
(2004) 04 RAJ CK 0009

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 771 of 2002

Lrs. of Ratanlal

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256, 482
Penal Code, 1860 (IPC) — Section 143, 323, 451

Citation : (2004) 04 RAJ CK 0009

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : K.L. Maheshwari, for the Appellant; D.D. Kalla, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This misc. petition u/s 482 Cr.P.C. has been filed by the petitioners, who are LRs. of Ratanlal (hereinafter referred to as "the deceased") with the prayer that the order dated 26.4.2002 passed by the learned Addl. Chief Judicial Magistrate No.3, Jodhpur by which the complaint was dismissed by invoking the provisions of Section 256 Cr.P.C. and application of the petitioners dated 4.3.2002 for taking them on record as LRs of deceased was also rejected and further, the order dated 17.6.2002 passed by the learned Addl. Sessions Judge No.1, Jodhpur, by which the revision filed by the petitioners was rejected, be quashed and set aside.

2. It arises in the following circumstances:

On 4.10.1997, deceased Ratanlal lodged a report in the Police Station Khanda Falsa, Jodhpur and on the basis of that report a case for the offences under sections 143, 451 and 323 IPC was registered and investigation; the police found that the case was false one and therefore, police submitted FR being No.38/97 in the Court.

Thereafter, the deceased complainant filed a protest petition and after considering the protest petition and after giving an opportunity of hearing to the deceased complainant, the learned Addl. Chief Judicial Magistrate No.3, Jodhpur through order dated 10.1.1999 accepted the FR submitted by the police and rejected the protest petition filed by the deceased complainant.

Thereafter, the deceased complainant went in revision against the order dated 10.1.1999 passed by the learned Addl. Chief Judicial Magistrate No.3, Jodhpur by which FR submitted by the police was accepted and protest petition of the deceased complainant was rejected and that revision being No.9/99 was heard by the learned Addl. Sessions Judge No.2, Jodhpur and the learned Addl. Sessions Judge No.2, Jodhpur through order dated 29.6.2000 allowed that revision of the deceased complainant and remanded the matter to the learned Addl. Chief Judicial Magistrate No.3, Jodhpur with directions to proceed further in the matter.

Thereafter, on remand, when the case was listed in the Court of ACJM No.3, Jodhpur on 8.11.2000, neither the deceased complainant nor his counsel was present and therefore, vide order dated 8.11.2000, the complaint filed by the deceased complainant was dismissed by the learned Addl. Chief Judicial Magistrate No.3, Jodhpur for default.

Aggrieved from the said order dated 8.11.2000 passed by the learned Addl. Chief Judicial Magistrate No.3, Jodhpur, the deceased complainant again filed revision before the learned Addl. Sessions Judge No.1, Jodhpur and the learned Addl. Sessions Judge No.1, Jodhpur through order dated 29.1.2002 allowed that revision and set aside the order dated 8.11.2000 passed by the learned ACJM No.3 Jodhpur and restored the case and remanded the same back to the learned ACJM No.3, Jodhpur with directions to proceed further in the matter.

It may be stated here that during the pendency of the complaint, the deceased complainant died on 8.2.2002.

Thereafter, on 4.3.2002, the present petitioners, who are LRs of deceased Ratanlal, filed an application with the prayer that since deceased complainant had died on 8.2.2002, therefore, his LRs (present petitioners) be substituted as complainants in place of deceased. The said application of the petitioners was rejected by the learned Addl. Chief Judicial Magistrate No.3, Jodhpur through impugned order dated 26.4.2002 holding inter-alia that under the provisions of Section 256 Cr.P.C. a complaint can be dismissed on the death of the complainant and therefore, he dismissed the complaint and also rejected the application of the petitioners for taking them on record as complainants in place of deceased. Aggrieved from the order dated 26.4.2002 passed by the learned ACJM No.3, Jodhpur, the petitioners preferred revision petition before the learned Sessions Judge, Jodhpur and the same was transferred to the learned Addl. Sessions Judge No.1, Jodhpur, who vide order dated 17.6.2002 rejected the revision of the petitioners and upheld the order of the learned ACJM No.3, Jodhpur dated 26.4.2002. Hence, this misc. petition u/s 482 Cr.P.C. with the

prayers as stated above.

In this petition, the following submissions have been made by the learned counsel for the petitioners:

(i) That the complaint has been wrongly dismissed by the courts below under the provisions of Section 256 Cr.P.C.

(ii) That on the death of the deceased complainant, his LRs can be taken on record.

Therefore, it was submitted that from both points of view, the impugned orders dated 26.4.2002 passed by the learned ACJM No.3, Jodhpur and 17.6.2002 passed by the learned Addl. Sessions Judge No.1, Jodhpur suffer from basic illegality and infirmity and the same deserve to be quashed and set aside.

3. I have heard the learned counsel for the petitioners and the learned Public Prosecutor and gone through the record of the case.

4. The salient features of this case is that till the impugned order dated 26.4.2002 was passed by the learned ACJM No.3, Jodhpur by which the complaint was dismissed by invoking the provisions of section 256 Cr.P.C. and application of the petitioners for taking them on record as LRs of deceased complainant was also rejected, summons on complaint against the accused were not issued, meaning thereby cognizance against the accused persons was not taken.

5. There is no dispute on the point that the offences mentioned in the police FIR as well as in the protest petition filed by the deceased complainant, pertained to summons cases.

6. For convenience, Section 256 Cr.P.C. is quoted here:

256. Non-appearance or death of complainant. - (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinabove contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2). The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

7. staring words of sub-section (1) of Section 256 Cr.P.C. are "if the summons have been issued on complaint " meaning thereby provisions of Section 256 Cr.P.C. can be invoked only when summons on complaint against the accused

persons have been issued.

8. this case, since summons have not been issued against the accused persons when the impugned order dated 26.4.2002 was passed by the learned ACJM No.3, Jodhpur, therefore, the complaint could have not been dismissed by invoking the provisions of section 256 Cr.P.C.

9. There is no dispute on the point that complainant deceased died on 8.2.2002.

10. Since Section 256 Cr.P.C. was not applicable to the present case as summons were not issued against the accused persons, therefore, dismissal of the complaint as well as the application of the present petitioner under the provisions of Section 256 Cr.P.C. was wrong and thus, the impugned orders passed by both the courts below are liable to be quashed and set aside and it would be just and proper to remand the case to the learned ACJM No.3, Jodhpur to pass appropriate orders on the complaint as well as application of the present petitioners, in accordance with law.

Accordingly, this misc. petition filed by the petitioners u/s 482 Cr.P.C. is allowed and the impugned orders dated 26.4.2002 passed by the learned Addl. Chief Judicial Magistrate No.3, Jodhpur and 17.6.2002 passed by the learned Addl. Sessions Judge No.1, Jodhpur are quashed and set aside and the case is remanded to the learned Addl. Chief Judicial Magistrate No.3, Jodhpur to pass appropriate orders on the complaint as well as application of the present petitioners in accordance with law.