

(2021) 02 RAJ CK 0080
In the Rajasthan High Court
Case No : Crl. Ref. No. 1 Of 2020

Nathu Ram And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 19-02-2021

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 91(6), 91(6)(a)
Copyright Act, 1957 — Section 63, 68A
Code Of Criminal Procedure, 1973 — Section 2(1), 2(a)(i), 2(c), 167, 167(2), 167(2)(a), 447
Indian Penal Code, 1860 — Section 304B, 386, 418, 419, 456
Prevention Of Corruption Act, 1988 — Section 13(1)

Citation : (2021) 02 RAJ CK 0080

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Ravindra Acharya, Farzand Ali, Abhishek Purohit

Judgement

1. The legal question that falls for our determination in this reference made by the Division Bench of this Court reads as under:

What would be the nature of an offence (whether cognizable or non-cognizable) for which imprisonment "may extend to three years" is provided and

no stipulation is made in the statute regarding it being cognizable/non-cognizable.

2. The Background facts giving rise to the legal issue may be summarized thus: The petitioners preferred a criminal miscellaneous petition seeking

quashing of an FIR No.12/16 lodged at Police Station, Jayal, District Nagaur, for the offence under Section 91(6) of the Rajasthan Land Revenue Act,

1956 (for short "the Act of 1956"). Precisely, the quashing of the FIR was prayed for by the petitioners on the ground that the offence alleged being

non-cognizable, the police had no jurisdiction or power to register the FIR.

Reliance in this regard was placed on a Single Bench decision of this Court in Pintu Dey vs. State of Rajasthan: 2015(3) Cr. L.R. (Raj.) 1291, laying down that the offences under Sections 63 & 68A of the Copyright Act being punishable by sentence of imprisonment upto three years, are non-cognizable offences. On behalf of the State, it was urged that law laid down by the learned Single Judge in Pintu Dey's case (supra), is incorrect inasmuch as, the ratio of the decision of the Supreme Court in Rajiv Choudhary vs. State (N.C.T.) of Delhi :AIR 2001 SC 2369 was wrongly applied.

3. The learned Single Judge after due consideration of the decisions cited at the bar, the provisions of Code of Criminal Procedure, 1973 ('Cr.P.C.') and Section 91 (6) of the Act of 1956, being of the opinion that the law laid down in Pintu Dey's case (supra) is not correct, while expressing difference of opinion, has referred the question of law referred supra for adjudication by a Larger Bench. Hence, this reference.

4. Learned counsel appearing for the petitioner while relying upon the decision of the learned Single Judge of this Court in Pintu Dey's case (supra) and the decision of the Supreme Court in Rajiv Choudhary's case (supra), contended that the sentence of imprisonment for the offence under Section 91(6) (a) of the Act of 1956 may extend to three years, which could be less than three years as well and therefore, the same being non cognizable, the police had no power to register the FIR. Learned counsel submitted that the distinction sought to be made by the learned Single Judge while referring the matter to the Larger Bench, is not well founded and runs contrary to the decision of the Supreme Court in Rajiv Choudhary's case (supra).

5. On the other hand, learned Additional Advocate General submitted that 'to the extend of three years' includes three years and therefore, by no stretch of imagination, it could be inferred that for the offence under Section 91(6)(a), the sentence prescribed is less than three years. Drawing the attention of the Court to Part II of First Schedule of Cr.P.C., learned AAG submitted that an offence against the laws other than IPC shall be categorized as 'non cognizable' if the offence is punishable with imprisonment for less than three years or with fine only and therefore, where for any offence, the punishment of three years could be awarded, the same cannot fall within the definition of 'non cognizable offence'. Learned AAG submitted that the law laid down by the learned Single Judge in Pintu Dey's case

(supra) relying upon the decision of the Supreme Court in Rajiv

Choudhary's case (supra), is ex facie erroneous inasmuch as, the decision of the Supreme Court relates to provisions of Section 167(2) Cr.P.C. which

is not applicable for determination of cognizability of the offence. Learned AAG submitted that the offences under IPC such as, criminal trespass

under Section 447 though punishable with three months and fine is made cognizable but in case of offences other law, the cognizability is determined

on the basis of maximum punishment provided and thus, adhering to the provision incorporated, an offence for which punishment of three years can be

awarded has to be treated a cognizable offence. Learned AAG submitted that the classification of the offences under Part II of First Schedule has to

be interpreted with reference to the context so as to advance the object sought to be achieved by the legislature and thus, the situation where any of

the offences may not fall in any of the classifications made has to be avoided. In this regard, learned AAG relied upon the decision of the Supreme

Court in Balram Kumawat vs. Union of India: AIR 2003 SC 3268.

6. We have considered the rival submissions and gone through the relevant provisions and decisions cited at the bar.

7. As per the provisions of Section 91(6)(a) of the Act of 1956, whoever occupies any land without lawful authority or having occupied such land

before coming into force of the Rajasthan Land Revenue (Amendment) Act, 1992, fails to remove such occupation within fifteen days from the date

of service of a notice in writing, calling upon him to do so by Tehsildar shall on conviction, be punished with simple imprisonment which shall not be

less than one month but which may extend to three years and with fine which may extend to twenty thousand rupees. However, as per first proviso to

sub-section (6), in case of an offence under Clause (a), the Court may for any adequate or special reason to be mentioned in the judgment impose a

sentence of imprisonment for a term of less than one month.

8. As per Section 2(c) of Cr.P.C. cognizable offence is an offence for which, a police officer may in accordance with the First Schedule or under any

law for time being in force, arrest without warrant, whereas as per Section 2(l) of Cr.P.C., non-cognizable offence is an offence for which a police

officer has no authority to arrest without warrant.

9. The First Schedule of Cr.P.C. deals with classification of the offences under the

Indian Penal Code ('IPC') as also under other laws. Part I of the First Schedule deals with the offences under the IPC, whereas, Part II thereof deals with offences against other laws and makes provisions regarding offences being Cognizable or Non-cognizable, Bailable or Non-bailable and by what Court triable, which may be beneficially quoted as under :

Offence Cognizable or Bailable or By what non-cognizable non-bailable court triable

If punishable with death, imprisonment Cognizable Non-bailable Court of Session. for life, or imprisonment for more than 7 years.

If punishable with imprisonment Cognizable Non-bailable Magistrate of First Class. for 3 years and upwards but not more than 7 years.

If punishable with imprisonment Non-cognizable Bailable Any Magistrate for less than 3 years or with fine only.

10. Indisputably, the Act of 1956 does not make provision regarding the offences punishable under the said Act being cognizable or non-cognizable

and bailable or non-bailable and therefore, the same shall be governed by the provisions of Part II of the First Schedule, quoted hereinabove.

11. A perusal of Part II of the First Schedule makes it abundantly clear that the offences under the laws other than IPC are classified in three

categories and the offence being cognizable or non- cognizable and bailable or non-bailable is determined on the basis of the range of sentence

imposable by the Court on conviction.

12. Apparently, the offence which is punishable with imprisonment to the extend of three years under the laws other than IPC, does not fall within

classification I and III under Part II of the First Schedule, which deals with the offences punishable with death, imprisonment for life, or imprisonment

for more than seven years and the offences punishable with imprisonment for less than three years or with fine only, respectively. Thus, the question

which requires consideration by this Court is whether the expression 'which may extend to three years' would squarely or necessarily fall within the

expression 'imprisonment for three years and upwards' used in classification II of

Part II of First Schedule and thus, the offence under Section 91(6)

(a) of the Act of 1956, has to be treated an offence Cognizable & Non-bailable, triable by Magistrate of First Class.

13. In Pintu Dey's case (supra), the learned Single Judge of this Court while dealing with the issue as to whether the offences under Sections 63 &

68A of the Copyright Act, 1957 ('Act of 1957') , punishable with imprisonment upto three years would be cognizable or non-cognizable, relied upon the

decision of the Hon'ble Supreme Court in the matter of Rajeev Choudhary's case (supra) and the decision of Andhra Pradesh High Court in Amarnath

Vyas vs. State of Andhra Pradesh : 2007 Criminal Law Journal, 2025 and held that the expression 'imprisonment for a term which may extend upto

three years' would not come within the expression 'imprisonment for three years and upwards' and thus, the offences under the said sections of the

Act of 1957 cannot be considered as cognizable offences.

14. In Amarnath Vyas's case (supra), the Andhra Pradesh High Court observed that the penal provisions shall have to be construed strictly. There

may be certain other class of offences which may fall in between classification II and classification III of Second Part of Schedule-I. Merely because,

they are not coming squarely within the domain of classification III, they cannot be considered as coming within the purview of classification II and

therefore, the Court opined that the expression 'imprisonment for a term which may extend upto three years' would not come squarely within the

expression 'imprisonment for three years and upwards'.

15. In Rajeev Choudhary's case (supra), the Hon'ble Supreme Court while dealing with the issue regarding interpretation and construction of

expression 'offence punishable with imprisonment for term of not less than ten years' occurring in Section 167(2) of the Cr.P.C. in context of the

expression 'imprisonment which may extend to ten years' occurring in Section 386 IPC, held that the expression 'not less than ten years' would cover

only those offences for which punishment could be imprisonment for clear period of ten years or more and it would not cover the offences for which

the punishment could be imprisonment for less than ten years. The Court opined that since the imprisonment for offence under Section 386 of the IPC

can vary from minimum to maximum of ten years, it cannot be said that the imprisonment prescribed is less than ten years. Accordingly, the Court

held that clause (i) of proviso (a) to Section 167 (2) would be applicable in case where investigation relates to an offence punishable with (1) death;

(2) imprisonment of life; & (3) imprisonment for a term not less than ten years and it would not cover the offence for which punishment could be

imprisonment for less than ten years.

16. In *Bhupinder Singh & Ors. vs. Jarnail Singh & Ors.*: (2006) 6 SCC 277, the Hon'ble Supreme Court while dealing with the issue with regard to

stipulated period for the purpose of filing the challan under Section 167(2)(a) of Cr.P.C. in a case involving offence under Section 304-B IPC

punishable with imprisonment for the term which shall be not less than 7 years but it may extend to imprisonment for life, observed:

15. Where minimum and maximum sentences are prescribed, both are imposable on the facts of the cases. It is for the Court, after recording

conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum

sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence. The High

Court's view in the impugned order that permissible period of filing of challan is 90 days is the correct view. Contrary view expressed by the

Jharkhand, the Delhi and the Karnataka High Courts is not correct. The Himachal Pradesh, the Rajasthan and the Punjab and Haryana High Courts

taking the view that 90 days is the period, have expressed the correct view.xxxxxx.....

17. Later, in *Rakesh Kumar Paul vs. State of Assam*: (2017) 15 SCC 67, while dealing with the issue of entitlement of the accused to 'default bail' in

terms of provisions of Section 167(2)(a) of Cr.P.C. in a case involving offence under Section 13(1) of Prevention of Corruption Act, 1988 punishable

with imprisonment for a term which shall be not less than four years but which may extend to ten years and fine, the Hon'ble Supreme Court while

accepting the view expressed in *Rajeev Choudhary's* case (supra), held:

25. While it is true that merely because a minimum sentence is provided for the statute it does not mean that only the minimum sentence is imposable.

Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in

between. Where does one strike a balance? It was held that it is eventually for

the court to decide what sentence should be imposed given the range available. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the "not less than" that sentence provided for. Therefore, the words "not less than" occurring to clause (i) to proviso (a) of Section 167(2) CrPC (and in other provisions) must be given their natural and obvious meaning, which is to say, not below a minimum threshold and in the case of Section 167 CrPC these words must relate to an offence punishable with a minimum of 10 years' imprisonment.

.....XXX.....

27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence-understandably so. This could be contrasted with an offence where the maximum punishment under IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed CrPC makes a distinction in the period of investigation for the purposes of "default bail" depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offence punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years' imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigation which must be concluded expeditiously. The cut-off, whether one likes it or not, is

based on the wisdom of the legislature and must be respected.

18. Adverting to the classification of the offences as prescribed under Part II of the Schedule, it is noticed that the classification I covers the offences

which are punishable with death, imprisonment for life or imprisonment for more than seven years and thus, the offences punishable upto seven years

are not covered under the said classification. Further, the classification III covers only those offences which are punishable with imprisonment for 'less

than three years or with fine only' and thus, adopting the reasoning of the Apex Court in Rajeev Choudhary's case and Rakesh Kumar Paul's case

(supra), the offences which are punishable with three years or more are not covered under the said classification. In this view of the matter, if the

offences punishable with imprisonment to the extend of three years are not covered under classification II, the same shall not fall in any of the

classifications i.e. I, II & III, as prescribed under Part II of the First Schedule.

19. A perusal of the Part I of First Schedule reveals that while dealing with the various offences under different sections of IPC, many offences

which are punishable with imprisonment for less than three years, have been classified as cognizable offence and the offences punishable with higher

punishment, even imprisonment for seven years are categorized as non-cognizable. But so far as the classification of offences under the laws other

than IPC is concerned, the offences have been classified in three categories on the basis of the range of punishment of imprisonment imposable.

Obviously, while providing the classification as aforesaid, the object of the legislature was that the entire range of offences under the laws other than

IPC must fall within one or other category as classified under Part II of the First Schedule.

20. As laid down by the Hon'ble Supreme Court in Balram Kumawat's (supra), contextual reading is a well known proposition of interpretation of

statute. The clauses of a statute should be construed with reference to the context vis-a-vis other provisions so as to make a consistent enactment of

the whole statute relating to the subject matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature. The Court

categorically laid down that:

22. Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The

law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the

law is not to allow the offender to sneak out of the meshes of law. Criminal Jurisprudence does not say so." (emphasis supplied)

21. In the background of law laid down by the Hon'ble Supreme Court as aforesaid, if we examine the classification of the offences under the laws

other than IPC as prescribed under Part II of First Schedule in context of the classification of the offences under IPC specified under Part I of the

First Schedule, it is noticed that for offences under the various sections of IPC, which are punishable with imprisonment to the extend of three years,

seven years or ten years, as the case may be, for the purpose of determination as to whether the offence shall be cognizable or non-cognizable and

bailable or non-bailable, the punishment provided has been mentioned as 'for three years', 'for seven years' and so on. To put in other words, the

punishment of imprisonment for the period specified as mentioned in Column 3 of Part I of First Schedule, includes the description of the imprisonment

for a term which may extend to the period specified. For example, the offences under Sections 418, 419, 456 IPC are punishable with imprisonment

for a term which may extend to three years, but while classifying the said offences as cognizable/non-cognizable and bailable/non-bailable in Column

No.3 of Part I of First Schedule, the description of the term of sentence is mentioned as 'for three years'. Similar is the position with regard to other

offences under IPC, which are punishable by imprisonment of either description for a term which may extend to maximum period specified. Thus, if

the classification of the offences in Part II of First Schedule is construed with reference to the context vis-a-vis the classification under Part I of the

First Schedule, the expression 'for three years' occurring in classification II under Part II of First Schedule has to be construed to include the offences

punishable with imprisonment for a term to the extend of three years. Thus, the classification made as aforesaid, for determination of nature of

offence whether it is cognizable or non-cognizable, the maximum punishment that may be awarded for particular offence, is relevant and not the

minimum sentence.

22. The view taken by the Andhra Pradesh High Court in Amarnath Vyas's case (supra), relied upon by the learned Single Judge of this Court in Pintu

Dey's case (supra) that there may be certain other class of offences which may fall between classification II and classification III, but by default, they cannot be considered as coming within the purview of classification II, in our considered opinion, is not correct. As a matter of fact, Part II of First Schedule covers every offence under any other statute, other than IPC, where there is no stipulation regarding it being cognizable or non-cognizable in the statute itself.

23. Coming to the decisions of Hon'ble Supreme Court in Rajeev Choudhary and Rakesh Kumar Paul's cases (supra), it is noticed that in sub-section

2(a)(i) of Section 167 Cr.P.C., the expression used is 'an offence punishable with death, imprisonment for life or imprisonment for a term of not less

than ten years' and thus, obviously, unless the minimum sentence prescribed is less than ten years, the offence shall not fall within the said clause for

the purpose of default bail. As discussed above, the expression 'imprisonment for 3 years and upward' used in classification II of Part II is totally

different, which has to be interpreted in context of similar expression used in Part I of First Schedule. In this view of the matter, in our considered

opinion, the law laid down by the Hon'ble Supreme Court in Rajeev Choudhary's case and Rakesh Kumar Paul's case (supra) while interpreting the

provisions of sub-section 2(a)(i) of Section 167 Cr.P.C. in different context, is not attracted in the instant case.

24. In view of the discussion above, we are firmly of the view that the decision of the learned Single Judge of this Court in Pintu Dey's case (supra) does not lay down the correct law.

25. Accordingly, the reference is answered in terms that unless otherwise provided under the relevant statute, the offences under the laws other than

IPC punishable with imprisonment to the extend of three years, shall fall within the classification II of offences classified under Part II of First

Schedule and thus, shall be cognizable and non-bailable. Consequently, the offence under Section 91(6) (a) of the Act of 1956 shall be cognizable and

non- bailable.

Let the criminal miscellaneous petition be listed before the learned Single Judge for disposal.