

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO. 84/2001

(Jagdish Prasad & Ors. vs. State of Rajasthan & Anr.)

Date of Order: 28/11/2008**Presents****HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE**

Mr. Rajneesh Gupta on behalf of Mr. S.K. Gupta,
for the petitioner(s).
Mr. B.K. Sharma, PP for State.
Mr. Rajkumar Goyal on behalf of Mr. Mahendra Goyal,
for the respondent(s).

This criminal misc. petition has been filed by the accused-petitioners challenging the order dated 12.10.1999 whereby cognizance had been taken against them by the learned Civil Judge (Jr. Dn.) & Judicial Magistrate, Laxmangarh, District Sikar, for the offences under Section 143, 448 and 380 read with 149 I.P.C. Being aggrieved of the said order the accused-petitioners filed a revision petition before the learned Sessions Court and the same came to be dismissed by the learned Additional Sessions Judge No. 1, Sikar on 19.01.2001 .

2. Briefly, the facts of the case are that there was dispute between the parties with regard to a residential house situated at village Naichwa, District Sikar. Subsequently, it gave rise to civil and criminal litigation between the parties. The complainant-respondent then filed a report with regard to an incident of 17.01.96, before the police on 16.02.1996 on which a regular F.I.R. came to be registered (13/96) on 19.02.1996 for

the offences under Section 448 & 379 I.P.C. On completion of the investigation, the police filed a final report (9/96) on 04.03.1996 holding no such incident had taken place (adamvakua). The complainant-respondent had on 13.08.96 submitted a protest petition before the concerning Magistrate. After hearing both the parties, the learned Magistrate passed an order on 20.08.1996, whereby he had accepted the final report and dismissed the protest petition. Being aggrieved of the said order of the Magistrate, the complainant-respondent filed a revision petition before the learned Sessions Court, Sikar which came to be transferred to the court of Additional Sessions Judge No. 1 Sikar (No. 13/96) and the same was dismissed on 13.08.98.

3. Meanwhile, the complainant-respondent had filed a complaint before the court of learned Magistrate on 03.09.1996. After recording the statement of the complainant and his witnesses on 14.11.1996 and 26.11.1996, learned Magistrate then took cognizance against the petitioners by his order dated 12.10.1999 and called them through non bailable warrants. Being aggrieved of the said order passed by the learned Magistrate the accused petitioners filed a revision petition which was registered as revision petition No. 86/99. The learned revisional court dismissed the revision petition and affirmed the order of cognizance passed by the learned Magistrate on 19.01.2001. Hence, this misc. petition has been filed before this court.

4. It is noteworthy that in respect of the property in dispute, the complainant-respondent had taken up another set of litigation by way of filing a civil suit on 16.02.1999. Thereafter the case was transferred to the learned Additional District & Sessions Judge (Fast Track) Sikar in the year 2004 which was numbered as 13/04. In the said civil suit the learned court framed issues and issue No. 6 in particular related to the incident which had taken place on 17.01.1996 and the same reads as under: -

“क्या वादपत्र की चरण स. 8 व 9 में लिखेनुसार प्रतिवादी स. 1 व 2 ने 17.01.1996 को हवेली का मुख्य द्वार का ताला तोड़कर बलात् कब्जा किया और न्यूनतम कीमत दस हजार रुपये वाली दर्ज वस्तुएं लोहे की बड़ी पेटीया बड़े बक्से आदि चुरा लिये.

..वादीगण ”

5. The learned civil court, vide its judgment dated 11.10.2007 dismissed the suit filed by complainant-respondent and in para 41 of its order, the learned civil court decided issue no. 6 against the complainant holding that he had failed to prove the same.

6. The learned counsel for the petitioners have submitted that both the courts below has committed illegality in passing the impugned orders, as they have not taken into consideration the settled principles of law. Further, he has submitted that the impugned orders passed by both the courts below are not sustainable in law because no cognizance could

have been taken by the learned Magistrate on the second report/complaint filed by the complainant-respondent in respect of the same incident i.e. 17.01.1996 and which was based on the same facts and circumstances.

Further, he has submitted that the learned revisional court had also committed illegality in not taking into consideration the settled legal position in the matter and has erred in dismissing the revision petition. In support of his case, the learned counsel for the petitioner has relied upon the case of ***T.T. Antony versus State of Kerala***, reported in ***2001 A.I.R. (SC) 2637***. He has also relied upon the judgments of this court in the cases of ***Narendra Kumar versus State of Rajasthan & Ors.***, reported in ***2004 (3) R.Cr.D. 365 (Raj.)*** He has also placed reliance upon the case of ***Badrigiri versus State of Rajasthan***, reported in ***2004 WLC (Raj.) UC 767***. In the last, he relied upon the case of ***Bhom Singh versus State of Rajasthan & Anr.***, reported in ***2005 (1) R.C.C. 83***.

7. On the other hand, the learned counsel for the complainant-respondent has submitted that this misc. petition deserves to be dismissed because both the courts below have held that a prima facie case for taking cognizance against the accused-petitioners is made out. He has also submitted that though the learned Magistrate had accepted the final report in respect of the incident which had taken place on 17.01.1996 but the revisional court while dismissing the revision petition (no. 6/97) on 13.08.1998, which was in respect of F.I.R. No. 13/96,

had given liberty to the complainant-respondent to submit a complaint in the matter. The learned counsel for the complainant-respondent has placed reliance upon the case of ***Gopal Vijay Verma versus Bhuneshwar Prasad Sinha & Ors.*** reported in **(1982) 3 SCC 510**; the case of ***Chandan Mal Jain & Ors. versus State of Rajasthan & Ors.***, reported in **1998 Cr.L.R. (Raj.) 474** and on the case of ***Mahesh Chand versus B. Janardhan Reddy & Anr.***, reported in **A.I.R. 2003 SC 702**.

8. I have given my anxious consideration to the rival submissions made by the parties and have carefully gone through the material on record in respect of both the criminal proceedings, as well as, the civil litigation between the parties. It is an undisputed fact that the parties came to dispute in respect of a residential house situated at village Naichwa, District Sikar. The said dispute resulted in an incident which had taken place on 17.01.1996. The complainant-respondent had then filed a report against the petitioners on 19.02.2006 which came to be registered as F.I.R No. 13/96 at police station Naichwa, District Sikar, for the offences under Sections 448 & 379 I.P.C. The police commenced the investigation and on completion of the same, came to the conclusion that no offence is made out. Therefore, the police recommended a final report, No. 9/96, dated 04.03.1996.

On having received the final report, the learned Magistrate gave notice to the complainant-respondent, who had

then filed a protest petition on 13.08.1996. The learned Magistrate, after thoroughly considering the facts and circumstances of the case and also the investigation material placed before it, passed the order dated 20.08.1996 by which he accepted the final report filed by the police and dismissed the protest petition submitted by the complainant-respondent. Thereafter the revision petition filed by the complainant against the order of learned Magistrate also came to be dismissed on 13.08.1998, by the Additional Sessions Judge No. 1 Silkar.

9. Meanwhile the complainant-respondent had again taken up the matter by filing a complaint on 03.09.1996 in respect of the same incident i.e. of 17.01.1999. The learned Magistrate then recorded the statement of the complainant and his witnesses and then took cognizance against the petitioner on 12.10.1999 and issued non-bailable warrants. A revision petition filed against the said order by the accused- petitioner came to be dismissed on 19.1.2001 upholding the order of cognizance. Simultaneously, the complainant-petitioner had filed a civil suit before the learned Sessions Judge on 16.02.1999.

10. The two fold questions which arises for consideration of this court is, firstly, whether the second complaint filed by the non-petitioner with regard to an incident in respect of which a report was filed by the complainant-respondent earlier and on investigation a final report had been filed and accepted by the learned Magistrate after dismissing the protest petition, is

maintainable or not. Secondly, as to whether the learned revisional court was justified in giving liberty to the complainant-respondent to file a fresh complaint in respect of the same matter while dismissing the revision petition and upholding the order passed by the learned Magistrate on 20.08.1996, accepting the final report submitted by the investigation agency with regard to the incident of 17.01.1996 and dismissing the protest petition filed by the complainant-respondent.

11. Coming to the question of liberty given by the revisional court to the complainant-respondent to file a fresh complaint in respect of the same incident, whereas a thorough investigation had already been made resulting in submission of a final report on the ground of absence of occurrence and the protest petition filed by the complainant-respondent also having been dismissed, in my considered opinion, was not at all justified and it was rather contrary to the provisions of Cr.P.C. and also the settled principles of law. The learned revisional court had failed to take note of the fact that after having received the conclusion of the investigation, the learned Magistrate had thoroughly considered the final report and also the protest petition (a complaint) which was filed by the complainant-respondent, while passing the order dated 20.08.1996. In such view of the matter, there was no basis for the revisional court to have granted opportunity to the complainant to file a complaint before the Magistrate concerned, in respect of the same matter and incident.

12. As regards, the other question pertaining to the maintainability of a second report/complaint in respect of the same incident and based on same facts and circumstances, is maintainable or not, the Hon'ble Supreme Court in the case of T.T. Antony (supra) held that the second complaint in respect of the same incident and based on the same facts and circumstances is not maintainable under law. While considering the issue, the Hon'ble Supreme Court had observed as under: -

"20. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Secs. 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion u/ss. 169 or 170 of Cr.P.C., as the case may be, and forwarded his report to the concerned Magistrate u/s. 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-sec. (8) of Sec. 173 Cr.P.C.

21. From the above discussion it follows that under the scheme of the provisions of Secs. 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earlier or the first information in regard to the commission of a cognizable offence satisfies the requirements of Sec. 154 Cr.P.C. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequently information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offence. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the

station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence report in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Sec. 173 of the Cr.P.C."

13. Even the High Court had also so held in the case of Narendra Kumar (supra), on the principle laid down by the Apex Court in the case of T.T. Antony (supra) and ***Sunil Kumar versus Escorts Yamaha Motors Ltd. & Ors.*** reported in ***(1999) 8 SCC 468***. Later on, in the case of Badri Giri (supra) also, relying upon the decision of the Apex Court in T.T. Antony's case, it was held that after acceptance of final report, the filing of the second complaint on same incident and after taking into consideration same facts is illegal and deserves to be quashed and set-aside. Again in the case of Bhom Singh (supra) same principle was reiterated by the High Court, wherein the dispute related to a rented shop. After lodging of the report the police found that no case was made out and they filed a Final Report, which was accepted by the Magistrate.

Thereafter the complainant filed another complaint alleging that the investigation in earlier case was not fair. The second complaint so filed was sent for investigation under Section 156 (3) Cr.P.C. It was the said action of the learned Magistrate which was assailed on the ground that the second F.I.R. and fresh investigation on it could not be undertaken. In such a situation it was held that in no case a fresh investigation could have been started and if the complainant apprehended any

foul play on the part of investigation agency then he could have filed a protest petition and challenged the same before the court concern. Accordingly it was held that no cognizance can be taken on second F.I.R., in respect of the same incident and arising out of same facts.

14. The case law relied upon by the learned counsel for the complainant-respondent is not applicable in the facts and circumstances of this case. So far as the case of Gopal Vijay Verma (supra) is concerned, the same was remitted to the Chief Judicial Magistrate, for disposal in accordance to law because the learned Magistrate had declined to take cognizance upon complaint as he had earlier refused to take cognizance on a police report. Based on the said judgment of the Apex Court, the High Court in the case of Chandan Mal Jain (supra) had held that after submitting of the final report by the police, a complaint filed by the complainant could be entertained. It was held that, learned Magistrate had jurisdiction to look into a complaint so submitted by the informant/complainant and take cognizance of the offences notwithstanding the acceptance of final report submitted by the police. It is to be noted that in the case of Gopal Vijay Verrma and Chandan Mal Jain, after submitting of the conclusion by the investigation agency by a way of filing final report, a complaint came to be filed by the aggrieved and no protest petition had earlier been submitted which was ever considered by the learned Magistrate.

Besides, the Apex Court in the case of ***Kishore***

Kumar Gyanchandani versus G.D. Mehrotra & Anr., reported in ***(2001) 10 SCC 59***. expressed that the controversy involved, must be decided by a Larger Bench. After the said order dated 25.01.2001, the Apex Court in T.T. Antony's case (supra) decided on 12.07.2001, has taken the view that there can be no fresh investigation on receipt of every subsequent information in respect of same incident.

15. In the case of Mahesh Chand (supra) the Hon'ble Supreme Court had laid down that a second complaint is not completely barred. But it was in the circumstance of that case that, where the proceedings on a complaint was dismissed without assigning any reasons, that the Apex Court held that the learned Magistrate under Section 203 Cr.P.C., may take cognizance of an offence and issue process if there is a sufficient ground for proceeding. Second complaint could be dismissed after a decision has been given against the complainant in police matter, upon full consideration of his case. Further, it was held that a second complaint could be entertained only in exceptional circumstances namely, where a previous order was passed on an incomplete or on a misunderstanding of the nature of complaint or it manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in previous proceedings, have been adduced. In the present case, the facts and circumstances reveals that after submitting of the final report by the police, the complainant-respondent had filed a protest petition which was fully considered by the learned

Magistrate and the same was rejected. In my view, none of the situations as enumerated by the Apex Court in the case of Mahesh Chand (supra) do exist in the present case, so as to say that the second complaint filed in the instant case false in those exceptional categories.

16. For the aforesaid reasons, I am of the view that both the courts below have committed illegality in passing the impugned orders. The order of cognizance passed by the learned Magistrate on 12.10.1999 and the order of the revisional court dated 19.01.2001 is contrary to settled principles of law laid as down by the Larger Bench of the Apex Court in case of T.T. Antony (supra).

17. Consequently, this misc. petition deserves to be accepted. The impugned orders dated 12.10.1999 passed by the learned Civil Judge (Jr.Dn) & Judicial Magistrate, Laxmangarh District Sikar in Criminal complaint No. 109/96 (Criminal Case No. 272/99) Moti Lal versus Jagdish Prasad & Ors., and the orders passed by the revisional court on 19.01.2001 in revision petition No. 86/99 are hereby quashed and set-aside.

18. The record of the trial court be sent forthwith.

(RAGHUVENDRA S. RATHORE),J.

