

Bajrang Lal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-04-2002

Reported in : 2003CriLJ1127; RLW2003(3)Raj1979; 2003(1)WLC462

Judge : D.N. Joshi, J.

Acts : Indian Penal Code (IPC) - Sections 304B; Evidence Act - Sections 113B;
;Code of Criminal Procedure (CrPC) - Sections 209 and 482

Appeal No. : S.B. Criminal Misc. Petition No. 864 of 1997

Appellant : Bajrang Lal

Respondent : State of Rajasthan

Advocate for Def. : Sandeep Mehta, Adv.

Advocate for Pet/Ap. : D.D. Kalla, Public Prosecutor; Ranjeet Joshi, Adv.

Disposition : Petition allowed

Judgement :

Joshi, J.

1. The instant criminal miscellaneous petition under Section 482 Cr.P.C. has been filed against the order dated 5.8.1997 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Merta in Criminal revision No. 23/97(14/95)

Bajranglal v. State and Ors., whereby the order passed by the learned Civil Judge (S.D.) - cum - A.C.J.M. Merta, dated 11.9.1995 in F.R. No. 13/88 (FIR No. 12/88) of Police Station, Jaswantgarh accepting the F.R., was upheld.

2. Heard Mr. Ranjeet Joshi, learned counsel for the petitioner, Mr. D.D. Kalla, learned Public Prosecutor and Mr. Sandeep Mehta, learned counsel for the non-petitioners no. 2 to 5 (except non-petitioner No. 3 Chanda, against whom proceedings were abated on 23.1.2002 due to her death on 4.12.2000).

3. The facts of the Case in brief are that one Suresh Kumar S/o Kanhaiya Lal submitted a report on 22nd March, 1988, alleging the on the day of occurrence at 6 a.m., his brother's wife Renudevi (deceased) went to Nohra to take bath and started to boil water on 'Chulha' and at that time, he was informed by Malchand Rathi about the fire and flame in the Nohra. He rushed to the Nohra and seen that Renu was lying in the burnt condition. He informed his mother and grant-mother and therefore, went to call the doctor. On the date of incident at 8.15 p.m. Prakash, brother of deceased Renu, lodged the report of murder of Renu by her in-laws.

4. During investigation, the accused were arrested, statements of the witnesses on behalf of the prosecution and the accused were recorded. Therefore, the investigation was handed over to C.I.D. (C.B.) and a final report was submitted in the matter. The complainant submitted a protest petition against the final report submitted by the C.I.D. (C.B.). The same was accepted by the Additional Chief Judicial Magistrate, Merta. Aggrieved by the order of the learned Additional Chief Judicial Magistrate, a revision was filed, which was rejected on 5th August, 1997.

5. It was argued by the learned counsel for the petitioner Mr. Ranjeet Joshi that the learned A.C.J.M. has exceeded his jurisdiction in meticulously examining the evidence on record. The learned A.C.J.M. has considered alibi of the accused and passed the detailed order meticulously examining the merits of the case at the stage of taking cognance. It was further argued that as per the Post Mortem report, there was a smell of kerosine oil on the body of deceased Renu. Renu was married on 28th August, 1986 and the occurrence took place on 22nd March, 1988. It was argued by the learned counsel that under Section 304B of IPC read

with Section 113B of the Evidence Act, the case being of dowry death, presumption was available to the prosecution against the accused for commission of the offence as Renu was being harassed for the demand of dowry. It was further argued that though, a revision has been dismissed against the order of the Magistrate, even then, the High Court can interfere with the order, which causes mis-carriage of justice or is palpably illegal or is unjustified. Therefore, the impugned order passed by the learned A.C.J.M. be set aside to secure the ends of justice and to avoid mis-carriage of justice and the learned A.C.J.M. may be directed to take cognizance against the accused persons (except Chandu) and commit them to Court of Sessions for facing trial for the offence alleged.

6. The learned counsel for the petitioner placed reliance on the following decisions in support of his arguments:-

1 Mrs. Rupan Deol Bajaj and Anr. v. Kanwar Pal Singh Gill and Anr. (1)

2 Kishan Singh v. State of Rajasthan and Anr. (2)

3 Kana Ram v. State of Rajasthan (3)

7. Mr. Sandeep Mehta, learned counsel for the non-petitioners has supported the orders of both the courts below. He has relied on the reply filed by the State of Rajasthan in Bajrang Lal v. State of Rajasthan (4), decided on 19th August, 94 in which it was held that no case is made out for entrusting the investigations afresh to the C.B.I.

8. It was further argued by the learned counsel Mr. Sandeep Mehta that the case has been investigated re-investigated and the final report has been submitted after considering the entire evidence on record. The final report was also approved by the higher authorities even up to the level of I.G.P. (Crime), C.I.D. The report was accepted after notice and hearing to the complainant, against which the revision has also been dismissed. It was further argued by the learned counsel for the non-petitioners that powers under Section 482 Cr.P.C. cannot be exercised, particularly, in view of the fact that the revisional Court has upheld the order of the learned A.C.J.M. The learned Magistrate has passed the detailed and well reasoned order.

9. Considered the arguments advanced on either side.

10. As far as the argument of the learned counsel for the petitioner regarding the availability of the presumption under Section 304B IPC read with Section 113B of the Evidence Act is mis-conceived and liable to rejection and is hereby rejected. In the case before hand, the occurrence is alleged to have taken place on 22nd March, 1988. Section 304B IPC came into force on 19.11.1986 by Amending Act 43 of 1986 and the Hon'ble Apex Court has held in *Soni Devraj Bhai v. State* (5), that Section 304B has no retrospective application.

11. It is undisputed the State has not filed any appropriate petition and supported the order of the Magistrate as well as the order passed by the learned Sessions Judge. On the contrary, the petition is filed by a private party, at whose instance, the FIR was registered at Policy Station, Jaswantgarh. In dealing with the revisional powers of the High Court vis-a-vis right of the private parties to move a revision (against the order of acquittal) passed in a case instituted upon a case report, the Hon'ble Apex Court in *K. Chinnaswamy Reddy v. State of A.P.* (6), observed as under:-

'It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion, be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.'

12. It has been held in *Manohar Lal v. Vinesh Anand and Ors.* (7), as under:-

'To pursue an offender in the event of commission of an offence is to sub-serve a social need-Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus-the doctrine of locus-standi is totally foreign to criminal jurisdiction.'

13. It has been held in *Puran v. Rambilas and Anr.* (8), as under:-

'In the hierarchy of Courts, the High Court is the Superior Court. A restrictive interpretation which would have effect of nullifying Section 439(2) cannot be given. When Section 439(2) grants to the High Court the power to cancel bail, it necessarily follows that such powers can be exercised also in respect of orders passed by the Court of Session. Of Course cancellation of bail has to be on legal principles and only in appropriate cases. Further, even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) of Cr.P.C. The High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect. It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes Magistrate of justice or is palpably illegal or is unjustified.'

14. In Kana Ram v. State (supra), the Full Bench of this Court on an answer referred to it has held as under:-

'The provisions of Section 397(2) of the Code of Criminal Procedure, 1973 do not limit or affect the inherent power of this Court under Section 482 of that Code. The said inherent power can be exercised for either of three purposes specifically mentioned in Section 482, but in exercising the aforesaid power the Court should exercise self-restraint and the said power should be exercised very sparingly for the purposes mentioned in that Sec. It can also exercise such power as and when in a given case the conscience of the Court is shaken but such cases will be far and few and the power should be exercise only sparingly.'

15. It has been held in Jitender Kumar Jain v. State of Delhi and Ors. (9) as under:-

'We are of the view that the High Court failed to distinguish its separate powers under Section 397(2) of the Code of Criminal Procedure as also under Section 482 of the said Code. It is true that a second revision petition does not lie before the High Court when one is dismissed by the Court of Session. Still the Court of Session is a Court subordinate to the High Court and, as such, its proceedings are open to scrutiny by the High Court in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure. The High Court in these circumstances,

should not have dismissed the petition of the appellant on the premise as it has done. It is otherwise open to the High Court not to interfere in a matter when examining a case under Section 482 of the Code of Criminal Procedure, in this view of the matter, we set aside the impugned order of the High Court and remit the matter back to the High Court for reconsideration.'

16. Thus, in view of the above decision of the Hon'ble Apex Court and this Court, the Court is of the considered opinion that the powers u/Section 482 Cr.P.C. can be exercised despite the dismissal of the revision petition filed by the petitioner before the Court of sessions. The arguments raised by the counsel for the non-petitioners in this behalf is required to be rejected and is hereby rejected.

17. Now, I come to the merits of the impugned orders passed by the courts below.

18. Section 209 of the Code of Criminal Procedure deals with the commitment of the case to the Court of Sessions when an offence is triable exclusively by it. In *Sanjay Gandhi v. Union of India and Ors.* (10), the Hon'ble Supreme Court observed that in cases where offence is triable exclusively by the Court of Sessions, it is not open to the committal Court to launch on a process of satisfying itself that a prima facie case has been made out on the merits, the jurisdiction once vested in him under the earlier Code but has been eliminated. Therefore, to hold that he can go in to the merits even of a prima facie satisfaction is to frustrate the Parliament's purpose in re-moulding Section 207 A (old Code) into its present non-discretionary shape. The narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. Assuming the facts to be correct as stated in the police report, the Magistrate has, simply to commit for trial before the Court of sessions. The Magistrate's power to scrutinise the police report is confined to see whether a wrong section of the Penal Code has been quoted to describe the offence, he cannot see whether there are materials to support the charges made in the report. Under Section 209, the Magistrate has no jurisdiction to go in to the merits, even for a prima facie satisfaction, the Magistrate could only commit the case to the Court of Sessions.

19. Under Section 209 of the Code, the Magistrate is only to examine the police report and other documents mentioned in Section 207 and find out whether the offence is exclusively triable by the Court of Session. Once, he reaches to this conclusion, he has to commit the case for trial to the Court of Sessions. In forming the above opinion, the Magistrate is not to weigh the evidence and probabilities in the case, he is not required to hear the accused. In other words, he not required to hold any preliminary enquiry. He is only to consider whether a prima facie case is disclosed or not, and is not competent to satisfy about the merits of the case whether a prima facie case is made out or not. In *Kewal Krishan v. Suraj Bhan and Anr.* (11), it has been held that Magistrate in weighing evidence meticulously exceeds his jurisdiction. Under the new Code, the Magistrate is to work within sphere of limited function and no application of his mind is necessary (*Raj Kishore v. State*, (12),. In cases where offence is triable by the Court of Sessions, the committing Magistrate has no power to take oral evidence where a specific provision like Section 306 enjoins.

20. Keeping in view these guidelines, the order of the learned ACJM, if remained alive, could cause miscarriage of justice and this is an exceptional case where for the ends of justice the powers of Section 482 Cr.P.C. is to be exercised by this court. The order of the learned Additional Sessions Judge affirming the same is also liable to be set aside. At this stage, it cannot be considered that allegation about dowry finds place in the FIR or not. The Magistrate was not competent to consider the merits and de-merits of the letters written by Renu, either to her husband or to her friend. The order of the learned Magistrate is based on conjectures and imaginations. It was not within the jurisdiction of the learned Magistrate to consider about the illness of accused Ganpati and Chandu (now dead) and to express opinion about its naturality or otherwise to commit an offence. The learned Magistrate was also not competent to consider about the so called presence or otherwise of uncle-in-law Durgadat regarding plea of alibi. The Magistrate has exceeded his jurisdiction in considering the letters written by Kanhaiyalal, father-in-law of deceased Renu the learned A.C.J.M. has expressed as under:-

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21. The learned Magistrate has discarded the evidence of the relevant witnesses on the ground that no letter written in this respect has been produced. The learned Magistrate has gone to extent even holding that no prima facie case is proved. The learned Magistrate was not competent at this stage to meticulously examine the evidence relied by the prosecution and express its opinion on merits. The alibi of the accused and other grounds were to be considered by the learned Sessions Judge during the course of trial either at the stage of framing of the charge or its conclusion, therefore, the order of the courts below are liable to be set aside in exercise of the jurisdiction powers vested in the Court Under Section 482 Cr.P.C. for securing the ends of justice and to avoid mis-carriage of justice. The orders passed by the courts below are palpably illegal and unjustified and liable to be set aside and are hereby set aside. Accordingly, the petition is hereby allowed. The learned ACJM is directed to act according to law and pass an appropriate order. Keeping in view the observations made by this Court as above and in case, the accused are committed to the Court of Sessions, it is further ordered that the accused persons will be allowed (except Chandu) to remain on bail during the enquiry and trial on the conditions imposed by the learned Magistrate and the learned Sessions Judge respectively. Both the parties are directed to appear before the learned Magistrate for further proceedings on 5.8.2002.

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