
(2006) 07 RAJ CK 0010

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 231 of 2005

Parsa Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 07 RAJ CK 0010

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : Ranjeet Joshi, for the Appellant; Ashok Upadhyaya, Public Prosecutor for State and Mr. R.S. Choudhary for Non-Petitioners, for the Appearing Parties

Judgement

H.R. Panwar, J.—By the instant criminal misc. petition u/s 482 of the Code of Criminal Procedure, 1973 (for short "the Code" hereinafter) the petitioners have challenged the order dated 03.11.2004 passed by Special Judge/SC/ST (Prevention of Atrocities) Cases, Merta (for short "the revisional court" hereinafter) in Criminal Revision No. 40/2004 (30/03), whereby the revision petition filed by the petitioners against the order dated 11.07.2002 passed by Judicial Magistrate, Merta (for short "the trial court" hereinafter) was allowed and while setting aside the order of the trial court, the matter was remanded to the trial court with a direction to keep in view the discussion made in the order with regard to cognizance and rehear complainant Nathidevi and pass an appropriate order in accordance with law. Aggrieved by the order impugned to the extent directing the trial court to pass a fresh order keeping in view the legal position with regard to cognizance, the petitioners have filed the instant petition.

2. I have heard Learned Counsel for the parties. Carefully gone through the order passed by the revisional court as well as by the trial court.

3. Learned Counsel for the petitioners submits that the order impugned is beyond the scope of Section 398 of the Code to the extent directing the trial court to keep in view the discussion made in the order regarding the appreciation

of the law.

4. Learned Counsel appearing for the non-petitioners submits that the petitioners have already availed one revision as envisaged u/s 397 and a second revision is barred by law under sub-section (3) of Section 397 of the Code.

5. I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

6. So far as the contention regarding second revision being barred by sub-section (3) of Section 397 of the Code is concerned, there is no dispute about the provision of law. However, this petition is not u/s 397 or 401 of the Code, but the petitioners have filed this petition invoking inherent jurisdiction u/s 482 of the Code. This controversy stands concluded by a catena of decisions and a reference may be made to a Three Judge Bench decision of Hon'ble Supreme Court in *Krishnan and another Vs. Krishnaveni and another*, and therefore, the matter is no more *res Integra*.

7. So far as the order impugned is concerned, the power of the revisional court u/s 397 of the Code, have been conferred u/s 398 Cr.P.C. which provides that on examining any record u/s 397 or otherwise the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, "further inquiry" into any complaint which has been dismissed u/s 203 or sub-section (4) of Section 204 or into the case of any person accused of an offence who has been discharged. Thus, on examining any record or otherwise, the High Court or Sessions Judge can make the order for further inquiry into any complaint. Further inquiry would mean re-consideration of the existing material only. While explaining the scope of Section 398 of the Code, this Court, in *Ramsingh & Ors. v. State of Rajasthan*, 2003 WLC 563 observed that in revision, Court of Sessions cannot direct the trial court to take cognizance, but only a direction to hold further inquiry can be given.

8. In *Lalita (Smt.) v. State of Rajasthan & Anr.*, 2004 (2) R.C.D. 545 (Raj.), while setting aside the revisional order, this Court observed that in view of the provisions of Section 398 of the Code, the revisional court could have only directed for passing of fresh order after further inquiry. Explaining the meaning of "further inquiry", this Court held that further inquiry only means reconsideration of the existing evidence.

9. In this view of the matter, the order impugned, to the extent directing the trial court to keep in view the discussion made in the order impugned is beyond the scope of Section 398 of the Code. However, the order impugned directing the trial court to. rehear the parties including complainant Nathi Devi and pass an appropriate order according to law is perfectly in accordance with law.

10. Consequently, the order impugned dated 3.11.2004, to the extent directing the trial court to keep in view the discussion made in the order impugned, is set

aside. However, the trial court may make further inquiry. The expression "further inquiry" would mean re-consideration of the existing material only and pass an appropriate order in accordance with law.

With the above modification, the petition is disposed of Stay petition also stands disposed of.