

(2012) 01 RAJ CK 0009

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No's. 69 and 60 of 2012

Rajendra Yadav

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 301, 482
Penal Code, 1860 (IPC) — Section 120, 120B, 167, 197, 198

Citation : (2012) 3 RLW 2805

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : B.N. Sandu, L.N. Boss, Karanpal Singh, President, Raj. High Court Bar Association, Jaipur, Rinesh Gupta, Himat Singh, Rajesh Sharma, in S.B. Cr. Misc. Petition No. 69/2012, J.K. Gupta for Ram Swaroop Sharma in S.B. Cr. Misc. Petition No. 60/2012, for the Appellant; Rajendra Yadav, Government Advocate and Public Prosecutor for State and Peeyush Kumar, Public Prosecutor and Pradeep Shrimal, Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Mahesh Chandra Sharma, J.—As both the criminal misc. petitions relate to FIR No. 330 of 2011, they are being disposed of by this common order. Mr. J.K. Gupta, Advocate filed the S.B. Criminal Misc. Petition No. 60 of 2012 Ramswaroop Sharma vs. State of Rajasthan and another regarding the FIR No. 330 of 2011 registered at Police Station Ashok Nagar, Jaipur City (South) on dated 23.10.2011 for the offence under Sections 467, 478, 120B IPC for fair and proper investigation in the matter.

2. Mr. Rajendra Yadav, Govt. Advocate and Public Prosecutor himself has filed S.B. Criminal Misc. Petition No. 69 of 2012 for quashing of the FIR No. 330 of 2011 for offence under Secs. 167, 197, 198, 218, 219, 420, 467, 468, 469, 471, 474, 120B IPC registered at Police Station Ashok Nagar, Jaipur (South).

3. Brief facts of the case are that Ranswaroop Sharma son of Radhakishan,

resident of plot No. E 651, Gupta Store, Vaishali Nagar, filed a complaint before the Judicial Magistrate No. 11 Jaipur Metropolitan Jaipur against Rajendra Kumar Yadav, Government Advocate, Rajasthan High Court Jaipur, and Shyam Lal Sharma son of Ramgopal Sharma, resident of F 440 Gandhi Nagar, Jaipur u/s 190 Cr.P.C. for the offence under sections 167, 197, 198, 218, 219, 420, 469, 466, 467, 468, 471, 120 IPC. The complaint as shown in FIR (Annexure-1 in S.B. Cr. Misc. Petition No. 60/2012) reads as under:

4. The matter was sent for investigation at Police Station Vaishali Nagar u/s 156(3) Cr.P.C. But due to jurisdiction it was sent back to the court concerned. The trial court sent the matter to Police Station Ashok Nagar, Jaipur City where it was registered as FIR No. 330 of 2011 on 23.10.2011. The petitioner Ram Swaroop Sharma in his petition stated that the matter relating to respondent office " Government Advocate Office" and there is involvement of one accused Shyam Lal Sharma in other FIR 337 of 2011 at Police Station Vaishali Nagar. They arranged to call the case diary of matter in wrong case. The case diary was sent on dated 12 July 2011 at High Court. The SHO Police Station Vaishali Nagar vide note (Annexure-2 in S.B. Cr. Misc. Petition No. 60/2012) reported as under:

5. Thereafter on 8.11.2011 the complainant petitioner Ramswaroop filed the following application (Annexure-3 in S.B. Cr. Misc. Petition No. 60/2012) before the Judicial Magistrate No. 11 Jaipur:

6. The Police Station Ashok Nagar on 17.11.2011 submitted report (Annexure-4 in S.B. Cr. Misc. Petition No. 60/ 2012) before the JM No. 11 Jaipur Metropolitan Jaipur, which reads as under:

7. Mr. Rajendra Yadav, Government Advocate and Public Prosecutor and other advocates assisting him including the other Public Prosecutors and the President of the Bar Association have stated that the Government Advocate and the Public Prosecutor appointed by the State Government has every power to call for the case diaries from the Police Stations as and when any petitions relating to bails and misc. petitions for quashing of the FIR and for fair investigation in the case are filed. They have invited my attention towards section 301 Cr.P.C. wherein it has been provided that the Public Prosecutor or Assistant Public Prosecutor, who are in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

8. The counsel Mr. Rajendra Kumar Yadav, who is Government Advocate and Public Prosecutor stated that the Judicial Magistrate without looking to the fact that the Public Prosecutors are authorised and even without any permission or authority they have power to appear in the court and call for the case diaries from the Police Stations and in order to tarnish the reputation of the Public Prosecutor the complainant has unnecessarily filed a complaint against him and the same should be quashed and set aside in the inherent jurisdiction of this court u/s 482 Cr.P.C. Mr. Rajendra Kumar Yadav, Public Prosecutor stated that Pankaj Gaur filed criminal misc. petition before this court and only in that case

the diary was called. Without calling any diary the case could not be defended for the State Government. The complaint, and the criminal proceedings taken against him and the FIR No. 330/2011 registered at Police Station Ashok Nagar, Jaipur, which does not disclose any cause of action should be quashed.

9. Mr. J.K. Gupta, earlier appeared before this court and argued that the petitioner filed the misc. petition in order to get fair trial and proper investigation in the FIR No. 330 of 2011. Now he is not present before this court when the case was taken up in the second round along with the criminal misc. petition filed by Mr. Rajendra Kumar Yadav, Public Prosecutor and Government Advocate for quashing of the FIR registered against him in the Police Station on a complaint filed by the complainant before the Judicial Magistrate No. 11 Jaipur Metropolitan. The Judicial Magistrate without looking into the facts mentioned in the complaint sent the complaint u/s 156(3) Cr.P.C. to the Police Station Vaishali Nagar and thereafter to the Police Station Ashok Nagar.

10. Mr. Man Singh, Sub Inspector of the Police Station Ashok Nagar, Jaipur was directed to appear before this court. He appeared before this court and this court asked him question whether any case is made out or not against Mr. Rajendra Kumar Yadav, Public Prosecutor of this Court as per the facts mentioned in the FIR. Mr. Man Singh, Sub Inspector after reading the FIR before this court stated that no case is made out against the petitioner Rajendra Kumar Yadav, Public Prosecutor and others. He further stated that every day the case diaries are called by the Public Prosecutors and they have a right to call the case diaries and even without authority from the Government defend the cases in the High Court. This court further asked Mr. Man Singh, Sub Inspector that the case diary in the FIR No. 330/2011 is intact or not to which he replied that the case diary is intact.

11. This court further asked the question to Shri Hari Singh, Constable who has brought the case diary of FIR No. 337 of 2011 registered at Police Station Vaishali Nagar that whether the case diary was intact or not. He replied that the case is diary is complete and intact.

12. This court further asked question to Shri Man Sigh, whether you have made fair and proper investigation in the case or not. He has stated that he has made investigation fairly and properly and further stated that no case is made out as per the investigation made by him against the Public Prosecutor and others. He has further stated that from reading of the FIR and the facts disclosed in the FIR does not disclose any offence and also disclose any cause of action and he will submit FR before the concerned Judicial Magistrate.

13. I have heard the learned counsel for the parties.

14. Section 301 Cr.P.C. reads as under:

301. Appearance by Public Prosecutors. (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal. (2)

If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

15. Thus it is clear that the Public Prosecutor has authority to appear before the court without any written authority from the Government before any court in which the case is pending. The allegation in the FIR was made against Shri Rajendra Kumar Yadav that there is no criminal misc. petition pending before this court and the case number of the misc. petition which was mentioned in the request of the Incharge Police Station was that the case diary was called in S.B. Criminal Misc. petition No. 1690 of 2011, which is registered in the name of "Abid Hussain." A query was made by this court on the computer whether any such criminal misc. petition was filed by Pankaj Gaur or not before this court. On query the data made available is enclosed with the file of this case.

16. It is clear from the data that Pankaj Gaur filed S.B. Criminal Misc. Petition No. 1956 of 2011 in FIR No. 337 of 2011 of Police Station Vaishalai Nagar and not S.B. Criminal Misc. Petition No. 1690 of 2011 as mentioned in the letter of the SHO of the Police Station and in the complaint and in the FIR. In the S.B. Criminal Misc. petition No. 1956 of 2011 which was registered herein at Jaipur Bench on 28.7.2011, the case diary was called by the office of Public Prosecutor in the Rajasthan High Court and unnecessarily in the complaint filed before the Judicial Magistrate No. 11 facts have been mentioned against Shri Rajendra Kumar Yadav, Government Advocate and Public Prosecutor without even calling any query from the office of the Public Prosecutor by the Judicial Magistrate. The complaint or the FIR does not disclose any such offence and also does not disclose any cause of action, which are made in the FIR or complaint made against the Public Prosecutor and others. The Public Prosecutor is fully empowered to call for the case diary from the Police Stations in each and every case in which proceedings have been initiated in the High Court. In my view the FIR/ complaint does not disclose any offence against the Public Prosecutor which was rightly pointed out by Mr. Man Singh, Sub Inspector, thus the FIR deserves to be quashed and set aside. In the result, the misc. petition No. 69 of 2012 filed by Rajendra Kumar Yadav, Govt. Advocate and Pubic Prosecutor, for quashing of the FIR No. 330/2011 Police Station Ashok Nagar is allowed and the criminal proceedings pending before the court of Judicial Magistrate No. 11 against him and the FIR No. 330/2011 Police Station Ashok Nagar is quashed. Since the FIR No. 330 of 2011 has been quashed the misc. petition No. 60 of 2012 filed by the petitioner Ram Swaroop Sharma for fair and proper investigation stands dismissed.