section 173 (2) Cr PC and after hearing the prosecution and the accused persons took cognizance against one accused and discharged the other. Thereafter, the Addl. P.P. submitted an application before him to add and implead another person 'M' as an accused. The Magistrate allowed that application and took cognizance against 'M'. By that time, no evidence had been recorded during trial. It was held that until and unless some evidence was recorded during trial, the Magistrate could not proceed Under Section 319(1) Cr. P. C. and implied 'M' as an accused. However, it was observed that after recording the evidence, if the Magistrate felt that he should take cognizance against any other person and to summon him for trial, then he was free to pass appropriate order to that effect.

8. In Bagh Singh v. The State of Rajasthan, 1985 RLW 428, this Court held that the cognizance of an offence can be said to be taken when the Magistrate applies his mind to the matter before him and decides to proceed further with the matter,

that once the Magistrate applies his mind on the police report filed Under Section 173(2) Cr PC before him and decides to take cognizance of the offence only against some of the accused persons, it can not be envisaged that he will have further opportunities of reconsidering the same police report again and again and on the basis thereof he would take cognizance Under Section 190(1)(b) Cr PC against other co-accused person, who may appear to be involved in the commission of some offence, because if it is allowed to be done, there would be no end to the re-consideration of the police papers from time to time. It was also made clear that merely because the stage of 190 Cr PC has passed, it cannot be said that the Magistrate can not take cognizance against any other person thereafter. On the other hand, if in the course of any inquiry or trial of an offence, it appears from the evidence that any person of not being the accused had committed an offence for which such person could be tried together with the accused, then the court has the power to proceed against such person Under Section 319 Cr PC for the offence, which he appears to have committed. It was, therefore, held that the cognizance of an offence taken by a Magistrate after passing the stage of Section 190(1)(b) Cr PC and before the stage Under Section 319 Cr PC reached, was not Justified and that the same amounted to abuse to the process of the court.

9. The Apex Court in a recent pronouncement in the case of Kishun Singh & Ors., 1993 Cr LR (SC) 193 has reiterated that strict sense Section 319 Cr PC cannot be invoked in a case, where no evidence has been led at a trial, where from it can be said that the appellants appear to have been involved in the commission of the crime alongwith those already sent up for trial by the prosecution.

10. In the instant case, the learned Magistrate perusing the final report Under Section 173(2) Cr PC, the evidence collected by the Investigating Officer and the protest petition and also hearing the parties after application of his mind by his order dt. 26.2.1991 took cognizance for the offence Under Section 323 IPC against petitioners Ramawatar, Nemichand and Durga Dutt only and issued summons against them. As regards other co-accused petitioners he did not take cognizance for any offence. In compliance of the summons issued against them, he aforementioned three accused petitioners appeals in the court on 4.5.91 and

thereafter on 8.6.1992 - substance of accusation Under Section 251 Cr PC was also stated and explained to them to which they pleaded not guilty and claimed trial. The Magistrate also ordered for issuance of summons against prosecution witnesses and fixed the next date. However, thereafter, the learned Magistrate adding a post script further took cognizance against the remaining accused petitioners and also took cognizance against petitioners Ramawatar, Nemichand and Durga Dutt for other offences. Once the learned Magistrate by his order dated 26.2.1991 took cognizance against three accused petitioners only that too for the offence Under Section 323 IPC, he was thereafter not empowered to again peruse the police report and documents annexed therewith and to review his previous order dated 26.2.1991 by taking cognizance against other accused petitioners for the offences Under Sections 147, 148, 323, 324, 452 & 149 IPC without recording further evidence during trial. Hence once the Magistrate exercises his power Under Section 190(1)(b) Cr PC, he can proceed against other persons appearing to be guilty for the offences only, if in the course of any enquiry or trial, it appears to him from the evidence that any person not being the accused has also committed any offence and then he can implead him as an accused Under Section 319 Cr. P. C. and proceed against such person. Indisputably, a Magistrate does not have any power Under the Cr. P. C. to review his own order. In such circumstances the subsequent order dt. 8.6.92, where by the learned Magistrate took cognizance against four other accused petitioners and also took cognizance of more offences against Ramawatar, Nemi Chand and Durga Dutt, is patently illegal and without jurisdiction and glaring injustice stares the court in the face can shake its conscience. Therefore, the impugned post script order date 8.6.92 amounts to abuse of the process of the court and to secure ends of justice, it is necessary to quash the same by invoking the inherent powers of this Court.

11. The upshot of the above discussion is that this petition is allowed and the 'post script order' dated 8.6.1992 passed by the learned Magistrate, whereby he took further cognizance of the offences Under Sections 147, 324, 452 & 149 IPC against accused petitioners Nemi Chand, Durga Dutt and Ramawatar and also took cognizance of the offences Under Sections 147, 323, 324, 452 & 149 IPC against petitioners Smt. Sampati, Smt. Rukmani, Smt. Chhagni alias Santosh & Chuuni Lal and ordered for issuance of summons against them is hereby quashed.

The case will go back to the learned Civil Judge (Junior Division) & Judicial Magistrate, Churu for trial. After recording the evidence, if he feels that he should take cognizance against other petitioners and that there exist sufficient grounds to believe that petitioners Ramawatar, Nemi Chand and Durga Dutt have also committed other offences then he will be free to pass an appropriate order to that effect in accordance with law and this judgment shall not stand in his way to prevent him to exercise discretion Under Section 319(1) or 259 Cr. P. C. Petitioners No. 1 to 3 are directed to appear before the learned trail Magistrate on 17.10.94 for further proceedings in the matter.

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