
(2013) 02 DEL CK 0296

In the Delhi High Court

Case No : Criminal M.C. No. 2012 of 2011

Rishi Raj and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) 3 ILR Delhi 2159

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Vikas Arora and Mr. Manish Sharma, for the Appellant; Rajdipa Behura, APP, for the Respondent

Judgement

G.P. Mittal, J.—By virtue of this Petition u/s 482 of the Code of Criminal Procedure ("the Code"), the Petitioners challenge an order dated 02.06.2011 passed by the learned A.C.M.M. whereby the police was directed to conduct further investigation expeditiously and promptly. The order dated 02.06.2011 is extracted hereunder:

02.06.2011

Present: SI Bhushan Azad in person

Accused Shiv Narain, Raj Kumar & Kewal Singh alongwith counsel.

Counsel for the accused B. Subhash

Further status report regarding the accused persons namely B. Subhash, Muni Raj, Rish Raj and Girdhari Lal is filed. The IO is not able to show the case diary written by him since the last date of hearing in regard to the further investigations. The facts disclose that investigations are not being conducted properly. In the circumstances the matter be brought into the notice of the Commission of Police for intimation and to take appropriate steps for conducting the further investigations expeditiously and promptly.

This case has a chequered history. A case u/s 7(1)(C) of Cinematograph Act, 1952 and Section 63 of the Copyright Act, 1957 vide FIR No. 120/2004 P.S. Special Cell, Delhi was registered on the basis of a complaint dated 15.09.2004 to the effect that a movie "Divine Lovers" with adult scenes was being run at Aakash Cinema at Azadpur, North Delhi, during exhibition of the film a raid was conducted at Aakash Cinema and it was found that at the end of the film, some scenes showing a man and a woman doing sexual intercourse were shown. On 19.04.2005, a report u/s 173 of the Code was presented to the Court of learned Metropolitan Magistrate ("M.M.") wherein the names of the three accused persons who were actually exhibiting the film were shown in column No. 4, whereas the names of the four accused including the two Petitioners herein were shown in column No. 2. It would be relevant to refer to the averments made in the report u/s 173 of the Code against the two Petitioners and the two other persons as under:

...In the course of interrogation it was revealed that this film was taken by the abovesaid accused persons from Raj Karan Movies, 1783, 2nd floor Kundan Mansion, Bhagirath Place, ND for Rs. 750/- on 09.09.04 for viewing from 10.09.04 to 16.09.04. SI Arvind joined Sh. Muni Raj in the investigation who has admitted that he was looking after the office of Raj Karan Movies and this film has been sold from his office. Further Muni Raj told that this film was purchased by his brother Rishi Raj who is nowadays working somewhere in Mumbai from B. Subhash Movies, Juhu Mumbai. SI has obtained the opinion of CBFC, which shows that several censored scenes are still present in all the reels. The CBFC report reads as "the seized celluloid print of the film contained insertion of several objectionable visuals of bare breasts, nudity and sexual intercourse acts as indicated under item B(i), (ii), (iii) & (iv) above, which are not available in the video copy of the film certified by the Central Board of Film Certification, Mumbai. Further, copy of cuts has been provided by CBFC in support of their opinion alongwith CBFC copy. In the course of investigation SI has seized 16 page photocopies of documents from the office of producer of the film i.e. B. Subhash at Mumbai. Which suggests that the film has been produced by B. Subhash and this film was sold to M/s. Raj Rishi Films, 6046/2 Dev Nagar, ND for period of seven years as on 10th January 1996, M/s. Ramnord Research Laboratory was authorized to prepare and deliver the prints to M/s. Raj Rishi Films, 6046/2, Dev Nagar, ND. It is apprehended that the uncensored copy of film has been obtained from M/s. Ramnord Research Lab Ltd., Mumbai. SI has gone to Mumbai to interrogate B. Subhash in this case but B. Subhash could never be available. However, on the basis of evidence available on file SI has obtained the NBW against I. Rishi Raj s/o Man Singh R/o 6046/2, Dev Nagar, Karol Bagh, ND, who has been running the office of distributor of the film, Muni Raj s/o Man Singh R/o 6046/2, Dev Nagar, Karol Bagh, ND who is proprietor of the office of distributor in this film, B. Subhash, the producer of the film and Girdhari Lal Sakseria MD M/s. Ramnord Research Lab Ltd. who has supplied the uncensored copy of film to the distributor. SI has tried his best to serve the NBW

upon these persons who are evading arrest by taking calculated steps. So, their names have been kept in col. No. 2 of the challan. The supplementary challan shall be filed against them if deemed fit after conducting interrogation. Now, the investigation in this case has been completed and challan against the accused persons whose names have been entered in col. No. 2 is being sent for trial.

2. By an order dated 23.04.2005, the learned A.C.M.M. took cognizance of the offence and ordered issuance of the summons against the accused. The order dated 23.04.2005 is extracted hereunder:

23.04.2005

Present: APP for the State with I.O. SI Davinder Kumar

Fresh challan filed today. It be checked and registered. Ld. CMM is on half day's leave.

I take cognizance for the offence u/s. 7(1(C) Cinematograph, 63 CR Act.

Accd. Shiv Narain, Raj Kumar and Kamal Singh are already on bail.

Other accused not arrested shown in column No. 2.

Issue summons to the accused and notice to their surety for next date.

Put up on 17-08-05. IO to be present on the date fixed.

3. It appears that although there was no specific order for taking cognizance against the Petitioners and the two other accused persons, the process was, however, issued by the ministerial staff attached to the Court which prompted the two other accused mentioned in column No. 2 to challenge the order of taking cognizance. The order dated 23.04.2005 was set aside in Crl. M.C. 5564/2006 by an order dated 29.04.2008. The learned Single Judge of this Court while setting aside the order dated 23.04.2005, remanded the case back to the Court with the direction that the parties will be heard afresh and a detailed reasoned order will be passed.

4. It is also borne out from the record and is also the case of the Petitioners that an interim protection was granted to the Petitioners by this Court in Bail Appln. 1470-71/2005 till 28.09.2005 and the Application came to be dismissed by an order dated 30.09.2005.

5. The Petitioners grievance is that the order dated 02.06.2011 passed by the learned ACMM is wholly illegal in view of the fact that the Magistrate having taken cognizance by an order dated 23.04.2005 could not have ordered for further investigation of the case and thus the order dated 02.06.2011 is liable to be set aside. The learned counsel for the Petitioners relies on the judgment of the Supreme Court in Reeta Nag Vs. State of West Bengal and Others, and Randhir Singh Rana v. State. (1997) 1 SCC 361. Referring to Section 468(2) of the Code, the learned counsel for the Petitioners argues that the offences under which the case was registered was punishable for a maximum punishment of

three years and thus, the period of limitation for taking cognizance was three years and since the same has not been taken for a period of seven years the FIR is liable to be quashed.

6. On the other hand, the learned APP for the State contends that since the cognizance was not taken by the learned A.C.M.M. specifically against the Petitioners and, if at all taken, was set aside by the Delhi High Court by its order dated 29.04.2008, the learned A.C.M.M. was not debarred from directing further investigation in the case. The learned APP argues that in the instant case in fact the learned APP had requested the Court (as recorded in order dated 28.04.2011) that the investigation against the Petitioners and two other accused was still pending. Thus, by the order dated 02.06.2011, the learned A.C.M.M. had simply reminded the investigating agency of its obligation to complete the investigation promptly. The learned APP relies on *Kishan Lal Vs. Dharmendra Bafna and Another*, *Bhagwant Singh Vs. Commissioner of Police and Another*, *Vinay Tyagi v. Irshad Ali*, (in Crl. A. 2040-2041/2012) arising out of SLP(Crl) Nos. 9185-9186 of 2009) decided on 13.12.2012.

7. I have given my thoughtful consideration to the respective contentions raised on behalf of the parties. I have also extracted the portion of the report u/s 173 of the Code filed by the investigating agency whereby three accused were shown in column No. 4 and the four accused including the two Petitioners herein were shown in column No. 2. With regard to the Petitioners, the investigating agency had stated that the NBWs had been obtained against the Petitioners but they were evading arrest. The IO had stated that the names of these four persons have been kept in column No. 2 of the challan. The supplementary challan shall be filed against them if deemed fit after conducting interrogation.

8. In *Reeta Nag* relied upon by the learned counsel for the Petitioners, the charge sheet was filed against 16 accused persons. The Magistrate took cognizance against six of the original 16 accused persons for offences under Sections 467 /468 /120B of the Indian Penal Code. He discharged the remaining 10 accused persons on the prayer of the investigating officer. Subsequently, on an Application filed by the de facto complainant, the learned Magistrate by an order dated 20.08.2004 directed officer in charge of the Police Station to reinvestigate the case and submit a report. On a Petition u/s 482 of the Code preferred by the Respondents No. 2 and 3, the Calcutta High Court having regard to the provisions of Section 362 of the Code held that the Magistrate had no jurisdiction to order reinvestigation of the case. The Calcutta High Court further observed that if any material was produced during the course of trial, the Magistrate would be competent to act in accordance with the provisions of Section 319 of the Code. The de facto complainant challenged the order passed by the Calcutta High Court. The Supreme Court referring to the judgments in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, , *Sankatha Singh Vs. State of U.P.*, and *Smt. Sooraj Devi Vs. Pyare Lal and Another*, held that the Magistrate had no power to order reinvestigation in the case. In paras 19 and 20, the Supreme

Court laid down as under:

19. As has been rightly held by the High Court, having regard to the decisions of this Court in Master Construction Co. (P) Ltd. case Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, and Sankatha Singh Vs. State of U.P., which were reflected in Smt. Sooraj Devi Vs. Pyare Lal and Another, , having passed a final order framing charge against six persons and discharging the remaining accused persons, it was no longer within the Magistrate's jurisdiction to direct a reinvestigation into the case.

20. The aforesaid question was considered by a three-Judge Bench of this Court in Adalat Prasad Vs. Rooplal Jindal and Others, on a reference made with regard to the correctness of the law laid down by the Supreme Court in K.M. Mathew Vs. State of Kerala and another, where it was held that the Court issuing summons was entitled to recall the same on being satisfied that the issuance of summons was not in accordance with law. Holding that the said decision in K.M. Mathew Vs. State of Kerala and another, 8) did not lay down the correct law, this Court in Adalat Prasad Vs. Rooplal Jindal and Others, held that the Magistrate had no jurisdiction to recall his order issuing process in the absence of any power of review or inherent power which did not inhere in the subordinate criminal courts, but was available to the High Court u/s 482 CrPC.

9. The Supreme Court also referred to its judgment in Randhir Singh Rana (as relied upon by the learned counsel for the Petitioners) and held that the Magistrate cannot suo moto direct further investigation u/s 173(8) of the Code or direct reinvestigation into a case on account of the bar u/s 167(2) of the Code. The judgment in Reeta Nag proceeded primarily on the premise that cognizance was taken against six accused persons who were charged and the rest ten accused persons had been ordered to be discharged on the basis of the report u/s 173(2) of the Code filed by the police and that the Magistrate had no power to review his own order. In Kishan Lal, a complaint u/s 420 etc. was filed before the Commissioner of Police, Chennai naming nine accused persons on the basis of which, an FIR was registered on 22.01.2006. On 08.10.2007, a charge sheet was filed in the Court of M.M. for an offence punishable under Sections 406 /420 /120B IPC against only two persons. The learned M.M. took cognizance against the two accused on 29.10.2007. On the premise that the learned Magistrate had not taken cognizance against the other accused persons, the complainant filed an Application u/s 482 of the Code before the High Court for setting aside of the said order. The Application was disposed of with liberty to the complainant to move an Application before the M.M. concerned. While disposing the Application, the learned M.M. ordered further investigation u/s 173(8) of the Code. The order of the learned M.M. was unsuccessfully challenged before the High Court The accused No. 2 took the matter to the Supreme Court. Dismissing the Criminal Appeal, the Supreme Court observed that the investigating agency can request the Magistrate in terms of Section 173(8) to carry out further investigation. It was observed that in certain situations, such a formal request is

not necessary. In para 15 of the report, the Supreme Court held as under:

15. An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter has recently been considered by a Division Bench of this Court in Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, in the following terms: (SCC pp. 336-37, paras 12-13)

12. This Court while passing the order in exercise of its jurisdiction under Article 32 of the Constitution of India did not direct reinvestigation. This Court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon.....

10. Similarly, in Vinay Tyagi, the Supreme Court relied on the three Judge Bench decision in Bhagwant Singh and referred to Reeta Nag and Randhir Singh Rana and held that where the Court has taken cognizance on the basis of the police report, it can still direct further investigation.

11. At this stage, it would be appropriate to revert back to the facts of the instant case. As stated earlier, the investigating officer in the report u/s 173(2) himself stated that the Petitioners and some other accused persons were evading arrest and that the supplementary challan shall be filed if some material came on record, but the same is not reflected in the investigation report. Since the cognizance, if at all taken by the learned A.C.M.M. was set aside by this Court by an order dated 29.04.2008, the learned M.M. was well within his powers to direct further investigation in the case. A perusal of the order dated 11.02.2011 shows that Inspector Devender had stated that no evidence could be collected against the present Petitioners whereas on the next date, that is, 28.04.2011, it was stated that the investigation against the Petitioners was still pending. The learned A.C.M.M., therefore, directed that the status of the investigation should be placed before the Court on the next date, that is, 02.06.2011. Finding that there was total laxity on the part of the Investigating Officer, the learned A.C.M.M. preferred to direct the matter to be brought to the notice of the Commissioner of Police and for expediting the investigation. There could be twin purpose of the order dated 02.06.2011. If there is no material against the Petitioners, the damocles sword must not hang on the Petitioners head and the matter can be put to rest. Secondly, if there is sufficient material disclosed by the investigating agency, the Magistrate can take cognizance and proceed further. Thus the order dated 02.06.2011 on this aspect cannot be faulted.

12. The learned counsel for the Petitioners referring to Section 468(3) of the Code argues that no fruitful purpose would be served in continuing the investigation or even filing of the charge sheet against the Petitioners as the

same would be barred by limitation. This aspect cannot be gone into by this Court at this stage. The Petitioner shall be at liberty to raise this point before the learned A.C.M.M. if the need arises. I do not find any illegality or abuse of the process of the Court in passing the order dated 02.06.2011 passed by the learned A.C.M.M.

13. The order does not call for any interference by this Court under its inherent powers u/s 482 of the Code. The Petition is accordingly dismissed. Pending Applications stand disposed of.