

State Vs. Ram Rattan

State Vs. Ram Rattan

SooperKanoon Citation : sooperkanoon.com/900982

Court : Jammu and Kashmir

Decided On : Sep-28-2005

Reported in : 2006(1)JKJ130

Judge : Bashir A. Kirmani, J.

Acts : Land Revenue Act - Section 133; ;Code of Criminal Procedure (CrPC) , 1989 - Sections 133, 161, 173 and 251 to 259B; ;Ranbir Penal Code (IPC) - Sections 147, 188, 447 and 447A

Appeal No. : Cr. Ref. No. 34/2003

Appellant : State

Respondent : Ram Rattan

Advocate for Def. : V. Bhushan Gupta, Adv.

Advocate for Pet/Ap. : B.S. Salathia, Addl. AG

Disposition : Reference allowed

Judgement :

Bashir A. Kirmani, J.

1. This is a Reference made by learned Additional Sessions Judge, Reasi recommending quashment of an order recorded by Judicial Magistrate, Reasi on

31st of January, 2004, whereunder he discharged the accused/respondents of offences under Sections 447-A/147 R.P.C. Respondent's counsel while opposing acceptance of the Reference contends that impugned order of trial Magistrate was perfectly well placed in circumstances of the case.

2. I have heard learned Counsel, gone through the records and considered the matter. It appears that on 28-12-2003, the concerned police instituted a case against accused/respondents under Section 447/147-R.P.C. with allegations that they were trespassing over State land under Survey nos. 409, 405, 358 and 341 situate at Tanda Tehsil Reasi despite concerned Tehsildar's eviction orders under Section-133 of Land Revenue Act passed in respect thereof, at whose behest the case had been registered. Materials submitted alongwith police case, include, Site-map of the concerned land alongwith statements purported to have been recorded Under Section 161, Cr.P.C during the course of investigation etc. From date of institution till 13th of January, 2004, matter continued to be pending before the Trial Magistrate, who ultimately dismissed the case at thresh-hold, discharging accused on the ground that date in the police report, and after having been dispossessed therefrom the accused/respondents had taken over the possession of the land in question, which indicated that the police report was not well founded. Aggrieved thereby, the State impugned the order in revision before learned Addl. Sessions Judge, who found that the order was bad, and hence the reference.

3. The case before the Magistrate, including inter-alia, allegations under Section-147 R.P.C., which is punishable with three year's imprisonment is a warrant case, procedure for trial whereof is laid down under Chapter-21 of the Code of Criminal Procedure, which contains provisions of Sections 251 to 259B. For trial of warrant cases instituted on police report like the one in hand, the procedure to be adopted by concerned Magistrate is specifically laid down under Section 251A according to which, after satisfying himself that copies of the Police report and documents appended therewith, have been furnished to the accused, he would consider the case and after hearing the parties, proceed further. If, on consideration, he finds that charge against accused is groundless, he shall discharge them, and in case there is some ground for presuming that accused have committed the offence triable under the Chapter, he shall frame a charge and explain the same to the

accused for recording their pleas.

4. Instantly, the trial Magistrate while considering the matter as above appears to have concluded that charges levelled against the accused were groundless, which in given circumstances of the case does not appear to be correct; for the simple reason that with report from an Executive Magistrate and incriminating materials collected during investigations, including the statements of the witnesses recorded under Section-161, Cr.P.C. the charges could not be said to be groundless.

5. It may be pointed out that the word 'groundless' as used in Sub-section (ii) of Section-251-A, as the reason for discharging the accused has to be understood as being opposite of the expression 'the grounds for presuming that accused has committed the offence' used in the Sub-section (ii) thereof as reason for framing the charge. The expression 'Grounds to presume the guilt' as per authoritative pronouncements of Hon'ble Apex Court and High Courts has been interpreted to mean a mere suspicion that is enough to suggest commission of offence by the accused. Obviously then the opposite would be that the police case alongwith all the materials appended therewith is not enough to even create a suspicion of the commission of offence by the accused, in which case only, they would be entitled to a discharge, which does not appear to be so with the instant case, wherein, as already noticed, the police report instituted before the trial Magistrate under Section-173, Cr.P.C. was accompanied by F.I.R. lodged by concerned Executive Magistrate alongwith statements, purporting to have been recorded under Section-161 Cr.P.C. containing incriminating material against the accused, in view whereof, the accusations levelled against them could not be said to be totally groundless, and that being so, the order of discharge recorded by the trial Magistrate appears to be bad.

6. Before parting, it would be appropriate to notice that while recording the discharge order, learned Magistrate (sic) has claimed to rely on some Supreme Court Judgments to conclude that in given facts of the case, the charges levelled against the accused were not attracted, which appears to be misplaced. It may be observed that the Law declared and laid down by Hon'ble Apex Court/High Courts is required to be applied on proved facts and situations only and not on

assumptions or contentions/pleas of the parties, which have always to be supported, substantiated and sifted before attaining the status of proved facts. Mis-application of authoritative Judicial pronouncements on un-proved facts, loosely, and only to justify wrong conclusions, which appears to be gaining currency of different levels is a nasty practice, liable to be stopped forthwith, and presiding officers require to strictly abstain therefrom.

7. Another interesting feature of the matter, though slightly disturbing, is the conduct of complainant Tehsildar/Executive Magistrate, who, instead of dealing with the matter under his statutory powers under Section 133 Cr.P.C., chose to submit a complaint to S.H.O. concerned to 'pray' for desirable action. This only shows that either he was ignorant of his powers/duties, or simply wanted to pass this back. Both way, it was, to say the least, deplorable and hardly in keeping with the standards of effective functioning.

8. With these observations, the reference is accepted and the impugned order of discharge recorded by trial Magistrate as aforesaid set aside. The matter is remanded back for further proceedings in light of what has been stated above with the observation that within given frame of accusations levelled against accused/respondents, attraction of the Penal Provisions of Section 188 and 447-R.P.C. may also be examined by learned trial Magistrate while hearing the matter afresh for considering the question of charge against accused. For communicating the observations made hereinabove, it is directed that copies of this order be circulated to all the Sessions Judges through R-6 for bringing it to the notice of all Magistrates under them. Matter is accordingly disposed off. Registry to transmit the record to the Court below with due dispatch.