

(1982) 10 RAJ CK 0018

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 190 of 1978

Vishnu Datt and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 01-10-1982

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 200, 210

Penal Code, 1860 (IPC) — Section 147, 148, 307, 342, 365

Citation : (1983) RLW 27 : (1982) WLN 549

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanta Bhatnagar, J.—This revision petition raises the question of law, as to whether in a case where on the First Information Report lodged for the incident a case is registered by the police and subsequent to that a complaint is filed in the Court, can the Court proceed with the complaint without receiving the report regarding the proceedings taken on the First Information Report, filed with the police.

2. On September 1, 1977 First Information Report regarding the beating giving to one Banwari was filed at Police Station Rajgarh against the petitioners. A case under Sections 307, 365, 342, 148 Indian Penal Code and 27 of the Arms Act was found to have been committed and efforts for arresting the accused were also made. Petitioner Mozi Ram is said to have been arrested. About nine months passed in the investigation but the police did not put the conclusion of the investigation before the Court. As the police did not proceed further with matter for a long time, Banwari complainant felt aggrieved and filed a complaint in the court of the Chief Judicial Magistrate, Churu on October 4, 1977 for the offences under Sections 307, 147, 365 and 148 I.P.C. The Court recorded the statement of the complainant u/s 200 of the Code of Criminal Procedure and called the case

diary of 1st Information Report No. 169 dated September 1, 1977 at Police Station Rajgarh relating to this very incident. The case diary was filed in the Court on December 1, 1977 and orders were issued for filing the report after completing the investigation. On February 22, 1978 of the court ordered that as the report regarding the result of the investigation has not been filed, the complainant may produce all of his evidence in the court to substantiate the allegations made in the complaint. Thereafter, witnesses of the complainant were examined and arguments heard. By the order dated May 25, 1978 the learned Magistrate took cognizance against the petitioners for the offences under Sections 307, 365, 148, 342 and Section 27 of the Arms Act and ordered for their attendance through warrant of arrest. Mozi Ram who had already been arrested by the police in connection with investigation on the First Information Report filed at Police Station, Rajgarh was on bail and therefore, was called throughailable warrant.

3. It is in grievance of this order of taking cognizance by the Court that the petitioners have invoked the revisional jurisdiction of this Court.

4. I heard Mr. B. R. Arora, learned Counsel for the petitioners and Dr S. S. Bhandawat, learned Public Prosecutor and perused the record. Mr. K.K. Bishnoi has filed memo of appearance on behalf of the complainant Banwari, but did not appear on the date of hearing.

5. The learned Counsel for the petitioners has referred to the provisions of Section 210 of the Code of Criminal Procedure and submitted that the only course open to the Magistrate was to stay the proceedings and call for the report on the matter from the police after conducting the investigation. According to the learned Counsel the learned Magistrate should not have taken cognizance against the petitioners when the matter was under investigation with the police.

6. Section 210 of the Code of Criminal Procedure lays down the procedure to be followed when a case is instituted otherwise than on a police report and the matter is also under police investigation on the basis of the First Information Report. As provided in that Section when a case is instituted otherwise than on the police report and it is brought to the notice of the Magistrate during the course of inquiry or trial that investigation by the police relating to that incident is in progress, the Magistrate shall stay the proceedings in the complaint case and shall call for the report on the matter from the police officer conducting the investigation. The impugned order and the order sheets proceeding the same show that the learned Magistrate, after locking into the case diary, directed the A.P.P. to get the report of investigation filed. The A.P.P. failing to do so, the Court proceeded with the inquiry and took cognizance of the offence by the impugned order. Simply because the report was not being filed, the Magistrate should not have proceeded with the case, rather should have further directed the Station House Officer concerned or in case of his non-complying with the directions, written to the higher authorities in this concern and get the report of the progress of the case. To put it in other words the Court should have directed the

investigating officer to complete the investigation and file the report instead of proceeding with the inquiry and taking cognizance. The provisions of Section 210 requiring the Magistrate to stay the inquiry or trial on the complaint till the report of the investigating officer is received are mandatory in nature.

7. In this view of the matter, the petitioners have a legitimate grievance against the cognizance taken & warrants of arrest ordered to be issued. The impugned order therefore, calls for interference by this Court in exercise of revisional jurisdiction.

8. The revision petition is, therefore, allowed. The order dated May 25, 1978 is set aside. The trial Court is directed to call for the report from the police officer conducting the investigation on the First Information Report lodged at the Police Station & stay the proceedings on the complaint till that time.