

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN JAIPUR
BENCH, JAIPUR

Ashok Parashar & Ors. V/s. The State of Rajasthan
S.B. Criminal Revision Petition No.211/2001

&

Rakesh @ Umakant & Anr. V/s. The State of Rajasthan
S.B. Criminal Revision Petition No.251/2011

S.B. Criminal Revision Petitions under Section
397 Read With Section 401 Cr.P.C.

Date of Order :: April 29, 2011

HON'BLE MR.JUSTICE R.S.CHAUHAN

Mr. A.K. Gupta for the petitioners.
Mr. N.R. Saran PP for the State.

Since both these revision petitions arise from the same impugned order, therefore, they are decided by this common judgment.

The petitioners are aggrieved by the order dated 17.02.2001 passed by the Judicial Magistrate (First Class) Pushkar, Ajmer, whereby the learned Magistrate has taken cognizance for offences under Sections 147, 148, 452, 323, 326 read with Section 149 IPC against the petitioners.

Mr. A.K. Gupta, the learned counsel for the petitioners, contends that on 22.09.1997, the accused party had lodged a FIR against the complainant-party for offences under Sections 307, 323, 324 and 34 IPC. On the basis of this

report, a formal FIR, FIR No.184/97, was recorded against Purshottam Soni, Bhagwan Das and Kalu. In order to save their skin, on 23.09.1997 i.e., a day later, Purshottam, in turn, lodged a report with the Police Station Pushkar for the offences under Sections 143, 452, 324, 323, 307 and 149 IPC against the present petitioners. The said report was registered as FIR No.186/1997. In the FIR filed by the accused-petitioners, the police submitted challan against the complainant-party. However, after a thorough investigation in the FIR lodged by the complainant-party against the present petitioners, the police submitted a negative final report wherein it gave cogent reasons for coming to the conclusion that no case was made out against the present petitioners. Despite the negative final report, without discussing the negative final report, the learned Magistrate has taken cognizance of the aforementioned offences, vide order dated 17.02.2001. Hence, this petition before this Court.

The learned counsel for the petitioners has relied upon the case of **Bhagwan Sahai Khandelwal & Ors. V/s. State of Raj. & Anr. [2006 (1) RLR 388]** in order to buttress his contention that in case the Magistrate were to take cognizance after submission of a negative final report of the police, the Magistrate is legally bound to give cogent reasons for disagreeing with the negative final report. However, in the present case, the learned Magistrate has failed to give any reason whatsoever for his disagreement with the negative final

report. Therefore, the impugned order is unsustainable.

In all fairness, the learned Public Prosecutor has not challenged this contention.

In the case of **Sampat Singh V/s State of Haryana [1993 SCC (Cri.) 376]**, the Apex Court had clearly observed that the Magistrate must give reasons for disagreement with the negative final report. In case no such reasons are given then the order is unsustainable in the eyes of law. The said principle was followed by this Court in the case of Bhagwan Sahai Khandelwal (supra). In the case of Bhagwan Sahai Khandelwal (supra), this Court also observed as under :-

“6. Life and personal liberty of every person is of utmost importance. Hence, life and personal liberty cannot be interfered with without a reasonable cause and without a procedure established by law. Taking of cognizance is, thus, a serious matter. For it involves disturbing the life and personal liberty of a person. Facing of a criminal trial is an ordeal, which adversely affects the reputation, the finance, the energy and the time of the alleged offender. Thus, taking of cognizance cannot be done in a mechanical manner. It should be done after a judicious application of mind to the facts and circumstances of each case. Although, a meticulous examination of evidence is not required at the stage of taking cognizance, but the Magistrate must consider the case in a holistic manner. Piecemeal consideration of the evidence does not commensurate with the judicial vision. Hence, in case a FIR or a complaint is followed by a negative Final Report, which is subsequently followed by a protest petition, while allowing the protest petition, a Judicial Magistrate is legally bound to discuss the negative Final Report. Such a discussion is warranted for three reasons; firstly, the Principles of Natural Justice demand and dictate that any order adversely affecting a right should be a speaking order. Although a

elaborate discussion may not be required, but the order must contain sufficient reasons showing the application of a judicious mind, for disagreeing with the negative Final Report. Secondly, since the cognizance order is a revisionable order, the Higher Judicial Authorities have a right to know the reasons, which weighed in the mind of the Judicial Magistrate for disagreeing with the negative Final Report. In the absence of such reasons, the Higher Judicial Authorities (the Sessions Court or the High Court) are left in the dark. Thirdly, it is a settled doctrine of law that "justice should not only be done, but also must appear to be done". Therefore, the accused has a right to know the reasons why the learned Judicial Magistrate has disagreed with the negative Final Report submitted by the Police after a thorough investigation. In case, such reasons are not stated, alleged offender may find it difficult to question the validity of the reasoning. Hence a cryptic order is not a judicious order whereas cognizance order should always be a judicious order."

Thus, the learned Magistrate was legally bound to reveal his mind by giving cogent reasons for disagreeing with the negative final report. A bare perusal of the impugned order clearly reveals that although the learned Magistrate has mentioned the fact that the police has filed a negative final report, the learned Magistrate has not given any reason whatsoever for disagreeing with the same.

Thus, these petitions are, hereby, allowed and the impugned order dated 17.02.2001 is quashed and set aside. The cases are remanded back to the learned Magistrate. The learned Magistrate is directed to peruse the evidence, the statements of the witnesses, if any, as well as to examine the negative final report submitted by the police and to pass the

cognizance order strictly in accordance with law keeping in mind the principle laid down by the Apex court as mentioned above. The said exercise shall be carried out within a period of one month. In case the petitioners are aggrieved by any order which may be passed against them, they are free to challenge the same.

(R.S.CHAUHAN)J.

A.Asopa/-