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(1990) 11 RAJ CK 0026

Rajasthan High Court

Case No: Criminal Revi. No. 342 of 1987

Tara Chand

APPELLANT

Vs

Gyanendra Tiwari

RESPONDENT

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Date of Decision: Nov. 7, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 482
- Penal Code, 1860 (IPC) - Section 109, 120B, 147, 149, 427

Citation: (1990) 2 RLW 107 : (1990) 2 WLN 572

Hon'ble Judges: B.R. Arora, J

Bench: Single Bench

Final Decision: Allowed

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### Judgement

B.R. Arora, J.

This revision petition is directed against the order dated 7-3-1987 passed by the Additional Chief Judicial Magistrate, Bali, by which the learned Additional Chief Judicial Magistrate took cognizance for the offence Under Sections 447, 427, 147, 149, 109 and 120B of the Indian Penal Code against the present petitioners.

2. In view of the Division Bench Judgment of this Court, the revision petition is not maintainable against the order of taking cognizance and, therefore, the counsel for the petitioner submits that this revision petition may be treated as a petition u/s 482, Cr. PC.

3. In the interest of justice, it is ordered that this revision petition may be treated as a miscellaneous petition and be registered as such.

4. Now, I propose to decide this miscellaneous petition. It has been contended by the learned Counsel for the petitioners that the Additional Chief Judicial Magistrate committed an error in taking the cognizance against the petitioners, as there is no evidence on record, from which prima facie any case is made out, against the

petitioners. There are only vague allegations levelled against the petitioners. In support of his case, learned Counsel for the petitioners has placed reliance on *Bhagwat Singh v. Balwant Singh and another*. 1978 CriLR 279 and *Secretary, N.C.E.R.T. and Ors. v. Dr. P.D. Bhatnagar* 1980 CriLR 372. The counsel for the respondent, on the other hand, supported the order passed by the learned Additional Chief Judicial Magistrate and according to him, the cognizance has rightly been taken. He has further submitted that at the time of taking the cognizance, the Court has only to consider whether there is prima facie evidence to proceed with the matter or not, and at this stage, meticulous scrutiny of the case is not required.

5. I have considered the rival submissions made by the counsel for the parties. It has been held by the Supreme Court in the case of [Rajindra Nath Mahato Vs. T. Ganguly, Dy. Superintendent and Another](#), that the High Court can examine whether there is any legal evidence justifying the conclusion of the lower Court. In view of the Judgment of the supreme Court this Court can look into the evidence produced by the complainant before the trial Court: whether the evidence produced by him prima facie inspires confidence of whether there is any evidence which could justify the conclusion arrived at by the lower court. The complainant in the present case, has examined himself as well as Jaggannath u/s 202, Cr. PC. In the complaint as well as in his statement, the complainant has stated that he was not present when the incident took place and he was informed by Narendra Vaishnava regarding the incident. This Narendra Vaishnava has not been produced and therefore, the statement of the complainant regarding happening of the incident is of no avail. Now, so far as the witness Jaggannath is concerned his statement is very vague on the point and that too with respect to Tarachand, Than Chand and Chhagan Lal. According to him, these persons were present and were instigating the labourers to break-down the walls. Those labourers have not been arraigned as accused. The complaint has been against the Members of the Municipal Board or the employees of the Municipal Board. In the statement of Jaggannath, recorded u/s 202, Cr. PC, only a vague allegation has been made against these three persons also. In this view of the matter, I am of the opinion that the learned Additional Chief Judicial Magistrate was not justified in taking cognizance against the petitioners and he committed an error in taking cognizance and issuing the process against the petitioners.

6. Consequently, this petition u/s 482, Cr. P.C., is allowed and the order of the Additional Chief Judicial Magistrate, Bali, dated March 7, 1987 is quashed and the criminal proceedings pending against the petitioners in Criminal Miscellaneous Case No. 168/1987 are quashed. If any other remedy is available to the complainant, he is free to avail the same.