

S.B. Criminal Miscellaneous Petition No.757/2006.

Pramod Kumar Vs. State of Rajasthan & Anr.

Date of order :: 12.06.2006.

HON'BLE MR.JUSTICE DINESH MAHESHWARI, V.J.

Mr. J.R. Chawel, for the petitioner.
Mr. S.N. Tiwari, Public Prosecutor.

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Having heard learned counsel for the petitioner and having perused the material placed on record, this Court is satisfied that this Miscellaneous Petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) against the order dated 28.03.2006 passed by the Addl. Chief Judicial Magistrate, Bhadra remains absolutely bereft of substance and deserves to be dismissed.

The dispute relates to a cheque bearing No.994724 drawn on State Bank of Bikaner and Jaipur, Branch Nohar. According to the petitioner, the respondent Niranjan Lal had drawn the said cheque for an amount of Rs.2,22,000/- in his favour and he presented the same to the Bank in his account on 28.11.2005 but the Bank returned the cheque dishonoured on 16.12.2005 for insufficiency of funds in the account of the respondent; the petitioner served a notice on 19.12.2005 upon the respondent and thereafter filed a complaint before the Additional Chief Judicial Magistrate, Bhadra and the same was registered as NIA (Complaint) No.2/2006. The petitioner has

further submitted that the respondent did not reply the notice but filed a complaint before the Additional Chief Judicial Magistrate, Bhadra that was sent to the Station House Officer, Bhadra for investigation whereunder FIR No.14/2006 was registered against the petitioner for offences under Sections 420, 467, 468, 471 and 120-B IPC. The police submitted a final negative report before the Magistrate. However, the respondent Niranjan Lal made a request to the learned Magistrate for sending the matter for re-investigation and thereupon the matter was sent for re-investigation in a particular manner with certain directions by the order dated 17.02.2006.

The aforesaid order dated 17.02.2006 passed by the Additional Chief Judicial Magistrate, Bhadra in F.R. No.13/2006 was put to challenge by the petitioner in S.B. Criminal Miscellaneous Petition No.425/2006 and the same was partly allowed by this Court on 02.06.2006.

A copy of the order dated 02.06.2006 has been placed on record by the petitioner and from the facts stated therein, it appears that the present respondent Niranjan Lal had alleged in his complaint that on 20.04.2005 the said complainant and his friends were taking breakfast in a sweet's shop of one Dinesh Kumar and for the complainant not having cash in his hands, extended a cheque of Rs.200/- to Dinesh

Kumar without mentioning the date and without stating the amount of cheque in words. It was alleged against the accused including the present petitioner that by entering into a conspiracy they increased the amount of cheque to Rs.2,22,000/- in place of Rs.200/- and forged the cheque and submitted the same to the Bank for encashment. On the said complaint, negative report was filed by the Police and the request of the complainant for re-investigation was granted by the order dated 17.02.2006.

This Court, after considering the said Miscellaneous Petition No. 425/2006, found that there was no restriction for the learned Magistrate for sending the case for further investigation under Section 173(8) Cr.P.C. However, this Court noticed the operative portion of the impugned order dated 17.02.2006 and observed that the Magistrate could not have directed for investigation in a particular manner. The operative portion in the impugned order dated 17.02.2006 as quoted in the order dated 02.06.2006 reads thus,-

"अतः एफ.आर. उक्त निर्देशाधीन पुनः अनुसन्धान हेतु डी.वाई.एस.पी. नोहर को इस निर्देश के साथ प्रेषित की जाती हैं कि वे इस बिन्दु पर सक्षम अनुसन्धान अधिकारी से हस्तलेख विशेषज्ञ/एफ.एस.एल. से चैक में अंकित राशि जो अंकों में हैं, उसका परिवादी मुलजिम पक्ष के नमूना हस्तलेख से जो कि अंकों में लिखवाया जाकर जाच करवाई जाकर रिपोर्ट सहित नतीजा पेश करावें । केस डायरी जरिये डाक भेजी जावे ।"

This Court partly allowed the said Miscellaneous Petition, set aside the part of the impugned order that related to directions for investigation in a particular manner and the Investigating Officer was directed to make further investigation as per his satisfaction in the light of the observations made in the impugned order dated 17.02.2006. This Court held,-

“In my opinion though the order with regard to further investigation is in consonance with the provisions of law but the operative portion of the impugned order is not sustainable in view of the judgment rendered in case of Mahipal Singh (supra).

In this view of the matter, the petition is partly allowed. The part of the impugned order dated 17.2.2006 so far as directing investigation in a particular manner is set aside. The Investigating Officer is directed to make further investigation as per his satisfaction in the light of observations made in the impugned order dated 17.2.2006 and submit the report before the trial court.”

In the meantime, an application was moved by the Investigating Officer before the learned Magistrate for supplying the original disputed cheque for the purpose of investigation and the learned Magistrate by the impugned order dated 28.03.2006 proceeded to allow the application for handing over the disputed cheque to the Deputy Superintendent of Police, Nohar after retaining a copy thereof on record.

The petitioner does not seem to have put to challenge the said order dated 28.03.2006 earlier but has submitted this Miscellaneous Petition on 07.06.2006, that is immediately after passing of the order dated 02.06.2006 in Miscellaneous Petition No.425/2006.

Questioning the order dated 28.03.2006, the petitioner has contended in this Miscellaneous Petition that the directions for investigation in a specific manner have already been quashed by this Court and, therefore, the impugned order for handing over of the cheque to the Investigating Officer deserves to be quashed. According to the petitioner, the application for handing over of the cheque was submitted only in pursuance of the order dated 17.02.2006 but the operative portion thereof directing re-investigation of the matter in a particular manner having already been set aside by this Court, the impugned order dated 28.03.2006 deserves to be quashed and the application submitted by the Deputy Superintendent of Police on the basis of the order dated 17.02.2006 is liable to be rejected.

The submissions as made by the petitioner in this Miscellaneous Petition remain fundamentally bereft of substance. A perusal of the order dated 02.06.2006 passed by this Court in Miscellaneous Petition No.425/2006 makes it clear that so far the directions for re-investigation as made by the trial

court on 17.02.2006 are concerned, the same have been affirmed by this Court, and the matter is required to be re-investigated in the light of the observations made in the order dated 17.02.2006, as affirmed by this Court. It is only that part of the directions of the learned Magistrate that the investigation was to be carried out in a particular manner, that has been set aside. For removal of doubts, this Court has directed the Investigating Officer to make further investigation as per his satisfaction. Obviously, the matter is to be investigated by the Investigating Officer and in view of the nature of allegations made in the complaint, if the Investigating Officer has found it necessary to have the cheque examined, such an approach cannot be said to be in abuse of the process of law and rather remains unexceptionable. The very fact that the matter is required to be re-investigated, and the cheque is the bone of contention, no fault can be found with the Investigating Officers' request for being handed over the original cheque; nor the learned court below could be said to have erred or have committed any illegality or impropriety while passing the impugned order dated 28.03.2006 and in handing over the original cheque to the Deputy Superintendent of Police, Nohar.

The petitioner seems to be labouring under misconception that the order passed by this Court on 02.06.2006, modifying the order dated 17.02.2006, may be put

forward to question the validity of the order dated 28.03.2006 also. It is true that the order dated 28.03.2006 has been passed in consequence of the order dated 17.02.2006 and a part of the order dated 17.02.2006 has been modified by this Court on 02.06.2006, nevertheless the order dated 28.03.2006 is in no way affected by the order passed this Court on 02.06.2006 nor stands anywhere in contradiction with the directions of this Court.

It is entirely a different story that both the petitioner and the respondent are levelling counter allegations on each other about the amount stated in the cheque in question, but for that matter if re-investigation by the Police has been ordered by the trial court and has been approved by this Court, no exception can be taken in the procedure adopted by the learned trial court and in handing over the original cheque to the Investigating Officer. The order dated 28.03.2006 does not result in failure of justice and calls for no interference.

The Miscellaneous Petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), VJ.

Mohan