Rajendra Rajoriya vs Jagat Narain Thapak on 23 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1229, AIR 2018 SC (CRIMINAL) 442, (2018) 1 CRILR(RAJ) 239, (2018) 2 BOMCR(CRI) 419, (2018) 2 RAJ LW 1746, (2018) 70 OCR 193, (2018) 1 UC 451, (2018) 2 PAT LJR 182, 2018 CRILR(SC&MP) 239, (2018) 2 CRIMES 1, (2018) 1 CURCRIR 264, (2018) 184 ALLINDCAS 106 (SC), (2018) 2 ALLCRILR 477, 2018 CRILR(SC MAH GUJ) 239, (2018) 2 JLJR 38, 2018 (2) KLT SN 6 (SC), 2018 (3) KCCR SN 234 (SC), (2019) 1 NIJ 244

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Bench: S. Abdul Nazeer, N. V. Ramana

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 312 OF 2018
(arising out of SLP (Crl.) No. 6900 of 2014)

RAJENDRA RAJORIYA … APPELLANT (S)

VERSUS

JAGAT NARAIN THAPAK AND ANOTHER … RESPONDENT (S)

JUDGMENT

N. V. RAMANA, J.

1.Leave granted.

2. In this criminal appeal the judgment dated 08.07.2014, passed by the High Court of Madhya Pradesh, bench at Gwalior in Criminal Revision No. 104/2013 is impugned.

3. Appellant herein filed a complaint before the jurisdictional police station under Sections 420, 467, 468, 471,120B, 506 of Indian Penal Code, 1860 [hereinafter referred as 'IPC' for brevity] and

under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the allegations that one Smt. Vidhyabai and others sold the disputed land to respondent no. 1 and got the appellant's property mutated by committing fraud and forgery. It was further alleged that the respondents had threatened the appellant with dire consequence and swore at them with filthy language intended to belittle his caste/tribe. It may be noted that the concerned police station did not take any action on the aforesaid complaint.

4. Aggrieved by the inaction of the police, the appellant approached the Jurisdictional Magistrate, Gwalior, with the same set of facts under Section 200 of Cr.P.C.

5. The Judicial Magistrate, 1st Class, Gwalior, by Order dated 21.04.2012, dismissed the aforesaid criminal complaint on the footing that there was no sufficient proof on record provided by the appellant/complainant to prove that he belongs to Scheduled Caste or Scheduled Tribe and the dispute between the parties had trappings of civil nature.

6. Aggrieved by the aforesaid dismissal of criminal complaint, appellant approached Addl. District and Sessions Judge [hereinafter referred as 'Sessions Court' for brevity] in Criminal Revision No. 242/2012. The Sessions Court, by the order dated 07.12.2012, held that the complainant belonged to Jatav community which is a Scheduled Caste. Further the Sessions Court observed that the facts narrated portray that the respondent no. 1 in conspiracy with others had transferred the land belonging to the appellant in an illegal manner. Thereafter, concluded that the lower court did not appreciate the facts as well as the law in a proper manner and remanded the case in the following manner: -

> This revision is allowed and order dated 21.04.2012 passed by Court is set aside and case is remanded back with a direction that if necessary after a further enquiry keeping in view the findings given in this order, proper order be passed with regard to registration of complaint and to summon the respondents and for that directed the parties to remain present before the Court below on 20.12.2012.

(Emphasis supplied)

7. On remand of the case, Judicial Magistrate, vide order dated 23.01.2013, while taking cognizance of the aforesaid offences under Section 420, 467, 471, 120-B of IPC and 3(1)(4) of SC/ST Act, registered the complaint as Criminal Case No. 1576/2013 and on 23-02-2013, learned Magistrate noted as under- ...the court is required to prima facie decide question of initiating proceeding arises or not. It is pertinent that in this case learned Revisional Court has prima facie already found sufficient ground for initiating proceeding against non-applicants.

(emphasis supplied)

8. In the meanwhile, aggrieved by the remand order dated 07.12.2012 passed by the Sessions Court and the order of the Magistrate, dated 23.01.2013, taking cognizance, the respondent filed revision before the High Court being Criminal Revision No. 104/2013. By the impugned judgment dated

08.07.2014, the High Court allowed the revision petition and quashed the complaint on the reason that the revisonal court could not have taken cognizance on 23.01.2013 as the same was in violation of Section 398 of Cr.P.C.

9. We have heard learned counsels appearing on behalf of both the parties.

10. The questions that fall for consideration are in regard to the legality of the remand order passed by the Sessions Court and the order of the learned Magistrate taking cognizance thereafter. As the High Court has dealt with the validity of both the orders, we would like to take up the same in seriatum starting with legality of the remand order.

11. The respondent contends that the learned Sessions Judge could not have observed on merits as it amounted to taking cognizance of the matter. Such contentions although seems attractive, but must be rejected for reason that the revisional court only had provided reasons for ordering further enquiry under Section 398 of Cr.P.C and the observations provided on merit cannot be said to have an effect of taking cognizance in this case.

12. At the outset, before we decide the legality of the remand order, we are required to determine the scope of criminal revision under Section 397 read with Section 398 of Cr.P.C. It would be appropriate to reproduce Sections 397 and 398 of Cr.P.C herein.

Section 397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

Section 398. Power to order inquiry.

On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of Sub-Section (4) of section 204 or into the case of any person accused of an offence who has been discharged:

> Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an

opportunity of showing cause why such direction should not be made.

A perusal of the aforesaid provisions portray that the revisionary power is exercised either by the Sessions Court or by the High Court and a dismissal of the complaint by the Magistrate under Section 203 of Cr.P.C may be assailed in a criminal revision under Section 397 of Cr.P.C. The ambit of revisional jurisdiction is well settled. Section 397 of Cr.P.C empowers the Sessions Judge to call for and examine the record of any proceeding before any subordinate criminal court situate within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such subordinate Court.

13. The extent of the revisionary powers inter alia, is provided under Section 399 read with Section 401 of Cr.P.C. It is clear from the aforesaid provisions that Section 398 has to be read along with other Sections which are equally applicable to the revision petitions filed before the Sessions Court. Section 398 only deals with a distinct power to direct further inquiry, whereas Section 397 read with Section 399 and Section 401 confers power on the revisionary authority to examine correctness, legality or propriety of any findings, sentence or order. The powers of the revisionary court have to be cumulatively understood in consonance with Sections 398, 399 and 401 of Cr.P.C.

14. We may note that the High Court, in the impugned judgment, came to an erroneous conclusion that the Sessions Court had itself taken cognizance of the matter which may be reproduced as under-

"On bare perusal of this provision it is clear that the impugned order cannot be passed under Section 398 of the Code. The word 'may direct' has been used by the legislation in this provision. It gives wide discretion to the court to order further enquiry.

Sessions Court has no power to take cognizance of the offence, assess the offence and reach its own conclusion whether there is ground for proceeding with complaint or not and further to direct a Magistrate with regard to registration of a complaint on finding a prima facie case".

15. On a perusal of the Sessions Court judgment (quoted supra), we are of the opinion that the Sessions Court did not pass an order taking cognizance. The Sessions Court order should have been construed only as a remand order for further enquiry. The observations made by the Sessions Court were only justification for a remand and the same did not amount to taking cognizance. In view of the above, the High Court clearly misconstrued the Sessions Court order and proceeded on an erroneous footing. On the other hand, the revisional court was also in error to the extent of influencing the Magistrate Court to keep the findings of Sessions Court in mind, while considering the case on remand. The misconception created before the High Court was due to the fact that the remand order provided discretion for the trial court to conduct further enquiry and thereafter consider issuing process. The High Court in the case at hand without appreciating the dichotomy

between taking cognizance and issuing summons, quashed the complaint itself on wrong interpretation of law. In the light of the above, the impugned order of the High court cannot be sustained in the eyes of law.

16. Now coming to the second aspect as to the legality of the order of the learned Magistrate taking cognizance of the matter. The standard required by the Magistrate while taking cognizance is well settled by this court in catena of judgments. In Subramanian Swamy vs. Manmohan Singh & Another, (2012) 3 SCC 64, this Court explained the meaning of the word 'cognizance' holding that "...In legal parlance cognizance is taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially". We may note that the Magistrate while taking cognizance has to satisfy himself about the satisfactory grounds to proceed with the complaint and at this stage the consideration should not be whether there is sufficient ground for conviction. It may not be out of context to note that at the stage of taking cognizance, the Magistrate is also not required to record elaborate reasons but the order should reflect independent application of mind by the Magistrate to the material placed before him.

17. On a perusal of the order of the learned Magistrate taking cognizance, it is apparent that the learned Magistrate observes that the Sessions court has already made out a prima facie case. Such finding would be difficult to sustain as the revisional court only observed certain aspects in furtherance of remanding the matter. Such observations could not have been made by the Magistrate as he was expected to apply his independent mind while taking cognizance. In the case on hand, we recognize the limitation on the appellate forum to review subjective satisfaction of the Magistrate while taking cognizance, but such independent satisfaction unless reflected in the order would make it difficult to be sustained. There is no dispute that Justice should not only be done, but should manifestly and undoubtedly be seen to be done. It is wrought in our constitutional tradition that we imbibe both substantive fairness as well as procedural fairness under our criminal justice system, in the sense of according procedural fairness, in the making of decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention.

18. On a different note, we may note that the Magistrates across India have been guided on number of occasions by concrete precedents of this Court to exercise utmost caution while applying their judicious mind in this regard. Unfortunately, we may note that number of cases which are brought before us reflects otherwise.

19. Our attention was drawn to the fact that a civil court subsequently declared the sale deed executed by Smt. Vidhyabai and others in favour of Jagat Narain Thapak as null and void. Further we are apprised of observations made by the Sessions Court on the merits of the case. But we are not inclined to go into those issues.

20. In view of the above, the appeal is allowed and the impugned judgment is set aside. Accordingly, the complaint be considered by trial court afresh. Before parting with this case, we may clarify that the trial court is directed to proceed with the case uninfluenced by any observations made by this

Court for the purpose of deciding the instant appeal.

.....J. (N. V. Ramana) .....J. (S. Abdul Nazeer) New Delhi, February 23, 2018.