

Mathura Prasad Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-13-2001

Reported in : RLW2003(1)Raj568; 2002(5)WLC340; 2002(2)WLN59

Judge : H.R. Panwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 397(3) and 482

Appeal No. : S.B. Criminal Misc. Petition No. 914 of 1998

Appellant : Mathura Prasad

Respondent : State of Rajasthan

Advocate for Pet/Ap. : S.D. Rajpurohit, Adv.

Disposition : Petition dismissed

Judgement :

Panwar, J.

1. This Criminal Misc. Petition under Section 482 Cr.P.C. is directed against the order dated 22.4.1998 passed by learned Additional Sessions Judge No. 1, Sri Ganganagar in Criminal Revision Petition No. 67/1997 whereby the learned revisional Court dismissed the revision petition filed by the petitioner against the order dated 26.8.1996 passed by Judicial Magistrate, Sri Ganganagar in Criminal

Original Case No. 555/1994 whereby the learned trial Court framed the charges against the petitioner.

2. I have heard learned counsel for the petitioner and learned Public Prosecutor. Perused the orders impugned and relevant material available on file.

3. It was contended by the learned counsel for the petitioner that the trial Court fell in error in framing the charges against the petitioner without there being any sufficient material. It was further contended that the orders of the trial Court as well as the revisional Court are arbitrary and based on insufficient material. It was further contended that the trial Court as well as the revisional court failed to scrutinise the material placed on record before framing the charge against the petitioner.

4. The learned Public Prosecutor opposed the petition and submitted that the petitioner has already availed the remedy of revision by filing criminal revision petition under Section 397(1) Cr.P.C. before the learned Additional Sessions Judge No. 1, Sri Ganganagar and as such the second revision is specifically barred by the provisions of Sub-section (3) of Section 397 Cr.P.C. The petitioner by invoking the inherent powers of the Court under Section 482 Cr.P.C. cannot be permitted to maintain the second revision.

5. The petitioner preferred a revision before the learned revisional Court on the ground that he was not afforded proper opportunity of hearing before framing of the charges against him for the offence under Section 420, 467, 468 and 471 IPC.

6. In the instant case a first information report was lodged on 12.10.1993 at Police Station Kotwali, Sri Ganganagar by Commissioner, Municipal Council, Sri Ganganagar against the petitioner for the offence under Section 420, 467 and 468 of the I.P.C. The police registered a crime report No. 463/1993 and proceeded with the investigation. After the thorough investigation, police filed charge sheet under Section 173 Cr.P.C. against the petitioner for the offence under Sections 420, 467, 468, 471, 120-B of IPC, vide order dated 26.8.1996, the learned trial Court after discussing the material on record, reached to the conclusion that there is sufficient ground to frame charges against the petitioner for the offences noticed

above. Against the order of the learned trial Court, a revision petition was preferred by the petitioner which was dismissed by the learned revisional court on 22.4.1998 by a reasoned order. Though, for framing of the charges reasons are not required to be stated by the trial Court.

7. In *Kanti Bhadra Shah and Anr. v. State of West Bengal* (1) Hon'ble Supreme Court held as under:-

'If the trial Court decided to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned.'

8. In *Umar Abdul Sakoor Sorathia v. Intelligence Officer, Narcotic Control Bureau* (2) the Hon'ble Supreme Court held thus:-

'It is well settled that at the stage of framing charge the Court is not expected to go deep into the probative value of the materials on record, if on the basis of materials on record the Court could come to the conclusion that the accused would have committed the offence the Court is obliged to frame the charge and proceed to the trial.'

9. In *State of Maharashtra and Ors. v. Som Nath Thapa and Ors.* (3) the Hon'ble Supreme Court held thus:-

'If on the basis of materials on record a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.'

10. Thus, it is clear that at the time of framing of the charges, the trial Court is not required to examine the material available meticulously but to form the opinion on the basis of material available as to whether there exist a prima facie ground to presume that the accused has committed the offence and then to proceed against him.

11. In Mohammed Akbar Dar and Ors. v. State of Jammu & Kashmir (4) the Hon'ble Supreme Court observed that:-

'Both the trial and the High Court have generally given a brief survey of the evidence sought to be adduced against the appellants. It is true that the High Court has not gone into the details or the pros and cons of the matter. This was obviously because that it not the stage when the Court could enter into meticulous consideration of the evidence and materials.'

12. In my considered opinion, the learned trial Court as well as the revisional Court committed no error in framing the charges against the petitioner as noticed above. Moreso this petition under Section 482 Cr.P.C. is nothing but a second revision which itself is not maintainable as held by the Hon'ble Supreme Court in Dharampar and Ors. v. Smt. Ramshri and Ors. (5) wherein their Lordship held as under: -

'The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the code and entertained a second revision application at the instance of the, 1st respondent. Admittedly, the 1st respondent had preferred a Criminal Application being Criminal Revision No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979 Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.'

13. Similarly, in *Deepti alias Arti Rai v. Akhil Rai and Ors.* (6), their Lordship held as under:-

'The High Court also should have taken care to verify the record before accepting the concession made by the learned Government Advocate. It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code.'

14. I have also taken a similar view in *Mohan Lal and Ors. v. State of Rajasthan and Anr.* (7). Thus viewed from any stand point, this petition is devoid of any merit and must fail.

15. The learned counsel for the petitioner contended that even there being a specific bar of Sub-section (3) of Section 397 Cr.P.C., this Court can exercise inherent power under Section 482 Cr.P.C. to secure the the ends of justice. He has placed reliance on the judgment of this court in *Shiv Raj Singh v. State of Rajasthan* (8), *Radmal and Ors. v. State of Rajasthan* (9), *Bhoj Raj Singh v. State of Rajasthan and Anr.* (10) and *Neeraj Kumar and Ors. v. State of Rajasthan and Ors.* (11).

16. A Division Bench of this Court while agreeing with the view taken in *Dharmpal's case* (supra) wherein it has been held that 'in view of the statutory bar of filing second revision laid down by the Code of Criminal Procedure under Section 397(3) Cr.P.C., the party cannot be allowed to take recourse of Section 482 Cr.P.C. and thereby circumvent the provisions of Section 397(3) Cr.P.C; particularly when none of the conditions required for the exercise of the inherent powers is present.'

17. In *Shiv Raj Singh's case* (supra) this Court while considering the maintainability of the second revision petition under the garb of Section 482 Cr.P.C. held that there is a specific bar under Section 397(3) Cr.P.C. regarding maintainability of the second revision petition by the same person, therefore, this petition under Section 482 Cr.P.C. which has been preferred by the petitioner

merely by changing the nomenclature and saying that the jurisdiction of this High Court for exercising its inherent jurisdiction is invoked, the statutory bar cannot be over-come.

18. In Bhojraj Singh's case (supra) this court held that Sections 397 and 482 have different parameters. The High Court or the Court of Sessions have concurrent jurisdiction as expressly provided in the section and it is open to the aggrieved person invoking the revisional jurisdiction either to move the High Court or the Sessions Court.

19. In Radmal and Ors. v. State of Rajasthan (supra) this Court held that no petition under Section 482 Cr.P.C. can be entertained against the revisional order passed by the Sessions Judge in a revision petition filed by petitioner in the Court of Sessions Judge, but when there is a case of gross injustice to the party and conscience of the Court is shaken, then in that case the petition under Section 482 Cr.P.C. also can be entertained.

20. In the instant case, the learned trial Court as well as learned revisional Court has taken into account the entire material on record before framing the charge and thus, this is not the case rarest of the rare where a gross injustice is caused to the petitioner. Thus the judgments relied on by the petitioner are consistent with the view taken by the Hon'ble Supreme Court in Dharampal and Ors. v. Smt. Ramshri and Ors. and in Deepti alias Arti Rai v. Akhil Rai and Ors. (supra).

21. In view of the aforesaid discussion, this criminal misc. petition must fall on both the counts;

22. For the reasons stated, there is no substance in this misc. petition. Accordingly, it is hereby dismissed.