
(1985) 01 RAJ CK 0021
In the Rajasthan High Court
Case No : Criminal Petition No. 363 of 1984

Hazari Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-01-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1985) 2 WLN 363

Hon'ble Judges : G.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Kishan Sharma, J.—The stay petition No. 364/84 filed in this Misc. Petition was listed for orders. As the matter is of petty nature and can be decided finally, I think it proper to dispose of the Misc. Petition itself.

2. The petitioners have preferred this Misc. Petition u/s 482, Cr.P.C. against the order of Addl. Sessions Judge, Dausa dismissing the revision petition of the petitioners and confirming the order of the Magistrate dated 2-7-82. The learned Magistrate did not accept the Final Report submitted by the police and took cognizance against the accused petitioner for the offence under Sections 147, 325 and 307, IPC.

3. On 17-1-81 the petitioner Sitaram lodged an F.I.R. at P.S. Lalsot alleging that he is the owner of the agricultural land bearing khasra No. 32 and there is a dispute about the way on the said land between his family and Jawan Singh and his family. On 17-1-81 when Sitaram and others were repairing the wall of land Khasra No. 32, Jawan Singh, Mool Singh and others armed with lathis, sword, gun, and Gandasa came to the field and gave beating to the petitioner and others. On this report F.I.R. No. 10/81 under Sections 147, 148, 149 and 307, IPC was registered.

4. When Jawan Singh came to know about this report, he also lodged a report at the police station, Lalsot against the petitioners and that report was registered at No. 11/81 under Sections 147, 148, 149 and 379, IPC.

5. After registering both the reports, the police investigated into the matter and found that the report lodged by Jawan Singh was a false report and submitted F.R. in FIR No. 11/81. The police, however, found prima facie case established against Jawan Singh and others and filed a challan against Jawan Singh and his party-men u/s 147, 148, 149, 325 and 307, IPC, and that challan is pending.

6. When the police submitted F.R. before the learned Magistrate in FIR No. 11/81, the learned Magistrate did not agree with it and took cognizance against the petitioners for the offence under Sections 147, 325 and 307, IPC vide order dated 2-7-1982. This order is being challenged by the petitioners in this petition.

7. Mr. J.K. Mathur, learned counsel for the petitioners argued that the petitioners are in possession of agricultural land Khasra No. 32, (old Khasra No. 126). No path or way exists in this Khasra. Jawan Singh and others wanted to have a way through khasra No. 32 and the petitioner Sitaram and others were not permitting them. He has contended that Jawan Singh filed a Civil suit in the Court of Munsif. Dausa on 28-8-1978 and in that suit he filed an application for temporary injunction. The learned Munsif after hearing both the parties dismissed the application for temporary injunction on 2-9-1978. Jawan Singh preferred a Misc. Appeal against the order of the learned Munsif dated 2-9-1978 before the Additional District Judge, Dausa, who passed an interim order on 8-9-1978 to maintain status quo, and ultimately after hearing both the parties vide order dated 12-5-1979 allowed the appeal of Jawan Singh and restrained the petitioner Sitaram and others from interfering in the use of the alleged way in khasra No. 32. Against this order dated 12-5-1979, Sitaram and others preferred a Civil Revision No. 271/79 in this Court. This revision petition was accepted by Hon"ble Kasliwal, J. on 13-1-1981. Hon"ble Kasliwal, J. observed. "In my view therefore, on the date of the filing of the suit alleged path way was not in use". Ultimately, the judgment of the Additional District Judge dated 12-5-1979 was set aside and the order of the trial court i.e. Munsif Court, dated 2-9-1978 was restored and the application for temporary injunction filed by Jawan Singh and others was dismissed.

8. Mr. Mathur further argued that just four days after the decision of the civil revision by this court on 17-1-1981 when Sitaram and others were repairing the wall of the land khasra No. 32, Jawan Singh and his party-men armed with lathis, Gandasis, gun etc. came there and gave beating to Sitaram and others (petitioners). A report was lodged by Sitaram at the police station which was registered as FIR No. 10/81 and after investigation the police challaned Jawan Singh and others under Sections 147, 148, 149, 307, 323 and 447, IPC which is pending.

9. Mr. Mathur argued that on the same day Jawan Singh also lodged a report

which was registered as FIR No. 11/8 and the police after investigation submitted F.R. The learned Magistrate did not agree with the F.R. and took cognizance against the petitioners which is under challenge. The argument of Mr. Mathur is that in view of the decision of this Court in Civil Revision No. 271/79 no path way was in use in khasra No. 32 and the temporary injunction granted in favour of Jawan Singh and others was vacated. So, the police had arrived at the right conclusion that there was no way which was in use by Jawan Singh and others. The police also found that Sitaram and his party-men had a right of private defence of person and property. According to Mr. Mathur, the learned Magistrate has committed an error in not accepting the F.R. filed by the police and he has further erred in taking cognizance against the petitioners. Mr. Mathur in support of his argument relied upon the decision in *Augustine and others v. The State* 1982 L.J 1557 in which their Lordships have observed as under:

If in respect of a transaction relating to an offence a case and a counter-case happen to be registered by the police, based on conflicting version given by rival persons it is not incumbent on the part of the Investigating Officer to file separate charge-sheets in both the cases. The Investigating Officer is expected to file a charge-sheet only in the case where, it appears to him as a result of investigation that an offence has been committed.

If the police after investigation of a case registered on the basis of the statement given to him by any individual finds that the facts stated therein are false, it is perfectly within his competence to refrain from filing a charge-sheet. This is so irrespective of the fact whether such an opinion is formed by the police in what is generally termed the main case or in the counter-case. Neither the court nor the individual at whose instance the investigation was taken up can challenge that power. If the individual concerned feels aggrieved it is open to him to prefer a private complaint to see that the same is tried as a counter to the main case.

What Section 173(2) of the Code contemplates is a report regarding an offence. When there are rival or conflicting versions of the occurrence and injuries have been caused on both sides the Investigating Officer can form his own opinion as to which of the parties has committed an offence.

10. I have considered the arguments advanced by Mr. Mathur and have also gone through the judgment of this Court in Civil Revision Petition No. 271/79. I agree with the arguments advanced by Mr. Mathur. The Investigating Officer during the investigation has the duty to form an opinion on the basis of the material which came to his knowledge. There was a finding by the highest court of the State that no path or way existed in Khasra No. 32. If during the investigation the Investigating Officer came to his independent opinion, it was not incumbent on him to file a charge sheet in all the cases, specially in such matter when cross reports were made. He can certainly come to the conclusion that one party acted in the right of private defence of person and property. Therefore, the Investigating Officer was correct in coming to a particular conclusion on the basis of judgment of this Court in Civil Rev. No. 271/79. I feel that the learned

Magistrate did not appreciate the FR submitted by the police and has not arrived at a correct conclusion by taking cognizance against the petitioner. If Jawan Singh & ors, felt aggrieved by the filing of FR by the police they are at liberty to file a private complaint and can prove their case, but the learned Magistrate has certainly erred in taking cognizance against the petitioners. Therefore, the order of the learned Magistrate dated 2-7-1982 cannot be sustained.

11. In the result, the Misc. Petition u/s 482, Cr.P.C is accepted. The order of the learned Magistrate dated 2-7-82 is set aside and the proceedings against the petitioners are quashed. The record of the lower Court be returned forthwith.