

(2012) 02 MP CK 0081

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 10880 of 2011

Ratan Tiwari and 3 others

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 197, 200, 202, 482
Penal Code, 1860 (IPC) — Section 107, 109, 119, 161, 162

Citation : (2012) CriLJ 2050

Hon'ble Judges : Naresh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Justice Shri N.K. Gupta

1. The applicants have preferred an application u/s 482 of Cr.P.C to quash the proceedings of the Criminal Complaint Case No. 1037/2011 pending before JMFC Gadarwara and also challenged the order dated 9.7.2011 passed by JMFC Gadarwara in that case by which the complaint was registered for offence punishable u/s 306 read with Section 34 of I.P.C. Facts of the case are that on 5.7.2007 applicants were posted as Police Officers at Outpost Sali Chauka of Police Station, Gadarwara. On 5.7.2007 at about 8.00 p.m in the night one Dinesh came and started abusing to the family of one Manohar Singh in the Village Sali Chauka and also assaulted his son Sandeep @ Deepak. Uma Bai and Sadhana saved the victim Sandeep. Thereafter, Uma Bai and Sadhana went to the outpost Sali Chauka for lodging an FIR. The applicant No. 1 Ratan Tiwari, who was Assistant Sub Inspector at that outpost did not lodge a FIR in a regular manner and no medical investigation was directed. Due to activity of the Police, Hemant and Dinesh became more violent and therefore, at about 9.00 p.m in the night Manohar Singh himself went to lodge a FIR but, no FIR was lodged by applicant No. 1. Thereafter, Sandeep @ Deepak s/o Manohar Singh reached to the outpost and he had also requested for lodging a FIR. But, no FIR was lodged.

On the contrary the applicants insulted the victims by telling abuses relating to their caste and thereafter, applicants assaulted Sandeep as well as Manohar Singh and kept them behind the bars. Applicants No. 2 to 4 were in drunken condition. In the meantime, Dinesh and his son Hemant reached to the outpost and they starting assaulting Deepak @ Sandeep before the Police but, applicants did not interfere in the matter. Applicants asked for a sum of Rs. 5000/- from Deepak @ Sandeep to release his father Manohar Singh. Thereafter, Sandeep was assaulted by the applicants in a bad manner. They told that if he dies in the incident then they will make a Panchanama and close the case. Being tortured by the Police, Sandeep @ Deepak left the outpost and went to the railway line which was 100 steps away from the outpost and jumped before the train and therefore, he committed suicide. Applicants No. 1 to 4 did not permit the father Manohar Singh to save his son on the contrary they shouted that let him die. Matter could not be registered by the Police. Thereafter, due to public agitation matter was registered for offence punishable u/s 306 of I.P.C but, no final report was submitted before any Magistrate. Manohar Singh himself has submitted a complaint before JMFC Gadarwara for offences punishable under Sections 302, 306 read with section 34 of I.P.C., 109, 119, 323, 161, 162 of I.P.C. After taking the evidence under Sections 200 and 202 of Cr.P.C., learned Magistrate registered a criminal complaint for offences punishable u/s 306 read with section 34 of I.P.C.

2. Learned counsel for the applicants submits that a fake complaint has been registered by the learned JMFC Gadarwara. Complaint case is not at all maintainable. Magisterial enquiry was directed to enquire about the death of Sandeep Silawat and that report was negative. Thereafter, Police has directed to file a final report in the case and Police has prepared a final report. Complaint was lodged for offence punishable u/s 302 of I.P.C also but, it was registered for offence punishable u/s 306 read with Section 34 of I.P.C only. Under such circumstances, no ingredients of Section 107 of I.P.C is established by the complainant. Applicants are Police officers and they are unnecessarily harassed by submission of that complaint. No compliance of provision u/s 197 of Cr.P.C was made by the complainant. Under such circumstances, it is prayed that proceedings of that criminal complaint case may be quashed.

3. On the other hand, learned counsel for the respondent No. 2 has submitted that for such offence, no sanction u/s 197 of Cr.P.C is required. In the present case no final report was submitted by the Police. However, still Magistrate is competent to take cognizance in the case if evidence under Sections 200 & 202 of Cr.P.C is reliable. Learned counsel for the respondent placed his reliance upon the judgment of Hon''ble the Apex Court in the case of H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh),) in which the Hon''ble Apex Court has held that in a complaint case Magistrate directed for investigation u/s 156(3) of the Cr.P.C., Police report was submitted that no case was made out still Magistrate was competent to take cognizance in the case and to issue the process. Learned

counsel for the respondent read the statement of one Ex-Police Constable Akhilesh Kumar (P.W.5) in support of his complaint and therefore, it is prayed that application u/s 482 of Cr.P.C may be dismissed.

4. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case and documents produced before the Court, I am of the view that Manohar Singh (P.W.1) and Akhilesh Kumar (P.W.5) were made eye witnesses and they have proved the entire situation of the case. It appears that Police Officers posted on that outpost were not ready to write down the FIR of deceased Sandeep. On the contrary a sum of Rs. 5000/- was demanded and the applicants threatened him that if he is not giving the sum demanded by the applicants then the career of deceased Sandeep would be spoiled. His father will not be released if the amount was not given and when Sandeep informed that he was an unemployed student and he could not provide the sum demanded by them, then he was directed that he may die, police will make a panchanama of his death. Immediately, Sandeep went to the railway line which was 100 steps away from the outpost and ultimately committed suicide. If evidence led by Manohar Singh and Akhilesh Kumar is believed prima facie, then certainly offence punishable u/s 306 of I.P.C is made out. Applicants have tortured the victim in such a manner that he had no option, except to commit suicide. Such type of brutality cannot be expected from the Police. Reports given by Magistrate as well as by S.P is written in such a manner that they were protecting the Police Officers. However, on the last page of his report SDM Narsinghpur has mentioned that for the incident Government officials were responsible. Similarly S.P. Narsinghpur in his letter which was sent in reference to the letter dated 25.10.2007 has appreciated the services of the applicants that they saved the outpost Sali Chauka where a crowd was burning it. But, such opinion was on that incident which took place after death of victim Sandeep and it appears from that report that he was saving the applicants due to their subsequent conduct.

5. As far as the provisions of Section 197 of Cr.P.C are concerned, it is not expected from a Public servant to harass a person in such a manner so that he may commit suicide and therefore, if the applicants have committed any crime punishable u/s 306 of I.P.C then they do not have any shelter of Section 197 of Cr.P.C because the overt act of the Police Officers was not within the purview of their public duty.

6. On the basis of the aforesaid discussion it is clear that applicants could not show any basis by which the proceedings pending before the committal Court may be quashed and therefore, it is not a fit case in which the inherent jurisdiction of this Court may be invoked u/s 482 of Cr.P.C.. On the contrary it would be proper to mention that learned Magistrate must have registered case u/s 323 of I.P.C also. Consequently, the application u/s 482 of Cr.P.C filed by the applicants is hereby dismissed.