
(1999) 02 RAJ CK 0031

In the Rajasthan High Court

Case No : Criminal M. Petition No. 631 of 1998

Hira Lal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 169, 173, 190, 200, 202
Penal Code, 1860 (IPC) — Section 120B, 201, 304B, 306, 406

Citation : (1999) CriLJ 3450 : (1999) 2 RLW 806 : (1999) 3 WLC 159 : (1999) 1 WLN 100

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : Sandeep Mehta, for the Appellant; Sanjay Mathur and A.K. Upadhyay, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G.L. Gupta, J.—Through this misc. petition, petitioners Hiralal and six others have called in question the order dated 2-5-1998 passed by the learned Addl. Sessions Judge No. 2, Udaipur whereby he rejected the revision filed by the petitioners preferred against the order dated 5-4-1997 of the Addl. Chief Judicial Magistrate, Salumber.

2. The short facts of the case are that for the death of Smt. Hema, Ashok Kumar had lodged" F.I.R. No. 285/86 under Sections 304-B, 120-B, 306, 498-A, 201 and 406, IPC at Police Station Salumber and after investigation the police submitted a challan against Prakash, husband of the deceased only and submitted a report u/s 169, Cr.P.C. against two other accused named in the F.I.R. Thereafter the learned Magistrate committed the case to the Court of Sessions vide order dated 14-3-1997. After that on 17-3-1997 complainant chose to file private complaint on 17-3-1997 making allegations against the petitioners, on which the learned Magistrate .recorded the evidence under Sections 200 and 202, Cr.P.C. and vide order dated 5-4-1997 summoned the petitioners as accused in the case.

This order was challenged before the learned Sessions Judge by way of revision petition. The revision was heard by Addl. Sessions Judge No. 2 who vide impugned order upheld the order passed by the Magistrate.

3. The contention of Mr. Mehta is twofold. One, the Magistrate had already taken cognizance of the offences on the police report u/s 190(b), Cr.P.C. on the basis of police report and he had no power to take cognizance of the same offence on the private complaint subsequently as the taking of cognizance of the same offence twice is not permissible. Two, the Magistrate had already committed the case to the Court of Sessions vide order dated 14-3-1997, and therefore, he had become functus officio so far as the cognizance of the offence u/s 190, Cr. P.C. is concerned, and hence he has committed error in proceeding to record the evidence of the complainant in the private complaint.

4. The learned Public Prosecutor and Mr. Mathur have not been able to support the impugned orders.

5. There is merit in the contention of Mr. Mehta that cognizance could not be taken twice by the Magistrate in respect of the same offences. Section 190, Cr.P.C. is reproduced hereunder.

190. Cognizance of offences by Magistrate.--(1) Subject to the provisions of this Chapter any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

6. A plain reading of Section 304-B, Cr.P.C. shows that u/s 304-B, Cr.P.C. the Magistrate takes cognizance of an offence and not against any particular accused. Therefore, when once cognizance of the offence is taken by the Magistrate, may be on the basis of private complaint or on the basis of the police report, or upon information received from any person other than the police officer, he may issue process u/s 204, Cr. P.C. against the accused persons who are alleged to have committed the offence.

7. The cognizance on the basis of the police report is taken when the Magistrate applies his mind to the facts contained in the police report filed u/s 173, Cr.P.C. In the case of a private complaint, the stage of taking cognizance is when the Magistrate embarks upon the enquiry under Sections 200 and 202, Cr.P.C. Once the Magistrate takes the cognizance of the offence either on the basis of the

private complaint or on the police report, it is not permissible that subsequently he may take cognizance again of the same offence : See Suresh v. State of Rajasthan (1997) 3 RLW 1928. Not only that, once the case proceeds further either by way of recording of evidence by the Magistrate or commitment to the Sessions, as the case may be, the Magistrate becomes functus officio so far as his powers u/s 304-B, Cri. P.C. are concerned : Vide : Sheoram v. State of Rajasthan 1982 Raj LR 550.

8. In the instant case, it is not disputed that after the police submitted challan against the accused the case was committed to the Court of Sessions. The moment the Magistrate committed the case to the Court of Session u/s 209, Cr.P.C. he became functus officio so far as his powers, u/s 304-B, Cr.P.C. in respect of the offence for which he had taken cognizance, is concerned. Therefore, he could not take cognizance of the same offence on the basis of the private complaint filed by Ashok subsequently.

9. The only provision under which additional person can be impleaded as accused in a case after the case is committed to the Court of Session is contained in Section 319, Cr.P.C. Under that Section, the Sessions Judge has a power to summon additional accused if it appears from the evidence that he had also committed the offence. Vide : Ranjit Singh Vs. State of Punjab, That being so, in the instant case, it was not open for the Magistrate to take cognizance second time of the same offence on the basis of the private complaint for which he had already taken cognizance on the police report and had even committed that case to the Court of Session.

10. In the instant case, the case had already been committed and thereafter the private complaint was filed. As such, the Magistrate could not have acted u/s 304-B, Cr.P.C. on the basis of the private complaint. That being so, the order taking cognizance on the private complaint of Ashok Kumar and subsequent order of summoning the petitioners are not sustainable.

11. Consequently, the petition succeeds, and the orders impugned therein are hereby quashed. This order will not prevent the Sessions Judge to pass an order u/s 319, Cr.P.C, against the petitioners, if he is satisfied by the evidence produced before him about their participation in the occurrence.