
(2015) 07 RAJ CK 0125

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1766 of 2010

Bijendra Singh Jadon and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 200, 202, 482
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 341

Citation : (2015) 07 RAJ CK 0125

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : Rajneesh Gupta and D.S. Jadaun, for the Appellant; Rishi Raj Singh Rathore, Public Prosecutor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Agarwal, J—The accused-petitioners have filed this Criminal Misc. Petition under Section 482 Cr.P.C. against the order dated 11.08.2010 passed by the Additional Sessions Judge No. 2, Alwar in Criminal Revision Petition No. 114/2009 whereby the learned revisional Court by dismissing the revision petition filed by the petitioners upheld and affirmed the order dated 10.09.2009 passed by the Judicial Magistrate No. 2, Alwar in Criminal Case No. 120/2007 whereby the learned trial Court ordered to frame charge against the petitioners for the offences under Sections 323, 323, 147, 341 and 379 IPC.

2. Brief relevant facts for the disposal of this petition are that for an incident dated 18.03.2002, FIR No. 112/2002 came to be registered at Police Station Kotwali, Alwar on 18.03.2002 for offences under Sections 143, 341, 323 and 379 IPC at the instance of respondent-complainant against accused-petitioner-Shri Bijendra Singh and four-five his companions and after investigation it was found that only offence under Section 323 IPC has been committed and the same being a non-cognizable offence FR was filed by the investigating agency in the trial Court. The respondent-complainant filed protest petition and the learned trial

Court after considering the FR, the evidence collected during investigation and the protest petition vide order dated 18.11.2003 took cognizance against the petitioners and one Shri Chhitar Singh, who subsequently died, for offences under Sections 147, 323, 341 and 379IPC. It is an admitted fact that order dated 28.11.2003 was not challenged and it got finality. After appearance of petitioners, learned trial Court vide order dated 30.06.2007 framed charge for offences under Sections 323, 323/149, 341, 379and 147 IPC against the petitioners and the same was challenged by them by way of Criminal Revision Petition No. 21/2012 and it was partly allowed by the revisional Court vide order dated 26.09.2008 and the matter was remanded to the trial Court with direction to pass a fresh order recording reasons in support thereof. The order dated 26.09.2008 was challenged by the respondent-complainant before this Court by way of S.B. Criminal Revision Petition No. 1443/2008 and the Coordinate Bench vide order dated 16.02.2009 quashed and set aside a part of the order dated 26.09.2008. In compliance of the order dated 26.09.2008 and 16.02.2009, learned trial Court vide impugned order dated 10.08.2009 re-framed charge against the petitioners for the offences under Sections 323, 147, 341 and 379 IPC with a finding that in the said incident more than five persons were involved. The order dated 10.08.2009 was challenged by the petitioners by way of Criminal Revision Petition No. 114/2009, but without success.

3. It was submitted by the learned counsel for the petitioners that there is no iota of evidence available on record showing even prima facie commission of any offence by the petitioners, but learned trial Court as well as revisional Court without considering the matter in a correct perspective has ordered to frame charge against the petitioners for the aforesaid offences. It was submitted that after investigation negative final report was filed by the investigating agency with a finding that at the most offence under Section 323 IPC has been shown to be made out against the petitioners and it being a non-cognizable offence police is not empowered to file charge-sheet and even after submissions of protest petition by the respondent-complainant, no further evidence was recorded by the trial Court under Sections 200 and 202 Cr.P.C. but even then charge has been ordered to be framed for the aforesaid offences. It was further submitted that offence under Section 379 IPC is also not disclosed, more particularly in view of the fact that no recovery was made from the petitioners or any of them. It was further submitted that for an offence to be made out under Section 147 or with the aid of Section 149 IPC, involvement of five or more persons is required to be shown, but in the present case cognizance was taken only against four persons and charge has been framed only against petitioners and thus, the basic ingredient to make out aforesaid offence is completely absent, but even then charge has been ordered to be framed.

4. In support of his submissions, learned counsel for the petitioner relied upon the case of Jalla Khan and Others Vs. State of Rajasthan .

5. On the other hand, learned Public Prosecutor assisted by the learned counsel

for the complainant, submitted that it is well settled legal position that at the stage of framing of charge only prima facie has to be seen whether sufficient grounds are available on record to proceed against an accused and in the present case both the learned Courts below after following the well settled legal position have passed their respective orders requiring no interference by this Court. It was submitted that although cognizance was taken only against four persons, out of which one Shri Chhitar Singh subsequently died, and charge has been framed against three petitioners only, but vide order dated 10.8.2009, learned trial Court on the basis of evidence collected during investigation including statements recorded under Section 161 Cr.P.C. has specifically found that in the incident more than five persons were involved, out of which some could not be named or identified and in view of the same no illegality or perversity can be said to have been committed by the Courts below even if charge for offence under Section 147 IPC has been framed.

6. In support of their submissions, they relied upon the case of State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan and Others, (2014) 1 AD 505 : (2014) AIRSCW 942 : (2014) CriLJ 1444 : (2014) 1 JT 394 : (2014) 1 RCR(Criminal) 572 : (2014) 1 SCALE 219 : (2014) 4 SCJ 135 .

7. I have considered the submissions made on behalf of the respective parties and the material made available for my perusal as well as the relevant legal provisions and the well settled legal position.

8. It is well settled legal position that at the stage of framing of charge for an offence against an accused only prima facie has to be seen whether sufficient grounds are available on record to proceed further against him and even strong suspicion is enough to frame charge and at this stage of the proceedings evidence is not required to be analyzed as it is required to be done at the final stage after trial.

9. On consideration of submissions made on behalf of the respective parties and the material made available for my perusal and more particularly in view of the reasons recorded by the learned Courts below in support of their respective orders and in the light of the well settled legal position, I do not find any illegality or perversity in the impugned orders requiring interference by this Court. I agree with the trial Court that prima facie sufficient evidence is available on record to frame charge against the petitioners for the aforesaid offences.

10. Consequently, the criminal misc. petition being meritless is, hereby dismissed. The stay application also stands dismissed. The stay order dated 24.09.2010 is vacated.