
(2006) 01 RAJ CK 0031

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1116 of 2001

Bhagwan Sahai Khandelwal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202
Penal Code, 1860 (IPC) — Section 323, 341, 427, 451, 452

Citation : (2006) 1 RLW 640 : (2006) 2 WLC 239

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Advocate : Himanshu Sharma, for the Appellant; Arun Sharma, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioners have challenged the order dated 13.3.2001 whereby the cognizance has been taken for offence under Sections 323, 341, 451 & 504 IPC by the Additional Civil Judge (Junior Division) and Judicial Magistrate First Class No. 4, Alwar.

2. Brief facts of the case are that on 19.11.1998, the non- petitioner No. 2 had filed a criminal complaint before the Additional Civil Judge (Junior Division) and Judicial Magistrate No. 2, Alwar wherein he claimed that he is a class-IV employee in the Electricity Department and the accused petitioners No. 1, 3, & 4 are his colleagues and the petitioner No. 2 is the son of the petitioner No. 1. He further claimed that the petitioners No. 1, 3 & 4 have formed a clique in the Department. They abuse the other persons working in the Department. He further claimed that seven days earlier, the petitioners No. 1 & 4 had pressurized him to work at the house of petitioner No. 3 and to clean the dishes there. Since his wife was ill, he had declined to do so. Therefore, they became estranged with him. He further alleged that they have been harassing him for the last one and half month. According to him, on 19.11.1998 after consuming liquor, the accused

petitioners came to his house and they assaulted him. The said complaint was sent to the Police for further investigation u/s 156(3) Cr.P.C. Although, the Police had registered the criminal case for offence under Sections 323, 341, 452, 504 & 427 IPC, the Police submitted a negative Final Report on 31.12.1998 as FR No. 118. Thereafter, the respondent No. 2 filed a protest petition against the said Final Report. Vide Order dated 10.2.1999, learned Judicial Magistrate took cognizance against the petitioners as aforementioned. Subsequently, the petitioners challenged the cognizance Order before the Additional Sessions Judge No. 3. The Additional Sessions Judge No. 3 directed the learned Judicial Magistrate to consider the entire evidence after recording the statements of the complainant and of his witnesses u/s 200 & 202 Cr.P.C. respectively. The Judicial Magistrate took cognizance against the petitioners for the aforementioned offences vide Order dated 13.3.2001. Hence, this petition before us.

3. Learned Counsel for the petitioner, Mr. Himanshu Sharma has argued that the learned Judicial Magistrate has not discussed the negative Final Report as required by law. Therefore, according to him, the impugned Order deserves to be interfered with.

4. On the other hand, Mr. Arun Sharma, learned Public Prosecutor has supported the impugned Order.

5. We have heard both the learned Counsels for the parties and perused the impugned order.

6. Life and personal liberty of every person is of utmost importance. Hence, life and personal liberty cannot be interfered with without a reasonable cause and without a procedure established by law. Taking of cognizance is, thus, a serious matter. For it involves disturbing the life and personal liberty of a person. Facing of a criminal trial is an ordeal, which adversely affects the reputation, the finance, the energy and the time of the alleged offender. Thus, taking of cognizance cannot be done in a mechanical manner. It should be done after a judicious application of mind to the facts and circumstances of each case. Although, a meticulous examination of evidence is not required at the stage of taking cognizance, but the Magistrate must consider the case in a holistic manner. Piecemeal consideration of the evidence does not commensurate with the judicial vision. Hence, in case a FIR or a complaint is followed by a negative Final Report, which is subsequently followed by a protest petition, while allowing the ; protest petition, a Judicial Magistrate is legally bound to discuss the negative Final Report. Such a discussion is warranted for three reasons; firstly, the Principles of Natural Justice demand and dictate that any order adversely affecting a right should be a speaking order. Although a elaborate discussion may not be required, but the order must contain sufficient reasons showing the application of a judicious mind, for disagreeing with the negative Final Report. Secondly, since the cognizance order is a revisionable order, the Higher Judicial Authorities have a right to know the reasons, which weighed in the mind of the Judicial Magistrate for disagreeing with the negative Final Report. In the absence

of such reasons, the Higher Judicial Authorities (the Sessions Court or the High Court) are left in the dark. Thirdly, it is a settled doctrine of law that "justice should not only be done, but also must appear to be done". Therefore, the accused has a right to know the reasons why the learned Judicial Magistrate has disagreed with the negative Final Report submitted by the Police after a thorough investigation. In case, such reasons are not stated, alleged offender may find it difficult to question the validity of the reasoning, hence a cryptic order is not a judicious order whereas cognizance order should always be a judicious order.

7. In case of Sampat Singh v. State of Haryana 1993 SCC 376, the Hon''ble Supreme Court had clearly stated that the Magistrate must give reason for disagreeing with the negative Final Report. In case, no such reasons are given, then the order is unsustainable in the eyes of law. Taking a cue from the said judgment, this Court, in case of Gopal Sharma v. State of Rajasthan 2005 (10) ROD 4197 (Raj.), has held a similar view.

8. Despite the fact that the Hon''ble Supreme Court had laid the principle of law in the case of Sampat Singh (supra), surprisingly the Judicial Magistrates are still passing cryptic orders without following the principle enunciated by the Hon''ble Supreme Court. Because of the omission committed by the Judicial Magistrate, this Court is flooded by Revision Petitions challenging the cryptic and unreasoned cognizance order. Such unsustainable orders are needlessly burgeoning the already over burdened High Court. Therefore, passing of such illegal orders is cause for serious concern to all of us. Firstly, learned Judicial Magistrates are supposed to know the principle laid down by the Hon''ble Supreme Court. Secondly, such orders infringe the fundamental right of the alleged offender to defend himself. Thirdly, such orders add to the sky rocketing litigations inundating this Court.

9. In the present case, despite the existence of a negative Final Report, the learned Judicial Magistrate has merely mentioned that the Police has submitted a negative Final Report on the basis of which the complainant has filed the protest petition. Learned Judicial Magistrate has neither bothered to tell us what are the findings of the Police after a thorough investigation, nor bothered to tell us why he disagrees with the findings of the Investigating Agency. He has merely discussed the statements recorded under Sections 200 & 202 Cr.P.C. without stating any reason for disagreeing with the negative Final Report. Hence, the impugned order is a non-speaking order, which suffers from the virus of non-application of mind. Therefore, the impugned order deserves to be quashed and set aside.

10. In the result, we quash and set aside the order dated 13.3.2001 and direct the Additional Civil Judge (Junior Division) and Judicial Magistrate, First Class No. 4, Alwar to re-hear the prosecution and to examine and discuss the negative Final Report and to pass a reasoned order. Considering the fact that the case has been hanging fire since 1998, the learned Judicial Magistrate is expected to carry out this exercise within a period of two weeks from the date of receipt of a

certified copy of this order.

11. The Deputy Registrar (Judicial) is directed to ensure that a copy of this order should be sent to all the District Judges to be circulated among the Judicial Officers throughout Rajasthan.

12. With these observations, this petition is allowed.