

(1990) 11 RAJ CK 0041

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 242 of 1987

Gulab Ram and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 05-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1990) 2 WLN 388

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—This miscellaneous petition is directed against the order dated March 31, 1987, passed by the Addl Sessions Judge, Bali, in Criminal Revisions No. 24/85 and 25/85, arising out of the order dated February 15, 1982, passed by the Munsif and Judicial Magistrate Bali.

2. Briefly Stated, the facts of the case are that the Non- Petitioner No. 2 Sardar Mal lodged a first information report at the Police Station, Bali, against the petitioners and the police, after necessary investigation, presented a final report, which was accepted by the Munsif and Judicial Magistrate, Bali, on November 1981. Before the acceptance of the final report, a protest petition was already filed by the complainant on July 25, 1971, but while accepting the final report, that protest petition was not considered. The learned Magistrate, thereafter, on the protest petition, took the cognizance against the present petitioners. The petitioners, being aggrieved with the order passed by the Judicial Magistrate dated March 25, 1982, taking cognizance against the petitioners filed a revision petition before the learned Additional Sessions Judge, Bali, and the learned Additional Sessions Judge, by his order dated March 31, 1987, dismissed the revision petition filed by the petitioner. It is against this order that the present petition u/s 482, Cr.P.C. has been filed.

3. It has been contended by the learned Counsel for the petitioners that the learned Judicial Magistrate took cognizance in the present case without taking into consideration the final Report submitted by the police after necessary investigation. It has further been submitted time the learned Magistrate has not taken into consideration the statements recorder by the police during investigation. In support of his contention, the learned Counsel for the petitioner has placed reliance on: Jagdish Ram v. The State of Rajasthan 1988 (2) RLW 282. Mr. J.M. Bhandari learned Counsel for the respondent No. 2 and the learned Public Prosecutor, on the other hand, have supported the judgment passed by the learned Sessions Judge and according to them, the learned Judicial Magistrate, Bali, while taking cognizance, has look into the final report as well as the police papers, it has been mentioned in the order itself that the final report is on the record.

4. I have considered the rival submissions and have also looked into the record of the case. Of course, it has been mentioned that the final report is there, but the order does not show that that report was considered. It has only been mentioned in the order that the report was called, but whether that report was considered or not is not clear. In this view of the matter, I am of the opinion, that the consideration of the report and the record of the case where...for the trial Court before taking cognizance. It is necessary for the trial court to consider the evidence on record in the suspected circumstance, if any, and then to form an opinion. In the present case the order taking cognizance does not show that the learned Judicial Magistrate before issuing the process has taken into consideration the final report as the report...such the order passed by the trial Court taking cognizance is, therefore, liable to be set-aside and so also the order in Revision passed by the learned Sessions Judge, Bali, deserves to be quashed.

5. In the result, the petition u/s 482, Cr.P.C. is allowed and the order passed by the trial Court taking cognizance as well as the order dated March 31, 1987 passed by the Addl Sessions Judge, Bali, in revision are set-aside and the case is remanded back to the Munsif and Judicial Magistrate, Bali, to proceed according to law. It is further directed that the learned lower Court will consider the entire material available on record including the final report submitted by the police before deciding whether the process should be issued against the petitioner or not.