
(2000) 11 RAJ CK 0045

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Miscellaneous Petition No. 112 of 2000

State of Rajasthan

APPELLANT

Vs

Shiv Bhagwan Saraogi
and Others

RESPONDENT

Date of Decision: Nov. 12, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 173, 2, 482
- Penal Code, 1860 (IPC) - Section 120
- Prevention of Corruption Act, 1988 - Section 13(1)(d)(2)

Citation: (2001) 1 WLC 407

Hon'ble Judges: V.G. Palshikar, J

Bench: Single Bench

Advocate: Mohd. Rafiq, AAG, for the Appellant; S.R. Bajwa, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Palshikar, J.

This petition is directed against the order dated 11.1.1999 passed by learned Special Judge, Sessions Court, Anti Corruption, Kota whereby he declined to accept the final report submitted by the policy under Sec. 173 Cr.P.C.

(2). The facts giving rise to the present petition are undisputed. First Information Report No. 45/96 was lodged by the Superintendent of Police, Rajasthan State Investigation Bureau, Jaipur against the accused persons complaining of commission of an offence by them punishable under Sec. 13(1)(d)(2) of the Prevention of Corruption Act, 1988 read with sec. 420 and 120B of IPC. After investigation the investigation Officer came to the conclusion that there is no proof of the accused viz. the first information report of having committed any crime. He, therefore, submitted final report in the court of Special Judge, Anti Corruption Act, Kota. However, the learned Judge by his order of that date refused to

accept the final report on the ground that it was being presented by a person other than officer-in-charge of a police station. It is pertinent to note that a judgment delivered by this Court in SB Cr. Revision Petition No. 146/89 on 17.11.1989 in the matter of State of Rajasthan vs. Jaswant Singh (1), was cited before learned Judge as has been noticed by him in para No. 5 of his order. However, the learned Judge in spite of the decision ignoring the judgment in the case of Jaswant Singh relied on an earlier judgment of Division Bench of this Court reported in Mangal Singh vs. State of Rajasthan (2), wherein it has been observed by this Court that in so far as Sec. 154 Cr.P.C. is concerned, officer-in-charge of the Station House. He, therefore, rejected the final report.

(3). It has been stated on affidavit before this Court that the learned Judge has so far refused to accept challan or final report as submitted by any officer of the Anti Corruption Bureau and has not made any orders either accepting or rejecting the papers so filed by the police. This, in my opinion, amounts to abdication of jurisdiction by the learned Judge which he ought not to do. I will however, advert to this aspect later on.

(4). Turning to the facts of the case it will be seen that Sec. 2 of the Code of Criminal Procedure 1973 defines various terms used in a Criminal Procedure Code. Sec. 2(o) defines what is officer in charge of a police station. It reads as under:-

"Officer in charge of a police station includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank of such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present."

(5). Then Sec. 2(s) defines what is a police station. It reads as under:-

"Police station means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf."

(6). Identical question from the judgment of this very Judge came up for consideration before this Court in State of Rajasthan vs. Hotilal Parashar & Anr. (3), decided on 21.9.1999. This court considered notification issued by Government of Rajasthan on 15.7.1957 directing that for the purposes of anti corruption cases the Anti Corruption Branch of Rajasthan Police on the whole shall be the Anti Corruption Police Station and by another notification of the same day it was further stipulated that for the purposes of Prevention of Corruption Act all officers of and above the rank of Sub Inspector of police will be competent to exercise the powers of officer in charge of a police station.

(7). Taking into consideration these notifications the definitions given in Sec. 2(o) and 2(s) of Cr.P.C. in relation to officer in charge and police station, this Court in Hotilal Parashar's case (supra) held that on Inspector of the Anti Corruption Department was competent to present a report under Sec/ 173 Cr.P.C. It was further observed that

definitions must be construed in law of the Government notifications issued in July, 1957 and so construed the Anti Corruption Branch is a police station and all officers above the rank of Sub Inspector can exercise the powers of the officer in charge and hence the order of the trial Judge was set aside.

(8). It has thus been held by this Court that for the purposes of Anti Corruption Act the Anti Corruption Branch of the police is a police station and all officers above the rank of Sub Inspector working in that branch are officers the function of the officer in charge as contemplated by the Code of Criminal Procedure. I am in respectful agreement with the view taken by learned college after considering the definitions of the terms officer in charge and police station as defined in Sec. 2(o) and 2(s) of Cr.P.C. In view of this authoritative pronouncement by this Court in *Hotilal Parashar's case (supra)* the impugned order is liable to be set aside and is accordingly set aside.

(9). Normally this should be the end of the Misc. Petition. However, certain serious allegations have been made duly supported by affidavit in relation to a Judge whose order is impugned in this petition it is stated on affidavit that the learned Judge does not regard the order in *Hotilal Parashar's case (supra)* as laying down any law. This fact is borne out by the impugned order itself where the learned Judge does notice the judgment in *Hotilal Parashar's case (supra)* and has sought to distinguish the same in view of another judgment of this Court in *Mangal Singh's case (supra)*. In that case it was observed that the officers in charge of police outposts are not officers in charge of police station within the meaning of Sec. 154 Cr.P.C. The Bench was considering in this Case lodgment of an FIR which is required to be gone to an officer in charge of a police station and it was in that light that the Bench observed that the officer in charge of an outpost is not an officer in charge of a police station and consequently it was held that the officers in charge of the police outposts are not officers empowered to record the FIR. The learned Judge should have seen that recording of FIR is entirely different that lading a report in the court under Sec. 173 Cr.P.C. after completion of investigation on an FIR already properly lodged. The case of *Mangal Singh (supra)* deals with lodgment of FIR whereas the judgment in *Hotilal Parashar's case (supra)* dealt with lodgment of the report u/s. 173 Cr.P.C. in the court of competent jurisdiction. The provision of Sec. 2(o) and 2(s) of Cr. P.C. were not noticed by the Bench deciding above case. The question as to whether presentation of a report by an officer of the Anti Corruption Branch above the rank of Sub Inspector u/s 173 Cr. P.C. is proper or not, never fell for consideration before the Bench in *Mangal Singh's case (supra)*. The ratio in *Mangal Singh's case (supra)* could not have been applied to the facts of the present case particularly in view of the judgment in *Hotilal Parashar's case (supra)*. The learned Judge, therefore, erred in relying on the judgment in *Mangal Singh's case (supra)*. That also can be considered as an error in interpretation of law and the matter can end at that. Unfortunately it does not end at that. An affidavit has been filed before me today by Additional Superintendent of Police, Crime Branch, Anti Corruption Bureau, Head Quarter, Jaipur stating that approximately 80 cases are pending acceptance either of final report or challan in this court presided over by this

Judge and he refuses to accept or reject either the final report or the challan on the ground that he will not do so till the matter is adjudicated upon by this Court. This, in my opinion, amounts to abdication of jurisdiction by the learned Judge. If he is of the view that he is rightly rejecting the final report or the challan on the ground that it is being improperly presented, he should exercise his jurisdiction and make an speaking order accordingly. He cannot sit over the report without making any order and ignoring a judgment of this Court requiring him to act otherwise. Such action, prima facie, may amount to interference with the administration of justice and, therefore, criminal contempt of this Court. It may also amount to serious misconduct on the part of the learned Judge inasmuch as he has refused to obey a binding decision of this Court and has refused to exercise jurisdiction vested in him by law. I repeat that he could have taken to his opinion rejected the final report or the challans filed by Anti Corruption Bureau, but he could not stop the judicial process of adjudication.

(10). In the peculiar circumstances I felt it my duty to place the papers alongwith this order before My Lord the Chief Justice for his kind perusal and for further action if his Lordship deems fit.

(11). In the result, the Misc. Petition u/s 482 Cr. P.C. succeeds and is allowed. The impugned order dated 11.1.1999 is set aside. The learned Special Judge, Anti Corruption Act, Kota is directed to accept the final report as presented by the officer of Anti Corruption Bureau.