
(2011) 03 RAJ CK 0116

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 599 of 2011

Vijay Kumar Duggar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 438, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2011) 03 RAJ CK 0116

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The Petitioner has approached this Court with the prayer that the police should be directed not to arrest him. This prayer rises under the following factual matrix.

2. One Mr. Dilip Duggar, the nephew of the Petitioner, had filed a criminal complaint against the Petitioner and others in the Court of learned Additional Civil Judge (J.D.) and Additional Judicial Magistrate No. 17, Jaipur City, Jaipur, wherein he alleged that the Petitioner and others had committed offences under Sections 420, 467, 468, 471 and 120B IPC. The said complaint was sent for further investigation u/s 156(3) Code of Criminal Procedure to the Police Station Banipark, Jaipur. On the basis of the said complaint, a formal FIR, FIR No. 23/2009, was chalked out for the aforementioned offences. However, after a thorough investigation, the police had submitted a negative final report, inter alia, on the ground that since the complainant has already instituted a civil case against the Petitioner and others, the entire case was of civil nature, rather than a criminal one. After the submission of the negative final report, a notice was issued to the complainant. So far the complainant has not appeared before the trial court. Therefore, his statement and statements of his witnesses, under Sections 200 and 202 Code of Criminal Procedure, have not been recorded.

Meanwhile, according to the Petitioner, although the negative final report is pending before the civil court, the police is still harassing him. They are threatening him that they are likely to arrest him. Fearing the possibility that he may be arrested by the police, the Petitioner moved a petition u/s 438 Code of Criminal Procedure before the Sessions Judge, Jaipur City, Jaipur. However, vide order dated 01.03.2011, the learned Judge has dismissed the said petition ostensibly on the ground that since a negative final report was submitted by the police, there is no chance of the police arresting the Petitioner. Hence, the apprehension entertained by the Petitioner is misfounded. Therefore, this petition before this Court seeking that the liberty of the Petitioner should be protected as the police is still threatening to arrest him.

3. The learned Counsel for the Petitioner has contended that the liberty is the heart of the Constitution of India, and the soul of every citizen of this country. Therefore, liberty has to be protected especially when a negative final report has been filed by the Investigating Agency.

4. Heard the learned Counsel for the parties.

5. This Court is of the opinion that the jurisdiction u/s 482 Code of Criminal Procedure cannot be converted into a jurisdiction u/s 438 Code of Criminal Procedure. Therefore, the proper remedy available to the Petitioner was to move a petition u/s 438 Code of Criminal Procedure. However, the learned Counsel has brought the order dated 01.03.2011 to the notice of this Court, whereby the learned Judge has dismissed the petition u/s 438 Code of Criminal Procedure. Although the order dated 01.03.2011 is not under challenged before this Court, but considering the fact that according to this Court the proper remedy is that of anticipatory bail and not of a miscellaneous petition u/s 482 Code of Criminal Procedure. This Court deems it proper to elaborate on its position. Admittedly, a FIR has been lodged against the Petitioner, wherein he has been named.

6. Although a negative final report may have been filed by the Investigating Agency, but, so far, it has not been accepted by the learned trial court. Furthermore, it is a settled position of law that a trial court is not bound by a negative final report submitted by the police. Moreover, the Petitioner has been voicing his concern and informing the court that he is being threatened by the police that he is likely to be arrested. Thus, the anxiety entertained by the Petitioner cannot be said to be non-existent or baseless. Section 438 Code of Criminal Procedure was, in fact, inserted in the Code with the sole purpose of protecting the liberty of the citizen. As long as a person has a bona fide belief that he is likely to be arrested, legally or illegally, he has the right to approach the court for protection of his liberty u/s 438 Code of Criminal Procedure. Moreover, the learned Judge has overlooked the fact that despite summoning of the complainant, the complainant is yet to appear before the learned trial Court. His statement is yet to be recorded u/s 200 Code of Criminal Procedure. Till the trial court gives a finding - accepting or rejecting the negative final report - obviously the Petitioner shall be under a belief that he can be arrested by the

Police notwithstanding the fact that the police has submitted a negative final report. The functioning of the police needs no comments as it is very well known. Therefore, the reason given by the learned trial court for dismissing the petition u/s 438 Code of Criminal Procedure is untenable. Hence, this Court is still of the opinion that only a petition u/s 438 Code of Criminal Procedure would lie. The Petitioner is certainly free to exercise that option, if he so desires.

7. But at least, this petition is devoid of any merit; it is, hereby, dismissed.