
(2015) 04 RAJ CK 0090

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1655 of 2013

Sita Ram Dabi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 482
Penal Code, 1860 (IPC) — Section 277, 302, 304-A, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(5)

Citation : (2015) 04 RAJ CK 0090

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : N.L. Joshi, for the Appellant; Vikram Rajpurohit, Public Prosecutor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—This criminal misc. petition under section 482 CrPC has been filed by the petitioner being aggrieved with the order dated 08.07.2013 passed by Additional Sessions Judge No. 3, Bikaner (for short "the revisional court" hereinafter) in Cr. Revision Petition No. 99/2012, whereby the revisional court has dismissed the revision petition. Before the revisional court, the petitioner had challenged the order dated 16.05.2012 passed by Chief Judicial Magistrate, Bikaner (for short "the trial court" hereinafter) in FIR No. 101/2011 of Police Station, Beechhwal, District Bikaner, whereby the trial court has rejected the application of the petitioner moved under section 190 CrPC and also rejected the prayer of the petitioner to give directions to the police to conduct further investigation in the above mentioned FIR. While rejecting the application under section 190 CrPC and declining the prayer of the petitioner to direct the police to conduct further investigation, the trial court vide order dated 16.05.2012 has ordered for taking cognizance against the respondent Nos. 2 to 7 for the offences punishable under sections 277 and 304-A IPC.

2. Brief facts of the case are that on a complaint filed by the petitioner before the Superintendent of Police, Bikaner on 31.05.2011, the police has registered the FIR No. 101/2011 at Police Station, Beechhwal, District Bikaner for the offences punishable under section 302/34 IPC and section 3(2)(5) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC/ST Act" hereinafter) and started investigation. After investigation, the police filed charge-sheet against respondent Nos. 2 to 7 for the offences punishable under sections 277 and 304-A IPC. Thereafter, the petitioner moved an application under section 190 CrPC on 13.01.2012 before the trial court and prayed that cognizance be taken against the respondent Nos. 2 to 7 for the offences punishable under section 302/34 IPC and under section 3(2)(5) of the SC/ST Act. The petitioner had also moved an application before the trial court seeking direction for the police authorities to further investigate into the allegations levelled in the FIR No. 101/2011. The trial court, vide order dated 16.05.2012, after hearing counsel for the petitioner, has rejected the application filed by the petitioner under section 190 CrPC and also rejected the prayer of the petitioner for directing the police to conduct further investigation into the allegations levelled in the FIR No. 101/2011 and took cognizance against the respondent Nos. 2 to 7 for the offences punishable under sections 277 and 304-A IPC.

3. Being aggrieved with the order dated 16.05.2012, the petitioner had preferred a revision petition before the revisional court, wherein the petitioner had confined his prayer only up to the extent of quashing of the order of the trial court, whereby it has declined to direct the police to conduct further investigation into the allegations levelled in the FIR. The petitioner has not challenged the dismissal of his application filed under section 190 CrPC and has also not challenged the order of the trial court up to the extent of taking cognizance against the respondent Nos. 2 to 7 for the offences punishable under sections 277 and 304-A IPC.

4. Now the petitioner has challenged the order passed by the revisional court while contending that the revisional court has erred in affirming the order passed by the trial court whereby it has declined to direct the police to further investigate into the allegations levelled in FIR No. 101/2011. It is noticed that here in this petition also, apart from praying for quashing of the orders passed by both the courts below, the petitioner has also prayed for issuance of a direction to the trial court to allow his application to give directions to the police to conduct further investigation into the matter.

5. Learned counsel for the petitioner has contended that the trial court has declined to direct the police to conduct further investigation into the allegations levelled in the FIR only on the ground that since it has taken cognizance against the accused-persons for the offences punishable under sections 277 and 304-A IPC, it has no jurisdiction to direct the police to conduct further investigation into the allegations levelled in the FIR filed by him. Learned counsel for the petitioner has argued that the petitioner had moved the application seeking direction to the

police to conduct further investigation into the allegations levelled in the FIR prior to taking of cognizance for the offences punishable under sections 277 and 304-A IPC against the accused and, therefore, the trial court has erred in not granting the prayer of the petitioner to direct the police to conduct further investigation while observing that no such order can be passed after taking cognizance against the accused-persons. It is contended that the revisional court has also not taken into consideration this aspect of the matter and has illegally rejected the revision petition filed by the petitioner.

6. In support of the above contentions, the learned counsel for the petitioner has placed reliance on decision of Hon''ble Supreme Court rendered in Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 as well as the decision of this Court in Shyam Lal vs. State of Rajasthan and Ors., 2013(3) Cr.L.R. [Raj.] 1227.

7. Per contra, learned Public Prosecutor as well as the counsel for the respondent Nos. 2 to 7 have supported the orders passed by the courts below and argued that when once the trial court has taken cognizance against the accused-persons for the offences punishable under section 277 and 304-A IPC, it cannot direct to conduct further investigation into the allegations levelled in the FIR. In support of this contention, the learned counsel for the respondent Nos. 2 to 7 has placed reliance on decisions of Hon''ble Supreme Court in Randhir Singh Rana Vs. The State Being the Delhi Administration, AIR 1997 SC 639 : (1997) CriLJ 779 : (1997) 1 Crimes 58 : (1996) 11 JT 638 : (1996) 9 SCALE 447 : (1997) 1 SCC 361 : (1996) 10 SCR 880 Supp : (1997) AIRSCW 356 : (1997) 1 Supreme 278 , Reeta Nag Vs. State of West Bengal and Others, (2010) CriLJ 2245 : (2009) 11 SCALE 395 : (2009) 9 SCC 129 : (2009) 14 SCR 276 : (2009) 8 UJ 3984 : (2010) AIRSCW 476 as well as the decision of this Court in Krishan Kumar and Ors. vs. State of Rajasthan, 2012(3) Cr.L.R. (Raj.) 1555.

8. Heard learned counsel for the rival parties and perused the impugned orders as well as the material placed on record.

9. An unfortunate incident took place on 28.04.2010, wherein the son of the petitioner died on account of drowning when he along with his friends went to a picnic at Sobhasar pond near Bikaner. The incident was reported to the police and investigation was conducted and it was found that it was a case of accident wherein the son of the petitioner died on account of drowning when he was picnicking with his friends at Sobhasar pond. After about one year and one month i.e. on 31.05.2011, the petitioner had filed a complaint before the Superintendent of Police, Bikaner alleging that his son has not died on account of accident but in fact he was murdered by the respondent Nos. 2 to 7. On the instructions of the Superintendent of Police, Bikaner, the FIR No. 101/2011 was registered at Police Station, Beechhwal on 01.06.2011 and the police started investigation. After thorough investigation, the police has filed charge-sheet against the respondent Nos. 2 to 7 for the offences punishable under sections

277 and 304-A IPC. At this stage, the petitioner filed the application before the trial court under section 190 CrPC with the prayer for taking cognizance against the respondent Nos. 2 to 7 for the offence punishable under section 302/34 IPC and under section 3(2)(5) of the SC/ST Act. The petitioner also filed application with a prayer for directions to the police to conduct further investigation into the allegations levelled in the FIR. The trial court has rejected both the applications and taken cognizance against the respondent Nos. 2 to 7 for the offences punishable under sections 277 and 304-A IPC.

10. There is no dispute about the proposition of law that a Magistrate has power to direct the police to conduct further investigation as has been held by the Hon''ble Supreme Court in Vinay Tyagi's case (supra) but the Magistrate can do so only up to the stage prior to taking of cognizance. After taking of cognizance, the Magistrate has no power to direct the police to conduct further investigation as held by the Hon''ble Supreme Court in Randhir Singh, Reeta Nag and Nupur Talwar's cases (supra) and by this Court in Krishna Kumar's case (supra).

11. Now the question is whether the trial court has taken into consideration the prayer of the petitioner for directing the police to further investigate into the allegations levelled in the FIR No. 101/2011 before taking cognizance against respondent Nos. 2 to 7 vide order dated 16.05.2012.

12. It is noticed that the trial court has taken into consideration the arguments advanced on behalf of the counsel for the petitioner in detail and has held that immediately after the incident, the matter was investigated by the police and it was found that when the son of the petitioner drowned in the water of the pond, all his friends present there, had approached the watchman and they also immediately rushed to the police and also called the villagers. It has been observed by the trial court that none of the friends of the petitioner ran away from the site. It has also been observed by the trial court that though some photographs have been produced by the petitioner to impress the court that the depth of the water was not so deep that any person can die while bathing in that water but from those photographs, it appears that all the students were enjoying and swimming in the water freely and it cannot be concluded that the fellow students of son of the petitioner have killed the son of the petitioner by drowning him. It is further observed by the trial court that the allegation of the petitioner to the effect that before killing his son, the accused-persons had forcibly got him drunk the beer or liquor is also not tenable because in the post mortem report, the presence of liquor or beer in the body has not been mentioned.

13. From the above observations of the trial court, it is clear that the trial court, after considering the pleas raised on behalf of the petitioner, has not found a fit case to direct the police to conduct further investigation into the FIR. In other words, the petitioner has failed to make out a case before the trial court to issue a direction to the police to conduct further investigation into the matter.

14. After going through the impugned orders passed by both the courts below,

this Court is of the opinion that when the petitioner has failed to furnish sufficient evidence before the trial court to pursue it to issue direction to the police to conduct further investigation in the matter, the trial court has not committed any illegality in rejecting the application containing the said prayer.

15. After independent examination of the pleas raised by the petitioner before the trial court, this Court too does not find a case to direct the police to conduct further investigation into the matter.

16. In the opinion of this Court, the revisional court has rightly advised the petitioner to approach the investigating agency for conducting further investigation on the basis of material furnished by him. The revisional court is also right in observing that if the police has not filed the documents, on which the petitioner has placed reliance during the course of investigation, along with final report/charge-sheet, the petitioner can very well approach the trial court with a prayer for summoning those documents during the course of trial against accused Nos. 2 to 7.

17. In view of the above discussions, this Court does not find any merit in this criminal misc. petition and the same is hereby dismissed.

18. Stay petition also stands dismissed.