
(2004) 01 MP CK 0022

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 670 of 1999

Rampyare and Others

APPELLANT

Vs

Rampyari

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 202, 202(2), 227

Citation : (2005) 1 MPHT 89 : (2004) 4 MPLJ 54

Hon'ble Judges : S.L. Jain, J

Bench : Single Bench

Advocate : Agrawal, for the Appellant; Manikant Sharma and G.S. Ahluwalia, for the Respondent

Judgement

S.L. Jain, J.

This order shall govern disposal of this revision as well as Criminal Revision No. 603/99, Krishna Narayan and Anr. v. Kalka Prasad, and Criminal Revision No. 494/99, Kalka Prasad v. Ram Naresh Tiwari and Anr. All the aforesaid revisions u/s 397/401 of the Criminal Procedure Code are directed against the order dated 29-1-1999 passed by Additional Sessions Judge, Satna in Sessions Trial No. 116/96 whereby an application filed by the respondents of Criminal Revision No. 494/99 u/s 197, Criminal Procedure Code was allowed and charges for the offences punishable under Sections 302 109 read with Section 302 and 302 read with Section 34, Indian Penal Code were framed against applicants of Criminal Revision Nos. 670/99 and 603/99.

The facts of the case which led to filing of these revisions are that a complaint u/s 200, Criminal Procedure Code was filed by complainant Kalka Prasad, who is applicant in Criminal Revision No. 494/99, for the aforesaid offences against the accused persons who are the petitioners in Criminal Revision Nos. 670/99 and 603/99 and respondents in Criminal Revision No. 494/99, on the allegation of having committed murder of Rambhushan, on 23-10-1989.

It was alleged that a long drawn litigation regarding property was pending between Kalka Prasad and the petitioners in Criminal Revision Nos. 670/99 and 603/99. On 27-8-1989 at about 4 P.M. a quarrel broke out between Rambhushan and Arun Kumar in which Arun Kumar died. A Crime No. 82/89 was registered at P.S. Uchchra. Regarding this incident, Sessions Trial Nos. 141/89 and 41/90 were pending before Sessions Court, Satna, for offence punishable u/s 302, Indian Penal Code. In this case deceased Rambhushan could not be arrested and he was making efforts to get anticipatory bail. On the date of incident, Police Inspector Vinod Pandey, Dy. S.P. Ramesh Chandra Pathak and other police personnel surrounded the house of complainant Kalka Prasad. Rambhushan, his sister Geeta Bai and grand daughters of complainant Kalka Prasad, namely, Kirtan Bai and Sangita were present in the house.

When Rambhushan tried to escape, the police personnel and some of the villagers who are accused in the complaint case, followed him and opened fire as a result of which a bullet hit the leg of deceased Rambhushan and he fell down. He was caught hold by police personnel and villagers, and was tied with a rope. Rambhushan also opened fire. Firearm injuries were caused to Inspector Vinod Pandey, Constable Virendra Tiwari and Dy. S.P. Ramesh Chandra Pathak. Inspector Vinod Pandey received serious injuries. Enraged by this incident, the police personnel assaulted Rambhushan. When his sister Geeta Bai tried to interfere, she was also abused. Inspector Vinod Pandey and Dy. S.P. Ramesh Chandra Pathak sat in the jeep. Injured accused Rambhushan was lodged in the jeep but on the directions of Dy. S.P. Ramesh Chandra Pathak, Rambhushan was thrown from the jeep.

It was further alleged that the Dy. S.P. then directed the police personnel and villagers to kill Rambhushan and to bring him dead at the police station. When the jeep moved from the spot, Head Constable Ramanuj Tiwari and other police personnel took Rambhushan towards Village Ragoli and beat him. When Geeta Bai, Kirtan Bai and Sangita tried to intervene at this stage also, they were abused. The deceased was then taken to the ground of Village Ragoli and was assaulted again. As a result of beating Rambhushan died.

Statements of witnesses were recorded. Head Constable Ramanuj Tiwari and Dy. S.P. Ramesh Chandra Pathak who were the accused persons in complaint case and are respondents in Criminal Revision No. 494/99, filed an application before the Trial Court u/s 197, Criminal Procedure Code stating that they had gone in search of absconding accused Rambhushan. When they reached in the forest near Village Uchchra, deceased Rambhushan fired at them which hit S.I. Vinod Pandey, Dy. S.P. Ramesh Chandra Pathak and Constable Virendra Prasad. Despite all this, Rambhushan was arrested. S.I. Vinod Pandey, Dy. S.P. Ramesh Chandra Pathak and Constable Virendra Prasad were shifted in a jeep for being admitted in the hospital. The deceased Rambhushan was handed over to Head Constable Ramanuj Tiwari. When Head Constable Ramanuj Tiwari with the help of villagers, namely, Chandra Shekhar and Kailash was bringing Rambhushan to police

station, other villagers assembled on the spot and attacked Rambhushan and started beating him. Head Constable, Ramanuj Tiwari made an attempt to save Rambhushan, but in vain as a result of assault by the villagers, Rambhushan died.

It was also stated in the application that Head Constable Ramanuj Tiwari lodged a report at Police Station, Uchehra on the basis of which Crime No. 98/89 was registered. S.I. Vinod Pandey succumbed to the injuries caused by deceased Rambhushan. As the villagers who assaulted Rambhushan, could not be identified, a final report of the offence was submitted. A magisterial enquiry was also directed As per report of magisterial enquiry the death of Rambhushan was caused by the villagers.

The learned Additional Sessions Judge, vide impugned order, allowed the application u/s 197, Criminal Procedure Code and discharged the applicants Dy. S.P. Ramesh Chandra Pathak and Head Constable Ramanuj Tiwari holding that their act was covered and protected by virtue of Section 197, Criminal Procedure Code as the act was done while discharging the official duty. However, the learned Additional Sessions Judge framed charges against other accused persons who are the petitioners in Criminal Revision Nos. 670/99 and 603/99.

Being aggrieved by the impugned order, complainant Kalka Prasad has filed Criminal Revision No. 494/99 against discharge of accused persons Dy. S.P. Ramesh Chandra Pathak and Head Constable Ramanuj Tiwari. The other accused persons except Kailash against whom charges were framed by the Additional Sessions Judge, Satna, have filed Criminal Revision Nos. 670/99 and 603/99.

I shall first proceed to decide Criminal Revision Nos. 670/99 and 603/99.

Learned Counsel appearing for the petitioners of these revisions submitted that where the aforesaid police officers were discharged, giving them benefit of Section 197, Criminal Procedure Code, the present petitioners could not have been held responsible for the offence as they had gone to help the police personnel who were assaulted by the absconding accused in which one S.I. Vinod Pandey sustained injuries and later on, died.

The contention can not be accepted. Protection u/s 197, Criminal Procedure Code is available to the public servants only. Admittedly, petitioners are not public servants and, therefore, they were not entitled to the protection u/s 197, Criminal Procedure Code. Merely because the petitioners had gone to help the police personnel, protection of Section 197, Criminal Procedure Code can not be made available to them. The provisions of Section 197, Criminal Procedure Code are to be construed strictly.

Learned Counsel next contended" that as the offence is triable exclusively by the Court of Session, it was obligatory for the complainant to examine all the witnesses cited in the complaint and if the same was not done, complaint could not have been registered. Non-examination of witnesses vitiates further proceedings.

A perusal of proviso to sub-section (2) of Section 202, Criminal Procedure Code reveals that Magistrate is required to call upon the complainant to produce his witnesses and examine them on oath. The duty of Magistrate in complaints about offences triable by Sessions Judge becomes onerous. The legislative intent behind the said proviso must be carried to its logical end. A person facing trial of a serious offence should not be taken by surprise.

But where complainant is satisfied with examination of only certain witnesses before committal of case it is not incumbent on committing Magistrate to record evidence of remaining witnesses. It is evident from the language of the proviso that it does not require all the prosecution witnesses to be examined. Only witnesses of the choice of complainant can be examined. The words "all his witnesses" under proviso to Section 202(2) do not refer literally to all prosecution witnesses in number rather to all complainant's witnesses to whom he considers material to prove his case.

It is not the case of the accused persons that the witnesses who were material for the purpose of finding out the truth or otherwise of the complaint were not examined. At this stage it can not be said that justice has not been done and the truth did not come to light. Proviso to sub-section (2) (supra) will not be infringed if the witnesses given up by the complainant are not examined. If the complainant closes evidence after examining some of witnesses, Magistrate can not compel him to examine all named witnesses. Where the Magistrate considers that the evidence of certain witnesses is necessary he can summon them as Court witnesses. It is not the case of the accused persons that the complainant disclosed his intention to produce some witnesses and the Court refused to examine them. Where all the witnesses produced by the complainant were examined, it is futile to urge that the provisions of Section 202 were not complied with.

Learned Counsel further submitted that there was inordinate delay in lodging the complaint and no reason has been assigned for the same.

This contention also is sans substance. The complainant has given an explanation for delay in lodging the complaint. He has explained that Marg No. 3789 was registered regarding the death of his son. Statements of the witnesses were also recorded and he was assured by the District Magistrate, Satna that action will be taken to ensure that the guilty persons are punished and directions were given to Executive Magistrate Nagod, to hold an enquiry in the matter. The Magistrate, accordingly held an enquiry and submitted his report on which no action was taken. This compelled the complainant to file the complaint case. The explanation can not be said to be unsatisfactory. Even otherwise, the delay in filing the complaint can not be a ground for discharging the petitioners.

Learned Counsel for the petitioner submitted that the facts emerging from the material collected by the prosecution during investigation do not constitute the offence for which the accused persons are alleged to have been charged,

therefore, neither the complaint could have been registered, nor the charge could have been framed against them.

The committing Magistrate, after examining the complaint and the statements recorded under Sections 200 and 202, Criminal Procedure Code found that the material disclosed commission of offence and he was satisfied that there were reasons to proceed against accused persons, therefore, the summoning order of the Magistrate can not be interfered with. Where the order issuing process is passed on legal evidence and it is not wholly perverse, no interference by this Court is called for in exercise of its revisional jurisdiction which is very limited. In this case no glaring feature is brought to my notice which would tantamount to miscarriage of justice.

At the time of framing the charge the only prima facie case is to be seen from the material submitted by the complainant. It is not necessary to enter into detail and discuss the evidence. Learned Additional Sessions Judge, in the impugned order has given the adequate reasons for framing the charges.

It is true that unless there is a strong suspicion against a person he should not be subjected to the agony of a protracted criminal trial by framing charges but where the Trial Judge has considered all the material available on record and found that prima facie the facts do constitute the offence against the accused, the High Court can not embark upon an enquiry as to whether the evidence in the case is reliable or not to justify the framing of the charges.

The purpose of Sections 227 and 228, Criminal Procedure Code is to ensure that accusation made against the accused are not frivolous. Of course, where the material available in the case creates a very strong ground and suspicion about the complicity of the accused in the crime, the Court has to frame charge as the truth, veracity and effect of evidence can not be judged at initial stage of trial.

Thus, the order of framing charge against the petitioners of Criminal Revision Nos. 670/99 and 603/99 is perfectly justified and I do not find any illegality in the order impugned.

Now, I proceed to consider Criminal Revision No. 494/99.

Shri Agrawal, learned Counsel, appearing for the petitioner/complainant submitted that the object of the section is to guard against vexatious proceedings against public servants and to secure a well-considered opinion of superior authority before a prosecution is launched against them. It is not the part of official duty to commit murder of a person. The offence of murder can not be said to be under the cover of official duty. Where the act of the police officers as complained of, can not even remotely be connected with discharge of their official duty, they could not have been discharged applying provisions of Section 197, Criminal Procedure Code.

As against this, Shri Manikant Sharma and Shri G.S. Ahluwalia, learned Counsel appearing for respondents, submitted that the police went in search of an

accused who was absconding. Due to the fire opened by the absconding accused, the Sub- Inspector, Vinod Pandey was seriously injured, who ultimately died and other police personnel also received firearm injuries. Ram Bhusan was assaulted by the villagers and not by the police personnel. The acts complained of against the respondents were committed by the public servants in discharge of their official duties or purporting to be in the discharge of official duty. Therefore, the prohibition imposed by statute for taking cognizance applies and the learned Trial Judge rightly allowed the application u/s 197, Criminal Procedure Code.

In determining the question whether the alleged offence was committed in official capacity or not the Court must at the outset have regard to the allegations in the complaint case. In the complaint and the evidence recorded, averments have been made that respondent No. 2 forced Ram Bhushan to get down from the jeep and instructed respondent No. 1. Head Constable Ramanuj Tiwari and other villagers to finish Ram Bhushan. Such an act on the part of respondents can not be said to be in discharge of their official duties.

It is true that Court has the liberty to look beyond the form in which the allegations have been made and Court is not required to confine itself to the allegations in the complaint. It can take into account all the materials on record at the time when the question is raised and called for consideration. At this stage from the material on record, it can not be said that the act complained of was done in the discharge of official duty. The Court is not expected or entitled to anticipate the defence. From the facts alleged, it can not be said at this stage that no offence was committed. It is not a part of official duty to commit offence. An officer is not expected to commit murder. Where prima facie it appears that the offence alleged is not under the cover of official duty, Section 197, Criminal Procedure Code is not attracted.

Learned Counsel for the respondent relied on Abdul Wahab Ansari Vs. State of Bihar Another, and Gulamhussain Kutubuddin Maner Vs. Abdulrashid Abdulrajak Maner and Others, . In both the cases, the directions for opening fire was given by SDM where the situation became out of control. It was held that the order of fire was in exercise of official duty. In the case in hand, the Dy. S.P. had no authority to order the opening of fire. At the present stage of the case, from the material on record it can not be said that sanction u/s 197, Criminal Procedure Code was necessary. However, if at the subsequent stage of the case, it is found that the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in the course of discharge of official duty, the proceedings will have to be dropped.

It is well settled that the question of sanction u/s 197 of the Criminal Procedure Code can be raised at any time even at the time of conclusion of trial. It is a case where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what they did was in discharge of official duty. Therefore, the Trial Court shall be at liberty to examine during the course of trial or even at the time of conclusion of trial as to whether the claim of

the accused, that the act they did was in the course of the performance of their official duty was reasonable one and it was neither pretended nor fanciful.

For the foregoing reasons Criminal Revision Nos. 670/99 and 603/99 are dismissed and the impugned order, framing charges against the petitioners of these revisions is maintained.

So far as the Criminal Procedure No. 494/99 is concerned, the same is allowed. The impugned order passed by the learned Additional Sessions Judge is set aside. However, it may be observed that during the course of trial, the Court below shall be at liberty to consider this question afresh and deal with the same at the subsequent stage or in the main judgment in the light of the provisions of the law without being prejudiced by any observation made in this order.