

(2020) 12 RAJ CK 0081

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 3718 Of 2020

Govind And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 323, 325, 354, 382, 452
Protection Of Children from Sexual Offences (POCSO) Act, 2012 — Section 7, 8
Code Of Criminal Procedure, 1973 — Section 156(1), 155(2), 164, 379, 401, 482
Constitution Of India, 1950 — Article 226

Citation : (2020) 12 RAJ CK 0081

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : Ramesh Devasi, Rajlaxmi Singh Choudhary

Final Decision : Dismissed

Judgement

Instant misc. petition has been filed by the petitioners for quashing of FIR No.183/2020 registered at Police Station Sadar Pali, District Pali East for

offence under Sections 452, 354(), 323 & 382 of IPC and under Section 7/8 of POCSO Act.

The complainant filed a written report before the P.S. Sadar Pali, Distt. Pali to the effect that on 20.09.2020 in the evening at around 07:00 P.M. his

uncle Vaja Ram came to visit him. At that time daughter of Vaja Ram who's is aged 16 years was alone at home. The accused persons finding the

daughter Vaja Ram alone entered into the house and tried to commit rape. It is alleged that they tore her clothes and touched her private parts. Upon

raising hue and cry, the complainant and his family members reached on the spot and saw that accused Govind S/o Bhanwar, Govind S/o Puna Ram

and Shaitan were trying to commit rape with her. When the complainant and

family members intervened the accused persons and their family members armed with weapons started beating them, resulting into grievous injury.

Learned counsel for the petitioner submits that as many as 22 accused persons were involved in this case but the specific allegation has been made

only against three persons. It is further argued that it is not feasible that so many people committed such an offence with a girl. In such circumstances,

no offence whatsoever is made out against the petitioners. Therefore, it is prayed that the FIR No.183/2020 registered at Police Station Sadar Pali,

Pali East may be quashed.

Learned Public Prosecutor submits a report dated 14.12.2020 received from the concerned Police Station, in which it has been mentioned that the

petitioners are involved in the alleged crime and Section 325 IPC was later on added in this case.

I have considered the rival arguments and carefully gone through the material on record.

From the bare perusal of the FIR, it is evident that all the accused- persons armed with weapons attacked the complainant party causing grievous

injuries. As per medical report also, Kana Ram has received grievous injuries and therefore Section 325 IPC has been added by the Police. The

prosecutrix Ms. A in her statement under Section 164 Cr.P.C. has also assigned specific allegations against accused persons. Therefore, at this

preliminary stage, it cannot be said that FIR is liable to be quashed.

Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs. Choudhary Bhajanlal & Ors. : 1992 Suppl. (1) SCC 335], laid down guidelines for

exercising inherent powers under Section 482 Cr.P.C. to quash FIR and criminal proceedings. The Court held:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated

by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of

the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could

be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down

any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima- facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases; that the court will not be

justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

Yet again, Supreme Court, in case of Janta Dal Vs. H.S. Choudhary : (1992) 4 SCC 305], while relying on Choudhary Bhajanlal's case (supra), held:

This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest

Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more

so when the evidence has not been collected and produced before (6 of 7) [CRLMP-3718/2020] the Court and the issues involved whether factual or

legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down

in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State

of Haryana v. Ch. Bhajan Lal and Ors., to which both of us were parties have dealt with this question at length and enunciated the law listing out the

circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present

case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code.

In another decision in the case of Pratibha Vs. Rameshwari Devi & Ors, JT 2007 (11) 122, the Hon'ble Apex Court held that while exercising the

extraordinary jurisdiction under Section 482 Cr.P.C., the High Court cannot go beyond the allegations made in the F.I.R or rely upon extraneous

consideration. For the purpose of finding out the commission of a cognizable offence, the High Court is only required to look into the allegations made

in the complaint or the F.I.R.

In another case of N. Soundaram Vs. P.K. Pounraj & Anr. : (2014) 10 SCC 616] ,Supreme Court, while reiterating the principles laid down in Bhajan

Lal (supra) on scope of exercise of powers under Section 482 Cr.P.C., held:

It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the

abuse of process of any Court and to secure the ends of justice [See State of

Haryana v. Bhajanlal]. The inherent power should not be exercised to stifle a (7 of 7) [CRLMP-3718/2020] legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482, CrPC [See MCD v. Ram Kishan Rohtagi]. An investigation should not be shut out at the threshold if the allegations have some substance. [See Vinod Raghuvanshi v. Ajay Arora].

In the facts and circumstances of the case so also in the light of the judicial pronouncements of Hon'ble Apex Court, no case for quashing of FIR

No.183/2020 registered at Police Station Sadar Pali, Pali East is made out. Hence, this criminal misc. petition is hereby dismissed. Stay petition is also dismissed.