Jagdish Ram vs State Of Rajasthan & Anr on 9 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1734, 2004 AIR SCW 1342, 2004 AIR - JHAR. H. C. R. 1439, 2004 CRILR(SC MAH GUJ) 277, 2004 (2) UJ (SC) 1075, 2004 (2) SLT 424, 2004 CALCRILR 635, (2004) 2 CGLJ 19, 2004 BLJR 1 723, (2004) 3 JT 202 (SC), (2004) 2 PAT LJR 451, 2004 (4) SCC 432, 2004 (3) ACE 1, 2004 SCC(CRI) 1294, 2004 CRI(AP)PR(SC) 471, 2004 (3) SCALE 49, 2004 (3) JT 202, (2004) 16 ALLINDCAS 75 (SC), (2004) MAD LJ(CRI) 554, (2004) 2 RECCRIR 194, (2004) 1 CURCRIR 391, (2004) 3 SCALE 49, (2004) 2 BOMCR(CRI) 422, (2004) 49 ALLCRIC 9, (2004) 2 CRIMES 296, (2004) 2 SUPREME 336, (2004) 2 ALLCRIR 1041, (2004) 2 ALLCRILR 961, (2004) 27 OCR 879, (2004) SC CR R 1022, 2004 CRILR(SC&MP) 277, 2004 CHANDLR(CIV&CRI) 111, (2004) 18 INDLD 198, (2004) 2 EASTCRIC 87, 2004 (1) ALD(CRL) 672

Author: Arijit Pasayat

Bench: Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  357 of 1997

PETITIONER:
Jagdish Ram.

RESPONDENT:
State of Rajasthan & Anr.

DATE OF JUDGMENT: 09/03/2004

BENCH:
Y.K. Sabharwal & Arijit Pasayat

JUDGMENT:
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J U D G M E N T Y.K. Sabharwal, J.

This matter pertains to an incident that took place in the year 1985. The criminal proceedings before the Magistrate have not crossed the stage of taking cognizance. One of the contentions urged in this appeal for quashing the criminal proceedings is long delay of 19 years.

The appellant is a District Ayurvedic Officer. The complainant is a Class IV employee in Ayurvedic Aushdhalaya, Fatehgarh. According to the complainant on 7th November, 1985 when the appellant

visited the said place several patients were present. The appellant asked the complainant to bring water. When the complainant brought water, he was insulted by the appellant who said to him "I do not want to spoil my religion by drinking water from your hands. How have you dared to give water" and started abusing him. The complainant has filed a complaint in the court of Chief Judicial Magistrate alleging commission of offence punishable under Section 7 of the Protection of Civil Rights Act, 1955 (hereinafter referred to as 'the Act').

The practice of untouchability in any form has been forbidden by Article 17 of the Constitution of India which inter alia provides that "untouchability" is abolished, the enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. To comply the mandate of the Constitution, the Act has been enacted inter alia with a view to prescribe punishment for the preaching and practice of "untouchability", for the enforcement of disability arising therefrom and for matters connected therewith. The aforesaid complaint was sent to the police under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for investigation. A case was registered and investigation conducted. The investigating officer examined the complainant and other witnesses and also obtained copies of certain documents. After completing the investigation the police submitted a final reported under Section 173 of the Code stating that the complaint was false and in fact on 7th November the complainant was found absent from duty and, therefore, he was asked to take casual leave for half day and it is on that account a false complaint was lodged by him.

After the submission of the abovenoticed final report by the police the complainant submitted another complaint. The statements of the witnesses who were said to be present at the time of the occurrence were examined by the Additional Chief Judicial Magistrate who by order dated 26th June, 1986 found a prima facie case, took cognizance and issued process against the appellant. The order issuing the process was challenged by the appellant in a revision petition filed before the Sessions Judge which was dismissed. On a petition filed under Section 482 of the Code, the orders of the Additional Chief Judicial Magistrate taking cognizance as also of the Sessions Judge were set aside by the High Court by judgment dated 26th May, 1988 and the case was remanded to the trial court to proceed according to law keeping in view the observations made in the judgment. The High Court inter alia observed that the trial court should consider the entire material available on record before deciding whether the process should be issued against the accused or not.

After remand, on consideration of the material on record, the Magistrate again reached the same conclusion and took cognizance by order dated 22nd January, 1990. This led to filing of another petition under Section 482 of the Code by the appellant. Again the High Court by judgment dated 27th May, 1994 set aside the order dated 22nd January, 1990 inter alia noticing that the Additional Chief Judicial Magistrate while disagreeing with the final report should have given some reasons for not accepting it and this time also the case was remanded to the Magistrate directing him to consider the material available on record and thereafter pass appropriate order deciding whether the process should be issued or not on the basis of the available material.

In this appeal, we are not going into the correctness of the judgments of the High Court dated 26th May, 1988 or 27th May, 1994. These judgments have attained finality. Suffice it to say that as

directed by the High Court, the Magistrate again considered the matter for the third time. Again, by order dated 16th December, 1994 the Magistrate reached the same conclusion as had been reached on two earlier occasions and took cognizance of offence under Section 7 of the Act against the appellant and directed that the appellant be summoned. There was a third petition under Section 482 of the Code before the High Court challenging the order taking cognizance. This time the appellant was not lucky. The High Court by the impugned judgment dated 4th May, 1996 rejected the contention that the Additional Chief Judicial Magistrate passed the order without considering the entire material on record. The High Court held that no case for exercising inherent powers under Section 482 of the Code was made out. Challenging the judgment of the High Court, the appellant is before this Court on grant of leave. This Court had stayed the proceedings before the Magistrate pending decision of the appeal.

The contention urged is that though the trial court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet entire material was not considered. From perusal of order passed by the Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. (Dy.Chief Controller of Imports & Exports v. Roshanlal Agarwal & Ors. [2003] 4 SCC 139).

The High Court has rightly concluded that the order passed by the Magistrate does not call for any interference in exercise of inherent powers under Section 482 of the Code.

Mr. Jain urged an additional ground for quashing the order. Learned counsel contends that the appellant is facing the criminal proceedings for the last 19 years and, therefore, the proceedings deserve to be quashed on the ground of delay. Support is sought from S.G. Nain v. Union of India ([1995] Supp. 4 SCC

552), Bihar State Electricity Board & Anr. v. Nand Kishore Tamakhuwala ([1986] 2 SCC 414) and Ramanand Chaudhary v. State of Bihar & Ors. ([2002] 1 SCC 153). In these cases, the criminal proceedings were quashed having regard to peculiar facts involved therein including this Court also entertaining some doubts about the case being made against the accused. In none of these decisions any binding principle has been laid down that the criminal proceedings deserve to be quashed

merely on account of delay without anything more and without going into the reasons for delay.

It is to be borne in mind that the appellant has been successively approaching the High Court every time when an order taking cognizance was passed by the Magistrate. It is because of the appellant that the criminal proceedings before the Magistrate did not cross the stage of taking cognizance. As earlier noticed, since earlier judgments of the High Court have attained finality, we are not going into correctness of these judgments. When third time the appellant was not successful before the High Court, he has approached this Court and at his instance the proceedings before the trial court were stayed. In fact, from 1986 till date the criminal case has not proceeded further because of the appellant. It would be an abuse of the process of the court if the appellant is now allowed to urge delay as a ground for quashing the criminal proceedings. In considering the question whether criminal proceedings deserve to be quashed on the ground of delay, the first question to be looked into is the reason for delay as also the seriousness of the offence. Regarding the reasons for delay, the appellant has to thank himself. He is responsible for delay. Regarding the seriousness of the offence, we may notice that the ill of untouchability was abolished under the Constitution and the Act under which the complaint in question has been filed was enacted nearly half a century ago. The plea that the complaint was filed as a result of vindictiveness of the complainant is not relevant at this stage. The appellant would have adequate opportunity to raise all pleas available to him in law before the trial court at an appropriate stage. No case has been made out to quash the criminal proceedings on the ground of delay.

Having regard to the enormous delay, we direct the trial court to expedite the trial and dispose of the case within a period of six months. For the reasons aforestated, the appeal is dismissed.