Rajinder Prasad vs Bashir & Ors on 19 September, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3524, 2001 (8) SCC 522, 2001 AIR SCW 3688, (2001) 7 JT 652 (SC), 2001 (6) SCALE 414, 2001 (4) LRI 538, 2001 (2) UJ (SC) 1588, 2002 CALCRILR 62, 2002 SCC(CRI) 28, 2001 (9) SRJ 196, 2002 CRILR(SC MAH GUJ) 9, (2001) 2 UC 627, (2001) 4 CRIMES 1, (2001) 3 EASTCRIC 276, (2002) 23 OCR 404, (2002) 1 RAJ CRI C 46, (2001) 4 RECCRIR 312, (2001) 4 SCJ 249, (2001) 4 CURCRIR 60, (2001) 7 SUPREME 88, (2001) 3 ALLCRIR 2591, (2001) 6 SCALE 414, (2001) 43 ALLCRIC 784, (2002) 1 BLJ 24, (2001) 4 ALLCRILR 68

Bench: M.B. Shah, R.P. Sethi

CASE NO.:
Appeal (crl.) 964 of 2001

PETITIONER:
RAJINDER PRASAD

Vs.

RESPONDENT:
BASHIR & ORS.

DATE OF JUDGMENT: 19/09/2001

BENCH:
M.B. Shah & R.P. Sethi

JUDGMENT:

SETHI,J.

Leave granted.

Aggrieved by the order of the Additional Sessions Judge, Deeg by which charges were framed against them for offences punishable under Sections 147, 148, 323, 324, 149, 427 and 395 of the Indian Penal Code, the respondents filed a petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") praying for quashing the aforesaid order. Holding that the Magistrate, being the court of committal, had no power to add four respondents as accused-persons without adopting procedure as prescribed under Section 203 of the Code, the High Court

allowed the petition of the respondents and set aside the order the court by which cognizance of offence under Section 395 of the Indian Penal Code was taken. The case has been remanded back to the learned Magistrate to hold inquiry as per the provisions of Section 203(2) of the Code with direction that if he finds that a case under Section 395 IPC is made out, he will pass necessary orders against the accused persons and commit the case to the Sessions Judge, if necessary.

The facts giving rise to the filing of the appeal are that on 10.3.1988 when the appellant-informant was sitting at his shop in the company of his brothers, the accused persons, namely, Chhaju Khan, Bannu Khan, Nasru Khan, Zakir Khan, Mumrej Khan, Razak Khan, Kallu, Nannu, Ramesh Mishtri and four others came there and assaulted Hotilal, one of the brothers of the appellant with intention to kill him. The other brothers of the appellant were also assaulted as a result whereof they received injuries. Accused persons took away a sum of Rs.600 along with some papers from the shop of the informant. The showroom (shop) was also damaged resulting in loss to the property. A case was registered against the accused persons under various sections and after investigation charge-sheets were submitted against them. As the charge under Section 395 IPC was not added against the accused- persons, the appellant-complainant submitted a protest petition seeking the addition of the aforesaid offence against them. By another application the appellant-complainant sought the addition of four accused persons, namely, Babu, Bashir, Sultan and Rajjal as their names were allegedly wrongly dropped from the list of accused persons by the investigating agency. The committal Magistrate allowed the applications and committed the case to the court of Sessions whereafter the learned Additional Sessions Judge being the trial court framed the charges against the respondents including the charge under Section 395 IPC.

The respondents submitted before the High Court that the Magistrate had committed a grave error by taking cognizance for offence under Section 395 IPC as also by adding the names of aforesaid four accused persons while committing them to the court of Sessions to stand their trial.

Learned counsel appearing for the appellant made a two-fold submission to assail the judgment of the High Court. Firstly, he contended that as the earlier revision petition filed by the accused persons under Section 397 of the Code had been rejected by the High Court vide order dated 13.7.1990 (Annexure P-6), they had no right to file the petition under Section 482 of the Code with prayer for quashing the same order. Secondly, it is submitted that the High Court committed a mistake of law by directing the Magistrate to follow the procedure as prescribed under Section 203 of the Code.

The order of the High Court dated 13.7.1990 shows that 13 respondents - accused persons had filed the revision petition challenging the order of the Magistrate taking cognizance for the offence under Section 395 IPC and for impleading respondents 10 to 13 as accused persons. After the commitment, the Magistrate as well as the Sessions Judge had issued non-bailable warrants against the accused persons. When the High Court directed accused persons to appear before the trial court and furnish their bail bonds, the learned counsel for the accused did not press his petition so far as taking of cognizance against them was concerned. The relevant portion of the order dated 13.7.1990 is reproduced hereunder:

> "Petitioners before me have challenged the order of the Magistrate, Deeg looking cognizance for the offence under Section 395 IPC and for other offence against the petitioners 10 to 13 after some time there have contended there petitioners 1 to 9 were on bail granted under section 436 Cr.P.C. and after adding a non bailable offence viz section 395 IPC. The Magistrate and the Sessions Judge both have directed for issuance of non-bailable warrants both this is not proper, as the petitioners 1 to 9 have already been granted bails. For petitioners 10 to 13 it is stated that they will also appear before the court and furnish their bail and bonds. As far as the first part of the plea about taking cognizance is concerned the learned counsel for the petitioner does not press the same."

We are of the opinion that when the earlier revision petition filed under Section 397 of the Code had been dismissed as not pressed, the accused-respondents could not be allowed to invoke the inherent powers of the High Court under Section 482 of the Code for the grant of the same relief. We do not agree with the arguments of the learned counsel for the respondents that as the earlier application had been dismissed as not pressed, the accused had acquired a right to challenge the order adding the offence under Section 395 of the Code and arraying four persons as accused-persons by way of subsequent petition under Section 482 of the Code. The object of criminal trial is to render public justice and to assure punishment to the criminals keeping in view that the trial is concluded expeditiously. Delaying tactics or protracting the commencement or conclusion of the criminal trial are required to be curbed effectively, lest the interest of public justice may suffer. For exercising power under Section 482 of the Code the learned Judge of the High Court relied upon a judgment of this Court in Krishnan & Anr. v. Krishnaveni & Ors. [1997 (4) SCC 241]. A perusal of the aforesaid judgment, however, shows that the reliance by the learned Judge was misplaced. This Court in Krishnan's case (supra) had held that though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 of the Code and the impugned order is liable to be set aside on this ground alone.

Even on merits, the High Court committed a mistake of law by referring to the provisions of Section 203 of the Code and after setting aside the impugned order directing the Judicial Magistrate to hold inquiry as per Section 203(2) of the Code before deciding the inclusion of offence under Section 395 I.P.C. or impleadment of the respondents as accused persons. Chapter XV of the Code comprising of

Sections 200 to 203 deals with the complaints to Magistrate and the procedure prescribed for dealing with such complaints. In the instant case no complaint was filed before the Magistrate by the complainant requiring him to follow the procedure under Chapter XV. Reference to sub-section (2) of Section 203 of the Code is misconceived inasmuch as no such sub-section exists in the statute book.

From the facts of the case, it appears that while passing the order which was challenged before the High Court, the Magistrate had taken recourse to Chapter XIV (Sections 190 to 199) of the Code. Section 190 of the Code empowers the Magistrate to take cognizance of any offence:

> "(a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

Under this section, a Magistrate has jurisdiction to take cognizance of offences against such persons also who have not been arrested by the police as accused persons, if it appears from the evidence collected by the police that they were prima facie guilty of offence alleged to have been committed. Section 209 of the Code prescribes that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions he shall commit, after compliance with the provisions of Section 207 or Section 209, as the case may be, the case to the court of Sessions and subject to the provisions of the Code, pass appropriate orders. This Section refers back to Section 190, as is evident from the words "instituted on a police report" used in Section 190(1)(b) of the Code. While dealing with the scope of Section 190 this Court in Raghubans Dubey v. State of Bihar [1967 (2) SCR 423] held that the cognizance taken by the Magistrate was of the offence and not of the offenders. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police some other persons were also involved, it is his duty to proceed against those persons as well.

Approving the judgment in Raghubans Dubey's case (supra) this Court in M/s.SWIL Ltd. v. State of Delhi & Anr. [JT 2001 (6) SC 405] held:

> "....in the present case there is no question of referring to the provisions of Section 319 Cr.P.C. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate as holding inquiry as contemplated under Section 2(g) Cr.P.C. nor the trial had started. He was exercising his jurisdiction under Section 190 of taking cognizance of an offence and issuing process. There is no bar under Section 190 Cr.P.C. that once the process is issued against some accused on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet."

The present case is squarely covered by the aforesaid judgments which renders the order impugned not sustainable under law.

Under the circumstances, the appeal is allowed by setting aside the order impugned and by upholding the order of the Additional Sessions Judge.

.....J. (M.B. SHAH) .....J. (R.P. SETHI) SEPTEMBER 19, 2001