
(1989) 07 RAJ CK 0022

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 174 of 1989

Smt. Pragati K. Shah and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-07-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 204, 482
Penal Code, 1860 (IPC) — Section 120B, 402, 406, 420, 465

Citation : (1990) 1 RLW 92 : (1990) 2 WLN 56

Hon'ble Judges : G.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.B Sharma, J.—This petition u/s 482 Cr. PC is preferred against the Order dated 10-1-89 by which, the learned Judicial Magistrate No. 3, Jaipur City Jaipur took cognizance against the petitioners Under Sections 406, 420, 465 and 120B, IPC

2. Before hearing the arguments Shri Bajwa, learned Counsel for non-petitioner No. 2 raised preliminary objection that the petition u/s 482 is not maintainable on the ground that the order of taking cognizance was passed by the learned Magistrate after satisfying himself that prima facie case is made out to proceed for the offence alleged in the complaint. The learned Counsel for the petitioner in spite of replying this legal objection argued the entire matter on the merit of the case.

3. A complaint was filed by A.S. Saroff against the petitioners for the offences u/s 406, 420 read with Sections 120B, 465 and 471 IPC The allegations have been made in detail in the complaint itself. The learned Magistrate recorded the statements of the complainant u/s 200, Cr PC and of witnesses u/s 202 Cr. PC and after perusing the statements the learned Magistrate passed the detail order whereby discussing the evidence recorded by him and the circumstances and the allegation made in the complaint and was of the opinion that it is a fit case where

cognizance be taken against the petitioners and he passed the impugned order dated 10-1-1989. The order of taking cognizance has been challenged by the petitioners u/s 482 Cr. PC. The legal point which needs consideration is as argued by Shri Bajwa that whether a petition u/s 482 Cr. PC can be preferred against the order of taking cognizance. Can this Court in its inherent powers interfere in the order of the learned Magistrate taking cognizance of the offence. In this respect the provisions of Sections 200, 202, 203 and 204 Cr. PC have been brought to the notice and I have gone through the provisions of law in this respect.

4. In support of his objection the learned Counsel for the petitioner argued at length about the facts of the case. He was trying to insist that on the evidence and the complaint filed by the complainant no offence u/s 406 and 420 IPC or a case of forgery is made out in. In support of his argument he has relied on 1983(2) Crimes 454 : 1965 S C 1433 : 1973 Cr. Law J. 945 : ILR 1964 362 : 1977 RCC 219 : 1982 Cr. L.J 594 and 1980 Cr. LJ 1033. I have gone through the ruling cited by the learned Counsel for the petitioner. All these rulings are with regard to the facts of the case which deals that in the circumstances and on the evidence the case is not made out as alleged in the complaint. Here the question is not whether the case is made out on the evidence or not. The question is whether the learned Magistrate has rightly arrived at the conclusion that a prima facie case is made out on the evidence of the complaint and whether there is any case to proceed and take cognizance against the offence. The learned Magistrate after satisfying himself found that the case is made out and he passed the impugned order. Therefore, case laws cited by the learned Counsel for the petitioners are of no assistance to him. The learned Counsel also relied on 1977 S C 1754 : 1986 RCC 308 and contended that in these cases the order of taking cognizance was quashed by the Hon"ble Supreme Court. In 1986 RCC 308 it has been observed that "Cognizance cannot be taken in an offence of any evidence and it was of the opinion that there was no evidence for taking cognizance. Therefore, the order of taking cognizance was quashed.

5. In reply to this argument the learned Counsel for the respondent No. 1 also relied on 1986 S C 984 and 1985 Cr. LR 502. While relying on these case-laws it was argued that the Court can interfere in its inherent power u/s 482 Cr. PC against the order of taking cognizance if the order of the learned Magistrate suffers to some patent illegality or where the learned Magistrate has taken cognizance of the offence beyond the period of limitation as prescribed in the Code of Criminal Procedure. In the case where the complaint has not been filed by a proper person and the learned Magistrate has taken cognizance on that, then too this can be a ground for setting aside of cognizance. It can also be a ground for setting aside the order of cognizance if it could be shown that the order of learned Magistrate is perverse. So perversity is also one of the grounds, and while deciding the petition whether this Court in its inherent powers can interfere in the order of taking cognizance some principles are to be kept in mind. The points which have been argued by Shri Bajwa, learned Counsel for the respondent are very relevant points which are to be kept in mind, while disposing

the petition and exercising the inherent power u/s 482 Cr. PC.

6. After giving full consideration to the argument. I would like to deal the jurisdiction of the learned Magistrate. When a complaint is filed the learned Magistrate will record the statements of the complainant u/s 200 Cr. PC. He will then record the statements of the witnesses produced by the complainant to support and corroborate the case u/s 202 Cr. PC. Section 203 Cr. PC says that if after consulting the statements recorded on oath of the complainant and his witness the Magistrate is of the opinion that there is no sufficient ground for proceeding he shall dismiss the complaint. Then Section 204 Cr. PC says that if in the opinion of the Magistrate there is sufficient ground for proceeding in the case when the Magistrate will take cognizance of the offence and call the persons against whom the complaint has been filed. If the learned Magistrate is satisfied that a case is made out or there is sufficient ground for proceeding in the complaint then certainly he will take cognizance and shall issue either summon or warrant as the case may be for the appearance of the accused person. Therefore, law provides that before taking cognizance it is the satisfaction of the learned Magistrate who records the statements u/s 200 and 202 Cr PC and on his satisfaction he will proceed with the case. It is not the satisfaction of the High Court that the cognizance in the case is to be taken. This Court in its inherent powers will examine whether the Magistrate has jurisdiction to entertain the complaint. If he has not jurisdiction then certainly this Court will interfere in its inherent powers and set aside the order of taking cognizance. If this Court find that the learned Magistrate has committed illegality in the procedure or that he has accepted complaint beyond the period of limitation as provided in the Code of Criminal Procedure or that the order of learned Magistrate is perverse then only this Court can interfere in its inherent powers. Otherwise the opportunity would be with the accused-persons to satisfy the learned Magistrate that on the evidence and the record and the facts of the case no case is made out for framing charge. In that circumstance the learned Magistrate after hearing and considering arguments and the record will either discharge the accused or will frame charge against the accused person. So opportunity for coming to this Court be after framing charge. But against the order of taking cognizance the only satisfaction is that learned Magistrate and if he is satisfied then this Court should not interfere in its inherent powers in the order of taking cognizance except in the case as mentioned above-that the order is a perversion, the Magistrate has no jurisdiction or that the complaint has been registered beyond the period of limitation.

7. In the case of *Khacheru Singh v. State of UP and Anr.* 1982 S C 784 their Lordships have without expressing any opinion on the merit of the case observed that "All that the learned Magistrate had done was to issue a summons to respondent No. 2 Satyavir Singh. If, eventually, the learned Magistrate comes to the conclusion that no offence was made out against Satyavir Singh it will be open to him to discharge or acquit him as the case may be. But it is difficult to appreciate why the order issuing summons to the accused should be quashed."

In this case the learned Magistrate took cognizance against Satyavir Singh He went before Sessions Court & then the High Court. The Sessions Judge set aside the order of the learned Magistrate and the High Court also confirmed the order of the learned Sessions Judge. When the matter came before the Hon"ble Supreme Court and while observing the order of the Sessions Judge and High Court was quashed and that of the learned Magistrate was restored.

8. In the case of J.P. Sharma v. Vinod Kumar Jain and Ors. 1986 S C 833 the Magistrate after accepting the complaint issued summons to the accused persons. A petition u/s 482 Cr. PC was preferred in the High Court for quashing the complaint; The High Court accepted the complaint and quashed the order of the learned Magistrate, then the matter came before Hon"ble the Supreme Court and it has been held that the High Court was not justified in quashing the complaint under its extra-ordinary jurisdiction. In this case their Lordships have observed as under:

Taking all the allegations in complaint to be true, without adding or subtracting anything, at this stage it cannot be said that no prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court u/s 482 of the Code of Criminal Procedure. The High Court in the instant case has exceeded that jurisdiction. The question at this stage is, not whether there was any truth in the allegations made but the question is whether on the basis of the allegations a cognizance offence or offences had been alleged to have been committed The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed The truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed. The truth or otherwise of the allegation made in the complaint would be investigated at the time of the trial.

9. So keeping-in view the principles laid down in case of J.P. Sharma (supra) and Kacheru Singk(supra) the position in this case is very clear. The argument that from. the facts montioned in the complaint or from the statement, the offence u/ s 402 and 420 of forgery is not made out, cannot be considered at this stage. This can be considered by the learned Magistrate at the time of argument before framing the charge. From the allegations made in the complaint and from the evidence recorded by the learned Magistrate, he was satisfied that a cognizable offence or offences alleged to have been committed by the accused-persons and after satisfying himself he passed the order of taking cognizance.

10. In view of my discussion made above and the principle laid down by Hon"ble the Supreme Court and also seeing the provisions of Chapter Vth of the Code of Criminal Procedure it is not a case where this Court in its inherent powers should interfere in the order of the learned Magistrate dated 10-1-1989, by which, be took cognizance against the accused-persons.

11. As a result, the petition is, therefore, dismissed.