

(2010) 10 RAJ CK 0054

Rajasthan High Court

Case No: Criminal Miscellaneous Petition No. 1467 of 2010

Kalu Ram

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision: Oct. 27, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 397, 482
- Penal Code, 1860 (IPC) - Section 147, 149, 323, 379

Citation: (2011) 1 RLW 422

Hon'ble Judges: Gopal Krishan Vyas, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Gopal Krishan Vyas, J.

Heard learned Counsel for the Petitioner.

2. In this petition filed u/s 482, Code of Criminal Procedure the Petitioner has prayed for quashing order dated 29.9.2010 passed by Addl. Sessions Judge, Parbatsar in Criminal Revision No. 58/10, whereby, learned revisional Court upheld the order passed by the Judicial Magistrate, Kuchaman City dated 22.4.2006, by which, cognizance was taken against the Petitioner and other persons.

3. As per facts of the case narrated in the petition, FIR was registered against 25 persons including the present Petitioner for offences under Sections 147, 149, 379 and 323, I.P.C. at Police Station, Kuchaman City on 29.05.1999 on the basis of complaint filed by the complainant. In the said FIR, after investigation, the police filed FR and, thereafter, protest petition was filed by complainant Shyamlal s/o Laxman Ram and evidence was produced u/s 200 Code of Criminal Procedure. Learned trial Court recorded statements of as many as five witnesses including eye-witnesses A.W.-2 Rameshwari Devi, A.W.-3 Narayani Devi and A.W.-4 Bala Devi; and, after taking into consideration entire facts of the case, took cognizance against

25 persons vide order dated 26.04.2006 and refused to accept the FR No. 17/99 filed by Police Station, Kuchaman City.

4. Against the above orders, 19 accused persons preferred revision petition u/s 397, Code of Criminal Procedure and that revision petition was dismissed by learned Addl. Sessions Judge, Parbatsar on 18.07.2007; and, Petitioner preferred revision petition separately against order dated 26.04.2006. Learned revisional Court, after taking into consideration entire facts and discussing the entire evidence, found that no error has been committed by learned Judl. Magistrate, Kuchaman City in taking cognizance against Petitioner and other accused persons and passed order dated 29.09.2010 dismissing the revision petition. Both these orders are under challenge in this petition.

5. Learned Counsel for the Petitioner vehemently argued that on the ground of delay the proceedings are required to be quashed. For the said argument, learned Counsel for the Petitioner invited attention of the Court towards judgment of this Court, reported in, Jitendra Kumar v. State of Rajasthan; and Anr. 2010(1) C.L.R. (Raj.) 112, [Pankaj Kumar Vs. State of Maharashtra and Others](#), and, While relying on these judgments learned Counsel for the Petitioner submits that the proceedings may be quashed.

6. It is also argued by learned Counsel for the Petitioner that the learned trial Court and revisional Court have committed grave error of law while taking cognizance against the Petitioner because the investigating agency after conducting thorough investigation came to the conclusion that prima facie no case is made out against the Petitioner as alleged by the complainant and found that entire case is false, therefore, submitted negative report but the learned Judl. Magistrate, Kuchaman City did not consider this aspect of the matter and took cognizance which is totally illegal.

7. I have considered the submissions made by learned Counsel for the Petitioner.

8. It is worthwhile to observe that FIR was filed by the complainant in the year 1999 with regard to the incident which took place at about 12 O'clock on 28.05.1999 when he was going towards his dhani and he was assaulted by the accused persons and accused persons committed offence of theft and they forcibly stole gold and silver ornaments of the family members of the complainant; but, the police did not conduct fair investigation, therefore, the complainant filed protest petition against the FR given by the police, upon which, statements were recorded by the trial Court. Time was consumed in this case in the judicial proceedings and this delay cannot be attributed to the complainant. In the judgments cited by learned Counsel for the Petitioner, altogether different facts were involved. In the case of Jitendra Kumar (supra), prayer was made for quashing order of cognizance, in which, cognizance was taken after nine years of the alleged incident and no explanation for this inordinate delay was available. In the judgment of the Hon'ble apex Court in Pankaj

Kumar's case (supra), the case was totally on different footing than the facts of the present case because in the case of Pankaj Kumar, Hon"ble apex Court quashed the proceedings on the ground that FIR was lodged on 12.05.1987, charge-sheet submitted on 22.02.1991 and nothing proceeded further until April 1999, and in that case also no reason was shown for the inordinate delay in trial.

9. Here, in the instant case, it is case of taking cognizance and not trial. In this view of the matter, both the judgments cited by learned Counsel for the Petitioner are not applicable to the facts of the present case. Learned Judl. Magistrate did not commit any error while taking cognizance and, therefore, revisional Court rightly dismissed the revision petition filed by the Petitioner. It is also one of the important facts that revision petition filed by the other accused was dismissed way back in the year 2007 and, now, in the case of the Petitioner, revision has been decided in the year 2010, for which, the complainant cannot be blamed.

10. As a result of above discussion, I am not inclined to interfere in the orders impugned in exercise of inherent jurisdiction u/s 482, Code of Criminal Procedure.

11. Hence, this petition is hereby dismissed.