
(1989) 11 RAJ CK 0007

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No's. 314 of 88 and 474 of 1989

Prahlad Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(B), 207, 209, 227, 306
Penal Code, 1860 (IPC) — Section 376, 448, 457

Citation : (1990) CriLJ 1688 : (1990) 1 WLN 255

Hon'ble Judges : S.S. Byas, J

Bench : Single Bench

Advocate : P.D. Acharya and A.K. Acharya, for the Appellant; Chandralekha, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Byas, J.—These two petitions u/s 482, Cr. P.C. have been filed by the accused against the two orders of the learned Sessions Judge, Merta City each dated 14-9-1988. Since the original orders by the Munsiff and Judicial Magistrate, Ladnu were passed at different stages in one and the same criminal case, they were heard together and are decided by a single order. By one impugned order, the learned Sessions Judge cancelled the bail u/s 439(2), Cr. P.C. granted to the accused by the learned Munsiff and Judicial Magistrate, Ladnu. By the other impugned order, the learned Sessions Judge quashed the order of the Magistrate dated 4-10-87 by which the Magistrate refused to take cognizance of the offences under Sections 457 and 376, I.P.C. and instead took cognizance of the offence u/s 448, I.P.C.

2. For a proper appreciation of the controvercies involved, it would be proper to notice the material facts in brief.

3. Smt. Samander Kanwar, the prosecutric appeared at Police Station, Ladnu on 11-9-1987 and presented a written report stating therein that when she was sleeping on the roof of her house in village Gudila in the night between 8th and

9th September, 1987, accused Prahlad Singh at about 11 p.m. stealthily entered her house and over powered her. He thereafter committed rape on her. She could not raise cries as the accused threatened to kill her. After committing the crime, the accused slipped away. She raised cries and many persons collected out-side her house. The Police registered a case under Sections 376 and 457, I.P.C. and proceeded with the investigation. The accused was arrested around 8 a.m. on 16-9-1987 and was presented before the Judicial Magistrate, Ladnu on the same day. He remanded him to judicial custody. The accused moved an application for bail before the Magistrate on 17-9-1987. The learned Magistrate after hearing the public prosecutor and the counsel for the accused on 17-9-1987 itself, allowed the application and passed an order to release him on bail on furnishing personal and surety bonds each in the amount of Rs. 5000/-. The prosecutrix approached the Sessions Judge u/s 439(2), Cr P.C. and prayed for cancellation of bail of the accused granted to him by the Magistrate, While the proceedings for cancellation of bail were pending before the learned Sessions Judge, the police submitted a challan against the accused on 12-10-1987. The case was taken up on 14-10-87 by the Magistrate. It was contended before him on behalf of the accused that from the evidence and material collected during investigation by the police, no offence under Sections 376 and 457, I.P.C. could be said to have been made out. The magistrate heard the A.P.P. and the counsel for the accused. By his impugned order dated 14-10-1987 he allowed the contention raised on behalf of the accused. As a result, he refused to take cognizance of the offences under Sections 376 and 457, I.P.C. and instead took cognizance of the offence u/s 448, I.P.C. The prosecutrix again went in revision before the learned Sessions Judge and challenged the order of the Magistrate.

4. Learned Sessions Judge heard both the matters together and by his orders dated 14-9-1988 cancelled the bail u/s 439(2), Cr. P.C. granted to the accused by the Magistrate. By another order of the same day, he allowed the revision filed by the prosecutrix and set aside the order of the Magistrate dated 14-10-87, by which the Magistrate had refused to take cognizance of the offences under Sections 457 and 376, I.P.C. and took cognizance of the offence u/s 448, I.P.C. Aggrieved against the aforesaid orders of the Sessions Judge, Merta passed on 14-9-1988, the accused had approached this Court u/s 482, Cr. P.C.

5. I have heard the learned counsel for the accused Shri P.D. Acharya and A.K. Acharya and the learned Public Prosecutor Smt. Chandralekha. I have also gone through the record carefully.

6. It would be proper first to take the petition relating to the impugned order of the Sessions Judge, by which he quashed the order of the Magistrate dated 14-10-1987 who refused to take cognizance of the offence under Sections 457 and 376 and took cognizance only of the offence u/s 448, I.P.C. It was vehemently contended by the learned counsel for the accused that the impugned order of the Sessions Judge is bad and unsustainable in law. It was argued that the learned Magistrate had meticulously scrutinized the evidence and the

material collected by the police and arrived at a conclusion that no offence under Sections 457 and 376, I.P.C is made out. It was argued that his order in revision can be set aside only when the order appears to be palpably erroneous or perverse.

7. It was on the other hand contended by the learned Public Prosecutor that by refusing to take cognizance of the offence under Sections 457 and 376, I.P.C. and by taking cognizance of a minor offence u/s 448, I.P.C. the learned Sessions Judge had virtually discharged the accused of the offences under Sections 457 and 376, I.P.C. for which he was not competent and authorised in law. Reliance in support of the contention was placed on the well known as of Sanjay Gandhi Vs. Union of India (UOI) and Others,

8. I have bestowed my thoughtful consideration to the rival submissions.

9. Section 209, Cr. P.C. occurring in Chap. XVI, Cr. P.C. speaks about the commitment of case to the Court of Sessions where the offence is triable exclusively by it. It need not be said that an offence u/s 376, I.P.C. is exclusively triable by a Court of Sessions. u/s 209, Cr. P.C., the Magistrate is required to furnish to the accused the copies of the documents mentioned in Section 207, Cr. P.C. in a case, which is instituted on a police report. After satisfying himself that this complaine u/s 207, Cr. P.C. has been made, it is obligatory and incumbent on the Magistrate to commit the case for trial to the Court of Sessions. There is no provision in Chapter XVI empowering or authorising the Magistrate to discharge the accused. In Sanjay Gandhi Vs. Union of India (UOI) and Others, , their Lordships dealt with the scope of Section 209, Cr. .C. and the powers of the committing Magistrate. It was observed :

"Under the new Code in cases where offence is triable exclusively by the Court of Sessions, the Committing Magistrate has no power to discharge the accused. Nor has he power to take oral evidence save where a specific provision like Section 306 enjoins.

It is also not open to the committal court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. The narrow inspection hole through which the Committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. If it is so, the Magistrate has simply to commit for trial before the Court of Session. If by error, wrong section of the Penal Code is quoted, he may look into that aspect. If made up facts unsupported by any material are reported by the police and a Sessions offence is made to appear, it is perfectly open to the Sessions Court u/s 227, Cr. P.C. to discharge the accused."

10. In the words of their Lordships, even if a case has been falsely fabricated and made up by inventing the facts by the police against the accused, it is not within

the realm of the Magistrate to scrutinize the evidence and discharge the accused. The reason is obvious. The powers of discharge have been invested in a Sessions Judge u/s 227, Cr. P.C. That power exclusively granted to the Sessions Judge u/s 227, Cr. P.C. cannot be usurped by the Magistrate. Power of discharge can be exercised only by a trial Court and the Court of the Judicial Magistrate is not the trial Court in respect of the offences exclusively triable by a Court of Session. The new Code of Criminal Procedure 1973 has made sea changes in the powers of the Magistrate relating to the offences exclusively triable by a Court of Sessions. The Magistrate now taking cognizance of the offence is merely required to look into the charge-sheet filed by the police and if he finds that the facts stated therein constitute an offence triable exclusively by a Court of Sessions, he is bound to make an order committing the case to the Sessions. The Magistrate is not authorised to look into the evidence collected by the police and to see whether or not there is a triable case against the accused. Whether the case is triable or not is now with the Sessions Judge, who alone can exercise the powers of discharge u/s 227, Cr. P.C.

11. Here in the instant case, the learned Magistrate took great pains in scrutinizing the evidence collected by the police and went at length to show how no case under Sections 457 and 376, I.P.C. was made out against the accused. His pains taking approach is futile and he made a useless exercise in discharging the accused because he was not authorised to do so in law. Learned counsel for the accused were persistently asked to point out decision in which a contrary view to the opinion expressed in Sanjay Gandhi Vs. Union of India (UOI) and Others, was taken and they could not.

12. Learned Magistrate laid much emphasis on the words "it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions" occurring in Section 209, Cr. P.C. and made an attempt to derive help from these words that it was open to him to find out whether the material collected by the police made it appear that the offence triable exclusively by the Court of Sessions, was there. This approach of the Magistrate is not warranted because what he is to do is to peruse the police report. He is to see only the facts recited in the police report to find out whether a case exclusively triable by the Sessions Judge was or was not made out. He is debarred from scrutinizing the evidence collected during investigation and to reject it on merits. Learned Magistrate declined to take cognizance of the offences under Sections 457 and 376, I.P.C. and instead took cognizance of the offence u/s 448, I.P.C. It need not be stressed that an offence u/s 448, I.P.C. is minor in nature than under Sections 457 and 376, I.P.C. Now when the cognizance of a minor offence was taken by the Magistrate, it necessarily resulted in a discharge of the accused from the major offence under Sections 457 and 376, I.P.C. Virtually, the order of the Magistrate is an order of discharge. Learned Magistrate which he could not do u/s 209, Cr. P.C. was done by him u/s 190, Cr. P.C. He did so as clever ploy to discharge the accused. Learned Sessions Judge rightly set aside the order of the Magistrate and no interference is called for.

13. Coming to the second petition relating to the cancellation of the bail u/s 439, Cr. P.C., less said is better. The accused was arrested on 8 a.m. on 16-9-87 and was produced before the Magistrate on the same day. The accused moved for bail on 17-9-87 and the bail was granted to him on the same day. In granting bail the learned Magistrate observed that no offence u/s 376, I.P.C. was prima facie made out against the accused. It has been discussed above that it was beyond his competency to state so in a case exclusively triable by a Court of Sessions. Here is a young woman who is said to be molested and raped by the accused in the mid night on the roof of her house, where she was alone. The prosecutrix is a widow. Learned Magistrate conveniently forgot to remember that no chaste Hindu woman (the prosecutrix is Rajput by caste) would falsely make such serious allegation of rape because in doing so her own personal reputation is at stake. The approach of the learned Magistrate in granting bail to the accused is wholly unjustified. His bail was rightly cancelled by the learned Sessions Judge u/s 439, Cr. P.C. No interference is called for.

14. In the result, both the petitions u/s 482, Cr. P.C. are dismissed. The accused is directed to surrender himself in the Court of Munsif and Judicial Magistrate, Ladnu on 19-12-1989, failing which it will be open to the Magistrate to proceed against him in accordance with law by getting him rearrested etc.