Moti Lal Songara vs Prem Prakash @ Pappu & Anr on 16 May, 2013

Equivalent citations: 2013 AIR SCW 3010, 2013 (9) SCC 199, 2013 CRI. L. J. 2977, AIR 2013 SC (CRIMINAL) 1375, (2013) 3 RAJ LW 1894, (2013) 4 MH LJ (CRI) 527, 2013 CRILR(SC&MP) 715, (2013) 3 MAD LJ(CRI) 50, (2013) 3 RECCRIR 333, (2013) 3 CRILR(RAJ) 715, (2013) 3 CURCRIR 247, (2013) 3 DLT(CRL) 557, 2013 ALLMR(CRI) 2657, (2013) 55 OCR 881, 2013 CRILR(SC MAH GUJ) 715, (2013) 7 SCALE 320, (2013) 2 ALD(CRL) 414, (2013) 126 ALLINDCAS 41 (SC), (2013) 82 ALLCRIC 382, (2013) 3 ALLCRILR 577, (2013) 2 CRIMES 328, 2013 (3) SCC (CRI) 872, AIR 2013 SUPREME COURT 2078, (2013) 2 KER LT 150

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Bench: Dipak Misra, K. S. Radhakrishnan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 785 OF 2013
(Arising out of SLP (Crl.) No. 294 of 2013)

Moti Lal Songara ...Appellant

Versus

Prem Prakash @ Pappu and Anr. ...Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The factual score of the case in hand frescoes a scenario and reflects the mindset of the first respondent which would justifiably invite the statement "court is not a laboratory where children come to play". The action of the accused-respondent depicts the attitude where one calculatedly conceives the concept that he is entitled to play a game of chess in a court of law and the propriety, expected norms from a litigant and the abhorrence of courts to the issues of suppression of facts can comfortably be kept at bay. Such a proclivity appears to have weighed uppermost in his mind on the base that he can play in aid of technicalities to his own advantage and the law, in its essential substance, and justice, with its divine attributes, can unceremoniously be buried in the grave. But, an eloquent one, the complainant with his committed and adroit endeavour has allowed the cause to rise like a phoenix from the grave by invoking the jurisdiction of this Court assailing the order passed by the High Court of Judicature of Rajasthan at Jodhpur in Criminal Revision No. 327 of 2011 whereby the learned single Judge by order dated 13.8.2012 accepted the plea of the accused-respondent and quashed the charges framed against him for the offences punishable under Sections 323, 324 and 307 of the Indian Penal Code (for short "IPC") not on the substratum of merits but on the foundation that the order dated 19.11.2008 passed by the learned Additional Chief Judicial Magistrate taking cognizance and issuing summons had already been set aside by the Additional District and Sessions Judge, No. 1, Jodhpur, in Criminal Revision No. 7 of 2009 and, therefore, the principle "when the infrastructure collapses, the superstructure is bound to collapse" got attracted. As it appears, though the High Court noticed the various dates, the suppression of facts and the factum that the accused being fully aware that the charges had been framed in Sessions Case No. 9 of 2009 by the learned Additional Sessions Judge, No. 3, Jodhpur on 27.7. 2009, chose not to inform the revisional court, namely, the learned Additional District and Sessions Judge, No. 1, Jodhpur, yet, possibly feeling legally helpless, interfered with the order of framing charges and quashed the same granting liberty to the prosecution to file an application under Section 319 of the Code of Criminal Procedure (for brevity "the Code") at the relevant stage.

3. Presently to the initial factual exposition. The appellant, as informant, lodged a First Information Report No. 428 of 2007 on 23.11.2007 at Police Station Pratap Nagar, District Jodhpur, on the basis of which investigation was carried on and, eventually, a charge sheet was placed for the offences punishable under Sections 341, 323, 324, 307 and 379 IPC against one Shyam Lal s/o Venaram. After the submission of the charge-sheet, the informant filed an application before the learned Additional Chief Judicial Magistrate No. 2, Jodhpur, asseverating that another accused, Prem Prakash, who had attacked his son with knife had deliberately not been made an accused. The learned Magistrate, as is manifest, after analyzing the materials on record, thought it appropriate to take cognizance against Prem Prakash @ Pappu for the offences punishable under Sections 323, 324, 307 and 379 IPC and, accordingly, summoned him through arrest warrant.

4. Being dissatisfied, accused Prem Prakash called in question the legal sustainability of the said order in Criminal Revision No. 7 of 2009 which came to be dealt with by the learned Additional District and Sessions Judge, No. 1, Jodhpur who, after referring to the rulings in Kalamudeen and others v. State of Rajasthan and another[1] and Natthi Singh v. State of Rajasthan and another[2], opined that when the offences were triable by a court of Session, the Magistrate could not have taken cognizance on the basis of a protest petition and, accordingly, set it aside vide order dated 14.10.2009.

5. Be it noted, on that day, the Additional Public Prosecutor was present but, unfortunately, the informant who was arrayed as opposite party No. 2 in the revision petition was absent. The disturbing feature, as is perceptible, is that on the basis of the cognizance taken by the learned Additional Chief Judicial Magistrate, both the accused persons, namely, Shyam Lal and Prem Prakash, were sent up for trial and the matter was dealt with by the learned Additional District and Sessions Judge, No. 3, Jodhpur who, on 27.7.2009, heard the learned counsel for the parties, the Public Prosecutor and after dwelling upon the allegations in the FIR, considering the involvement of the accused persons in the crime in question, taking note of the nature of injuries, adverting to the ingredients of the offence under Section 307 IPC, prima facie appreciating the credibility of the witnesses and many other factors, held as follows: -

> ".....looking to the facts and circumstances of the case, in the perspective of the principle propounded in the abovementioned rulings, prima facie, it appears that due to the reason of old enmity the accused persons have inflicted a number of injuries by the sharp weapon on the body of the victim and therefrom it is clear that common intention of the accused persons was to attempt to commit the murder of the victim Dinesh Kumar. At this stage, it is not appropriate to minutely and critically appreciate the evidence. From the guidance sought from the abovementioned rulings, it is clear that at this stage compared to the result of the acts committed by the accused persons, criminal intention of the accused persons is more important. Any fatal injury has not been inflicted on any vital part of the body of the victim and only on that ground at this stage, it is not justified and lawful to discharge the accused persons from the offence punishable under Section 307 of the Indian Penal Code."

6. However, as far as the offence under Section 379 IPC is concerned, he discharged them of the said charge. Ultimately, charges were framed for the offences under Section 341, 323/34, 324/34, 307 in the alternative under Section 307/304 IPC.

7. We have referred to the said order in detail to highlight that the matter was heard at length at the time of framing of charge and arguments were considered seeking discharge. However, for the reasons best known to the prosecution and to the accused-respondent, it was not brought to the notice of the learned Additional District and Sessions Judge No. 1, Jodhpur who allowed the revision holding that the order issuing summons was not justified. It is really unfathomable as to why the sustainability of the order taking cognizance when called in question was not heard by the learned Additional District and Sessions Judge No. 3, who was dealing with the Sessions Case No. 9 of 2009.

8. After the order taking cognizance was set aside in revision, an application was filed on 11.1.2010 seeking discharge. The learned trial Judge narrated the entire gamut of facts and observed that the fact of framing of charges was not brought to the notice of the learned Additional District and Sessions Judge, No.1, and further the High Court, in Criminal Revision No. 1046 of 2009 which was preferred against the order of framing of charge, neither set it aside nor modify it and, accordingly, did not think it

appropriate to discharge the accused-respondent.

9. As the factual matrix would uncurtain, undeterred by his conduct, the respondent, Prem Prakash, preferred Criminal Revision before the High Court. The learned single Judge of the High Court, after chronicling the facts in detail, came to hold that when the order dated 14.10.2009 passed by the revisional court setting aside the order taking cognizance was not challenged, the very basis of the continuance of the proceeding had become extinct and, therefore, the order of framing of charges could not be sustained. However, as stated earlier, he granted liberty to the prosecution to file an application under Section 319 of the Code for summoning the additional accused at the appropriate stage. Be it noted, the High Court has also observed that the order passed in revision setting aside the order of cognizance was not justified in law.

10. Ms. Madhurima Tatia, learned counsel for the appellant, has submitted that when the accused has not approached the court in clean hands and the High Court itself has observed that the order setting aside the order of cognisance was not justified, it should not have interfered with the order passed by the learned trial Judge declining to discharge the accused. Per contra, Mr. Rishabh Sancheti, learned counsel for the respondent No. 1, would contend that the order passed by the High Court in revision is absolutely impeccable inasmuch as once the order taking cognizance had gone unchallenged, it was obligatory on the part of the High Court to direct a discharge. That apart, it is urged by him that the learned Magistrate could not have taken cognizance in exercise of power under Section 190 of the Code of Criminal Procedure. Mr. Imtiaz Ahmed, learned counsel for the State, submitted that though the State has not challenged the order, yet it is a case where the accused-respondent should not have been discharged.

11. First, we shall advert to the legal propriety of the order taking cognizance by the learned Additional Chief Judicial Magistrate. The learned counsel for the accused-respondent has submitted with immense vehemence that in view of the conflicting views, the controversy relating to the power of the Magistrate under Section 190 of the Code has been referred to the larger Bench and, hence, the order of taking cognizance is invulnerable. To appreciate the said submission, we think it seemly to refer to certain pronouncements pertaining to the said issue. In Ranjit Singh v. State of Punjab[3], a three-Judge Bench was dealing with the issue whether the Sessions Court can add a new person to the array of the accused in a case pending before it at a stage prior to collecting any evidence. The three-Judge Bench was dealing with the said issue as reservations were expressed by a two-

Judge Bench in Raj Kishore Prasad v. State of Bihar[4] with regard to the ratio laid down in Kishun Singh v. State of Bihar[5]. The conclusion that has been recorded in Ranjit Singh's case is as follows: -

"19. So from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused.

20. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers."

12. In Kishori Singh and others v. State of Bihar and another[6], the learned Judges have opined thus: -

"10. So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons" in exercise of powers under Section 319 CrPC when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judge Bench decision. Neither of the contingencies has arisen in the case in hand."

13. In M/s. India Carat Pvt. Ltd. v. State of Karnataka and another[7], a three-Judge Bench, after analyzing the provisions of the Code, referred to the decisions in Abhinandan Jha v. Dinesh Mishra[8] and H.S. Bains v. State[9] and, eventually, ruled thus: -

"The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused."

14. In Dharam Pal and others v. State of Haryana and another[10], a three-

Judge Bench was dealing with a reference to resolve the conflict of opinions in Kishori Singh (supra), Rajinder Prasad v. Bashir[11] and SWIL Ltd. v. State of Delhi[12]. At that juncture, the pronouncements in Kishun Singh (supra) and Ranjit Singh (supra) were brought to the notice of the Court. After referring to various provisions of the Code, the Bench of three learned Judges expressed as follows: -

> "Prima facie, we do not think that the interpretation reached in Ranjit Singh case is correct. In our view, the law was correctly enunciated in Kishun Singh case. Since the decision in Ranjit Singh case is of three-Judge Bench, we direct that the matter may be placed before the Hon'ble the Chief Justice for placing the same before a larger Bench."

15. There is no dispute that the reference is still pending. In Uma Shankar Singh v. State of Bihar and another[13], a two-Judge Bench was dealing with the issue pertaining to the power of the Magistrate under Section 190(1)(b) of the Code. After taking note of the decisions and the reference order in Dharam Pal (supra), the Court accepted the submission that the law is well settled that the Magistrate is not bound to accept the final report filed by the investigating agencies under Section 173(2) of the Code and is entitled to issue process against an accused even though exonerated by the said authorities without holding any separate enquiry on the basis of the police report itself. The learned Judges proceeded to state that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC.

16. In the said case, while dealing with the pendency of a reference before a larger Bench and also adverting to the pending reference in relation to the lis, the Court observed as follows: -

> "...it is not necessary to wait for the outcome of the result of the reference made to a larger Bench in Dharam Pal case. The reference is with regard to the Magistrate's power of enquiry if he disagreed with the final report submitted by the investigating authorities. The facts of this case are different and are covered by the decision of this Court in India Carat (P) Ltd. following the line of cases from Abhinandan Jha v. Dinesh Mishra onwards."

17. In view of the aforesaid enunciation of law, we are of the considered view that the order taking cognizance cannot be found fault with. We may hasten to clarify that the learned Additional Chief Judicial Magistrate has taken cognizance on the basis of facts brought to his notice by the informant and, therefore, he has, in fact, exercised the power under Section 190(1)(b) of the Code.

18. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-

respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim supressio veri, expression faisi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused-respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum. The High Court, as we have seen, applied the principle "when infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand. That apart, we have dealt with regard to the legal sustainability of the order in detail. Under these circumstances, we are disposed to think that the power under Article 142 of the Constitution is required to be invoked to do complete justice between the parties. Cognizance of the offences had been rightly taken by the learned Magistrate and charges, as we find, have been correctly framed by the learned trial Judge. A victim of a crime has as much right to get justice from the court as an accused who enjoys the benefit of innocence till the allegations are proven against him. In the case at hand, when an order of quashment of summons has been obtained by suppression, this Court has an obligation to set aside the said order and restore the order framing charges and direct the trial to go on. And we so direct.

19. Consequently, the appeal is allowed, the order passed by the High Court in Criminal Revision No. 327 of 2011 and the order passed by the learned Additional District and Sessions Judge, No.1, Jodhpur, in Criminal Revision No. 7 of 2009 are set aside and it is directed that the trial which is pending before the learned Additional District and Sessions Judge, No. 3, Jodhpur, shall proceed in accordance with law.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

May 16, 2013.

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[1] 2005 (2) Cr.L.R. (Raj.) 1118
[2] 2007 (1) Cr.L.R. (Raj.) 621
[3] (1998) 7 SCC 149
[4] (1996) 4 SCC 495
[5] (1993) 2 SCC 16
[6] (2004) 13 SCC 11
[7] (1989) 2 SCC 132
[8] AIR 1968 SC 117

[9] (1980) 4 SCC 631
[10] (2004) 13 SCC 9
[11] (2001) 8 SCC 522
[12] (2001) 6 SCC 670
[13] (2010) 9 SCC 479
