
(2009) 12 CHH CK 0026

Chhattisgarh High Court

Case No: Cr.M.P. No. 540 of 2009

N.K. Taunk and Others

APPELLANT

Vs

Manik Mehta and
Another

RESPONDENT

Date of Decision: Dec. 11, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 210, 210(3), 482
- Penal Code, 1860 (IPC) - Section 34, 379, 380, 427, 448

Citation: (2009) 4 CGLJ 62

Hon'ble Judges: T.P. Sharma, J

Bench: Division Bench

Advocate: Arvind Kumar Dubey, for the Appellant; Beenu Sharma, Panel Lawyer for Respondent No. 2/State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T.P. Sharma, J.

This is a petition u/s 482 of the Code of Criminal Procedure, 1973 (in short "the Code") for quashment of the order dotted 3.7.2009 passed by the 11th Additional Sessions Judge (F.T.C.), Durg, in Criminal Revision No. 154/ 2008 setting aside the order dated 4.10.2008 passed by the Judicial Magistrate First Class, Durg, in unregistered criminal complaint whereby learned 11th Additional Sessions Judge has directed the Judicial Magistrate First Class for taking cognizance for the offence punishable under Sections 457 and 380 of the Indian Penal Code on the basis of complaint filed by Respondent No. 1, herein.

2. Quashment is prayed on the ground that on the basis of complaint filed by Respondent No. 1, the Court shall examine the complaint in accordance with Chapter XV of the Code.

During pendency of inquiry, the police has also registered the offence and filed the charge sheet for the offence punishable u/s 448/ 34 of the Indian Penal Code, therefore, after filing of the charge sheet, learned Judicial Magistrate First Class has rightly merged the complaint along with charge sheet, but the revisional Court has directed for separate inquiry and for taking cognizance, for which the revisional Court was not competent.

3. I have heard learned Counsel for the parties and perused the order impugned.

4. From perusal of the order impugned, it reveals that criminal complaint for the offence punishable under Sections 379, 380, 427, 454, 457 and 448/ 34 of the Indian Penal Code was filed by Respondent No. 1 which was pending for inquiry before the Judicial Magistrate First Class, Durg. During the course of inquiry, the police has filed the charge sheet for the offence punishable under Sections 448/ 34 of the Indian Penal Code against the Petitioners. After filing of the charge sheet, learned Judicial Magistrate First Class has merged both the cases. Order of merger was challenged by Respondent No. 1 before the revisional Court and the revisional Court has passed the order impugned.

5. It is clear from the order impugned that the police has filed the charge sheet against the Petitioners only relating to the offence punishable u/s 448/ 34 of the Indian Penal Code and not for other offences alleged in the complaint. In this circumstance, the only option was left to the concerned Court in accordance with Sub-section (3) of Section 210 of the Code that he shall proceed with the inquiry on the basis of complaint made by Respondent No. 1. Provisions of Section 210 of the Code reads thus:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-(1) when in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

6. Admittedly, at this stage the Judicial Magistrate First Class, Durg has not completed inquiry on the basis of complaint, therefore, any direction for taking cognizance of the

offence would be pre-mature and even otherwise the revisional Court is not competent to pass such direction.

7. For the foregoing reasons, the petition is allowed. Direction relating to inquiry into the complaint made by Respondent No. 1 passed by the revisional Court is affirmed and direction relating to order taking cognizance of the offence punishable under Sections 457 and 380 of the Indian Penal Code are hereby quashed. The Judicial Magistrate First Class, Durg shall proceed with the inquiry into the complaint made by Respondent No. 1 in accordance with Chanter XV of the Code.