
(1991) 01 RAJ CK 0070

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 459 of 1990

Harish Meena and Another

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 23-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 147, 323, 342, 504

Citation : (1991) 1 RLW 623 : (1991) 1 WLN 160

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This miscellaneous petition is directed against the order dated January 19, 1990, passed by the Munsif and Judicial Magistrate, Makrana, by which the learned Magistrate took cognizance against the petitioners for the offences Under Sections 147, 323, 342 and 504 I.P.C.

2. Complainant Rekha Ram filed a complaint against the petitioners and Badan Singh, Salig Ram, Gumana Ram, Pratap Singh and Devi Singh Under Sections 147, 323, 342 and 504 I.P.C. in the Court of the Munsif and Judicial Magistrate, Makrana on April 15, 1988. In the complaint, various allegations were made against the petitioners as well as the other accused-persons. The learned Magistrate, after submissions of the complaint, recorded the statements of Rekha Ram, Rajendra Singh, Ganpat Ram, Girdhari Ram, Kheta Ram, Balu Ram, Modu Ram, Ramesh, Ramu Ram, Lalu Ram, Parmanand and Khinwa Ram Under Sections 200 and 202 Cr.P.C. After recording the evidence and perusing the same, the learned Magistrate, by his order dated January 19, 1990, took cognizance against the petitioners and the other co-accused under Sections 147, 323, 342 and 504, I.P.C. It is against this order that the present petition has been filed u/s 482, Cr.P.C.

3. I have heard the learned Counsel for the petitioners and the learned Public

Prosecutor and have also gone-through the record.

4. At the time of taking the cognizance, the Court has only to see that whether from the evidence of the witnesses and the documents on record, any prima facie case to proceed-with against the accused is made-out. If there is a prima facie evidence to proceed-with against the accused then the Court can take cognizance. If the accused, against whom the cognizance has been taken, has any valid defence available to him, then that can be decided by the trial Court at the appropriate stage. As the order, taking the cognizance is an *ex parte* order, passed by the learned Magistrate, without giving any opportunity of hearing to the accused, therefore, if the accused has any grievance against the order passed by the learned Magistrate then he can agitate his grievance and raise objections before the learned Magistrate and the learned Magistrate will consider all those objections raised by the accused. If after hearing the arguments the Court is of the opinion that no case is made-out then it may discharge the accused. But the cognizance taken by the learned Magistrate cannot be interfered-with or quashed by this Court under its inherent powers at this stage.

5. It has further been agitated by the learned Counsel for the petitioners that the order of taking the cognizance, passed by the learned lower Court, is not a speaking order and he has placed reliance over the judgment of this Court in the case of *Basuda and Ors. v. The State of Rajasthan* 1989 RCr.C 272. I have considered this aspect of the matter, also. Without going into the controversy what sort of order is required to be passed at the time of taking the cognizance, I have gone-through the record of the case. The statements recorded by the learned Magistrate Under Sections 200 and 202 Cr.P.C, the complaint filed by the complainant and after going through the complete record, I am of the opinion that prima facie a case to proceed-with against the petitioners has been made-out and the learned lower Court has not committed any illegality in taking the cognizance against the petitioners for the offences, mentioned above. Even otherwise, the order passed by the learned Magistrate, in the present case, clearly shows that he has gone-through the statements of the witnesses recorded Under Sections 200 and 202 Cr.P.C. and after going-through the statements of the witnesses, he is of the opinion that prima facie the case to proceed-with against the accused Under Sections 323, 342 and 504, I.P.C. is made-out against the accused. The learned Magistrate, in his order, has given the names of the witnesses and the evidence which has been relied-upon by him in taking the cognizance. It is not necessary that while taking the cognizance and issuing the process the Magistrate may pass a detailed order critically or meticulously examining the evidence on record. That order is required to be passed only if the learned Magistrate refuses to take the cognizance. The view taken is in consonance with the view taken by Hon"ble K.S. Lodha, J. in *Bhanwar Lal v. The State of Rajasthan* 1985 WLN 141.

6. Consequently, the miscellaneous petition, filed by the petitioners, u/s 482 Cr.P.C. has got no force and is hereby dismissed.