

(2011) 09 RAJ CK 0046

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1381 of 2009

Samandar Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 197, 200, 202, 203
Penal Code, 1860 (IPC) — Section 323, 327

Citation : (2012) 3 RLW 2076

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Anurag Sharma, for the Appellant; Alka Bhatnagar, Public Prosecutor and Biri Singh Sinsinwar assisted by Mukesh Saini, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble R.S. Chauhan, J.—The petitioner is aggrieved by the order dated 27.07.2009 passed by Special Judge, Dacoity Affected Area, Bharatpur, whereby the learned Judge has quashed the order dated 04.06.2007 passed by the Judicial Magistrate No. 2, Bharatpur, wherein the learned Magistrate has taken cognizance against respondent No. 2 Rajendra Dagur for offences under Sections 323 and 327 IPC, and the learned Judge has remanded the case back to the learned Magistrate. Briefly, the facts of the case are that on 08.05.2007, the complainant petitioner, Samandar Singh, submitted a complaint before the learned Magistrate, wherein he claimed that for the year 2007-2008 he was given contract by the Municipal Council, Bharatpur for the parking lot near Heeradas Khadi Samiti. He further claimed that on 07.05.2007, around 7 O' Clock in the evening, the respondent No. 2, a police personnel parked his jeep and asked the petitioner complainant as to how much money he had with him. The petitioner informed him that he had about Rs. 10,000/-. The respondent No. 2 demanded the money to be handed over to him. The respondent No. 2 also told him to recover Rs. 200/- from each car so as to cover up the loss of Rs. 10,000/- The complainant petitioner informed him that as he is permitted only to

charge for parking of the vehicle, in case the CO., or the officers of the Municipal Council would come to know about his over-charging, they would cancel his contract. When the respondent No. 2 tried to snatch the said amount, the petitioner raised an alarm. The statements of the petitioner and of his three witnesses, namely Chandra Prakash, Girjakant Awasthi and Vijay Singh were recorded u/s 200 and 202 Cr.P.C. respectively. After recording their statements, vide order dated 04.06.2007, the learned Magistrate took cognizance against the respondent No. 2 for the offences under Sections 323,; 327 IPC and issued bailable warrants against the respondent No. 2. Since the respondent No. 2 was aggrieved by the said order, he filed a revision petition before the learned Judge. Vide order dated 27.07.2009, the learned Judge has accepted the revision petition, quashed the order dated 04.06.2007, and remanded the case back to the learned Magistrate directing that an enquiry be held through a competent person and proper order be passed after permitting the respondent No. 2 to submit his documents and after considering the documents so submitted by the respondent No. 2. Hence, this petition before this Court.

2. Mr. Anurag Sharma, the learned counsel for the petitioner, has vehemently contended that the learned Judge could not have controlled the discretion vested in the learned Magistrate u/s 202 Cr.P.C. Secondly, the learned Judge could have directed a further enquiry only u/s 398 Cr.P.C. However, the said section deals with a case when a complaint is dismissed u/s 203, or when the person accused of an offence is discharged. However, in the present case, the respondent No. 2 was not discharged. In fact, cognizance against him was taken. Therefore, even u/s 303, Cr.P.C., the learned Judge could not have directed further enquiry to be held.

3. On the other hand, Mr. Biri Singh Sinsinwar, Sr. Advocate, assisted by Mr. Mukesh Saini, has vehemently contended that prior to taking cognizance, the learned Magistrate was duty bound to hold an enquiry. For, the complainant had given two different dates for the occurrence and had made allegations against a Public Officer. Moreover, the cognizance could not have been taken as there was no sanction order available. Thus, the requirement of Section 197 Cr.P.C. had not been fulfilled. Lastly, that the respondent No. 2 had ample evidence in his favour to show that he was being roped in a false case. Therefore, the learned Judge was justified in setting aside the cognizance order and in directing the learned Magistrate to hold an inquiry and to consider the documents available with respondent No. 2. Thus, the learned counsel has supported the impugned order.

4. Heard the learned counsel for the parties and perused the impugned order.

5. Section 200 and 202 Cr.P.C. are as under:

200. Examination of complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant

and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by, a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions or

(b) Where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer in charge of a police station except the power to arrest without warrant.

6. A bare perusal of these two provisions clearly reveal that a discretionary power has been bestowed upon the learned Magistrate to either record the statement of the complainant and of his witnesses, if any, or in the alternative to direct that an enquiry be made by a competent person. Thus, a choice has been given to the learned Magistrate for exercising his powers.

7. In the present case, the Magistrate, not only had the statement of the

complainant, but also had the statements of his three witnesses before him. Therefore, the Magistrate felt that he had sufficient evidence for taking cognizance and issuing the process against the respondent No. 2. Needless to say, the jurisdiction of a Magistrate for taking cognizance is a limited one. For, he is concerned merely with seeing whether prima facie an offence has occurred or not? After all, the cognizance is of the offence and not of the offender. Thus, with the availability of the complainant's statement and the statements of this three witnesses, prima facie, sufficient evidence did exist to show the commission of the alleged offences. Thus, the learned Magistrate was certainly justified in taking cognizance on the basis of the statement of the complainant and of his three witnesses.

8. The learned Judge has failed to realize that the discretion vested in the learned Magistrate cannot be cribbed, cabined or confined. It is the discretion, which has to be exercised judiciously. The learned Judge is not justified in striking down the order by holding that the documents which are available with the respondent No. 2 should have been considered. After all, at the time of taking of the cognizance, the accused has no locus standi.

9. Even the direction that the Magistrate should direct an enquiry and also the direction that the documents available with respondent No. 2 should be considered, such directions are legally unsustainable. For, such a direction, naturally emasculates the discretion of the Magistrate. Moreover, the documents available with the respondent No. 2 cannot be possibly considered at the time of taking cognizance. For, at the initial stage, the Court is not concerned with the possible defence, which is available to the alleged offender.

10. The learned counsel for the petitioner is certainly justified in pleading that the impugned order could not have been passed u/s 398, Cr.P.C. Although Section 398 permits the Sessions Judge to direct the Chief Judicial Magistrate or any other Magistrate subordinate to him to make further enquiry into any complaint, however, such a direction can be issued only if the complaint were dismissed u/s 203 or sub-section (4) of Section 204 or if the person accused has been discharged. However, in the present case, none of these circumstances have occurred. For the reasons stated above, the order dated 27.07.2009 is quashed and set aside and the order dated 04.06.2007 is hereby confirmed.

This petition is, hereby, allowed.