

(1994) 02 RAJ CK 0017

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 65 of 1994

Hari Prasad

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 326, 447

Citation : (1994) 1 RLW 459 : (1994) 1 WLN 535

Hon'ble Judges : R.S. Verma, J

Bench : Single Bench

Judgement

R.S. Verma, J.—Mr. Thakur is directed to accept notice. He accepts notice.

2. The matter is being heard at the admission stage for final disposal, looking to the very short point involved.

3. The facts giving rise to this petition lie in a narrow compass. Heera Ram lodged an FIR with Police Station Jaswantgarh on 27.7.89 to the effect that on 26.7.89 he was sleeping in room of his house. His son and her wife were sleeping outside the room. Accused-petitioners Hari Prasad, Dale Ram and Sohan Ram and others armed with various weapons entered his house and gave beating to the inmates of the house who sustained certain injuries.

4. The police after due investigation gave a Final Report and the matter was placed before Munsif & Judl. Magistrate, Ladnu. After hearing the complainant, the learned Magistrate took cognizance of offences u/s 447 and 323, IPC against the three accused petitioners, Hari Prasad, Dale Ram and Sohan Ram. Aggrieved by this order, petitioners filed a revision petition before the learned Addl. Sessions Judge, Nagaur. Learned Addl. Sessions Judge, Nagaur after hearing both the sides affirmed order of the learned Magistrate so far as cognizance was taken against the petitioners for offences u/s 447 and 323, IPC.

5. It may be stated that the learned Magistrate had not taken cognizance for offence u/s 326, IPC. There was no revision against the order of the learned

Magistrate either by the State or by the complainant making grievance of the fact that cognizance was not taken in respect of offence u/s 326 IPC yet while dealing with the revision petition, the learned Addl. Sessions Judge directed the learned Magistrate to look into the record and find out as to who had caused a grievous hurt and then take cognizance for this offence too. It is against this part of the order that the petitioners have come to this Court.

6. The learned Public Prosecutor finds himself unable to support the order of the learned Addl. Sessions Judge so far as it directs the Magistrate to consider the record pertaining to offence u/s 326 IPC and take cognizance of this offence and in my opinion rightly so. The learned Magistrate did not take cognizance for any offence u/s 326 IPC and there was no revision by the State or by the complainant. The accused petitioners had come to the court against order of the learned Magistrate whereby cognizance had been taken against them for offences u/s 447 and 323 IPC I find that the learned Addl. Sessions Judge fell in grave error in directing the Magistrate to consider if any offence u/s 326 was made out and to take cognizance of offence u/s 326 IPC. This part of the order of the learned Addl. Sessions Judge is, therefore, illegal, improper and unjust and deserves to be set aside.

7. The second contention of the learned Counsel for the petitioners was that the learned Magistrate did not consider the grounds given by the police in submitting the Final Report. He did not consider that cognizance could not have been taken for offences u/s 447 and 323 IPC since it was barred by limitation.

8. On this aspect, the learned Public Prosecutor submits that petitioners can raise this objection before the learned Magistrate himself. Order date 13.7.93 is an ex-parte order passed at the back of the petitioners and it is submitted that as and when petitioners place relevant material before the learned Magistrate, he would be free to consider these contentions and decide afresh if any case for proceeding further against the petitioners is made out or not. In my opinion, the learned Public Prosecutor is right in making the submission. The order dated 13.7.92, by which cognizance has been taken, is an ex-parte order. The petitioners would be free to place the relevant material before the learned Magistrate to show that no case under sections 447 and 323 IPC was at all made out or to show that if such an offence was made out, its cognizance was barred by limitation. The learned Magistrate should consider the objections of the petitioners and thereafter should proceed in the matter untrammelled and unfettered by the order passed by him on 13.7.92.

9. The Misc. Petition is disposed of accordingly.