
(1992) 01 RAJ CK 0075

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 125 of 1991

Pratap Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 164, 169, 482
Penal Code, 1860 (IPC) — Section 147, 323

Citation : (1992) 1 RLW 98 : (1992) 1 WLN 326

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.L. Tibrewal, J.—This petition u/s 482 Cr. P.C. is directed against the order dated February 26, 1991 of Munsiff and Judicial Magistrate, Sirohi. The question involved in the matter is very simple as to whether the Magistrate can direct to the investigating agency to get the statement of the witnesses recorded u/s 164 Cr.P.C.

2. In brief, the facts of the case are that a complaint was filed by the non-petitioner Dayalal in the court of Judicial Magistrate, Sirohi against the accused petitioners under sections 147 and 323 IPC which was forwarded to the police u/s 156(3) Cr.P.C.

As per the complaint, the prosecution case is that there is a common garage belonging to the complainant and the accused persons situated at Sirohi near police station. On 16-10-1990, the accused persons threw away the parts of the scooter belonging to the complainant and the accused-Pratap caught the neck of the complainant and pressed it and also inflicted a blow on his head with the silencer of the scooter.

3. The police investigated the matter and recorded the statement of the witnesses. Thereafter, the police came to the conclusion that no case was made

out against the accused persons, as such, a negative report was submitted before the learned Magistrate. However, the learned Magistrate, by impugned order declined to accept the final report and directed the S.H.O to make further investigation in the case with a further direction that the statement of all the witnesses by the complainant be got recorded by a Magistrate u/s 164 Cr.P.C. and on the basis of the statement recorded by the Magistrate the result of the investigation should be brought before the court. This order of the learned Magistrate is under challenge.

4. The contention of the learned Counsel for the petitioners is that the aforesaid direction given by the Magistrate to the S.H.O. to get the statement of the witnesses recorded u/s 164 Cr.P.C. is without jurisdiction. According to the learned Counsel, the statement of the witnesses u/s 164 Cr.P.C. are recorded during investigation and the functions of the Magistrate and the investigation agency are entirely different, and though the Magistrate may or may not accept the report and take suitable action according to law, he cannot impinge upon the jurisdiction of the police by compelling them to get the statement of the witnesses recorded u/s 164 Cr.P.C. A reference in this connection has been made by the learned Counsel for the petitioners on the judgment of the Supreme Court in *Abhinandan Jha and Others Vs. Dinesh Mishra*, . The learned Counsel referred the following observations made in the said case:

There is no power, expressly, or impliedly conferred, under the Code on a Magistrate to call upon the police to submit a charge-sheet when they have sent a report u/s 169 of the Code that there is no case made out for sending up an accused for trial. The functions of the Magistrate and the police are entirely different and though the Magistrate may or may not accept the report and take suitable action according to law he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view.

The argument of the learned Counsel for the petitioner has got force. The law is now well settled that whenever a final report is submitted by the police, three courses are open to the Magistrate. He may decline to accept the final report and take cognizance on the police papers after being satisfied that there is ground to proceed against the accused. The second course is that he may accept the final report, while the third course is that he may decline to accept the final report and direct the police to make further investigation u/s 156(3) Cr.P.C. However, the Magistrate cannot impinge upon the jurisdiction of the police by compelling them to get the statement of the witnesses recorded u/s 164 Cr.P.C. as the same are desired by the complainant. It is true that any Magistrate is competent to record a statement u/s 164 Cr.P.C. even though the investigating police have not taken any initiative to request the Magistrate to record the statement. Ever the police may not desire to have the statement of a witness/witnesses recorded by the Magistrate. But, even than there is nothing to prevent the witness/witnesses from going to a Magistrate with the request to have his/there statement recorded u/s 164 Cr.P.C. but the Magistrate cannot give such direction to the investigating

agency. Otherwise also, the matter, appears to be of civil nature as the complainant himself has come out with a case that the garage in question is a common one belonging to the complainant and the accused persons and no partition has taken place between the parties.

5. Taking into consideration the above facts, I am of the view that it is a fit case in which power u/s 482 Cr.P.C. should be exercised by this Court and the impugned order passed by the Magistrate should be set-aside.

Consequently, this petition is allowed and the order of the Magistrate dated February 26; 1991 is set-aside.