



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 9188/2022



1. Sh. Mohanlal S/o Shri Jhabarmal, aged about 54 Years, R/o Pacharon Kee Dhani, Tan Daalmas, P.S. Lakshmangargh, District Sikar, Rajasthan.
2. Smt. Babita W/o Sh. Mohanlal, aged about 48 Years, R/o Pacharon Kee Dhani, Tan Daalmas, P.S. Lakshmangargh, District Sikar, Rajasthan.
3. Sh. Ramesh S/o Sh. Mohanlal, aged about 29 Years, R/o Pacharon Kee Dhani, Tan Daalmas, P.S. Lakshmangargh, District Sikar, Rajasthan.
4. Sh. Narendra S/o Sh. Mohanlal, aged about 25 Years, R/o Pacharon Kee Dhani, Tan Daalmas, P.S. Lakshmangargh, District Sikar, Rajasthan

----Petitioners

Versus

1. State of Rajasthan, Through P.P
2. Kamla Devi W/o Hariram, R/o Pacharon Kee Dhani, Tan Daalmas, P.S. Lakshmangargh, District Sikar, Rajasthan
3. Vikas S/o Hariram, R/o Pacharon Kee Dhani, Tan Daalmas, P.S. Lakshmangargh, District Sikar, Rajasthan

----Respondents

For Petitioner(s)	:	Mr. Yogesh Kumar Gupta with Mr. Deepak Gupta
For Respondent(s)	:	Mr. Jitendra Singh Rathore-PP Mr. Rajesh Gadwal with Mr. Pushpendra Kumar

JUSTICE ANOOP KUMAR DHAND
Order

03/01/2025

1. The instant criminal misc. petition has been preferred against the impugned order dated 25.06.2016 passed by the Additional Chief Judicial Magistrate, Lakshmangargh, District Sikar by which



cognizance has been taken against the petitioners for the offences under Sections 452, 323 and 341/34 IPC.

2. Aggrieved by the aforesaid order, the petitioners submitted a criminal revision petition before the Court of Additional Sessions Judge, Lakshmangarh, District Sikar and the same was rejected vide order dated 18.09.2021 and the order of taking cognizance was upheld.

3. Feeling aggrieved and dissatisfied by both these orders, the petitioners approached this Court on earlier occasion by way of filing S.B. Criminal Misc. Petition No. 6655/2021, however the same was withdrawn by the petitioners on 27.08.2022 with liberty to take all the averments at the stage of framing of the charges. The following order was passed on 27.08.2022 at the request of the petitioner:-

“Learned counsel for the petitioners wants to withdraw this criminal miscellaneous petition with liberty to take all the averments against the impugned order at the time of charge.
Order accordingly.
Stay application also stands disposed of.”

4. Thereafter, the petitioners have again approached this Court by way of filing the instant petition and this Court rejected the instant petition vide order dated 03.01.2023 observing therein that the fact with regard to filing of the earlier misc. petition bearing No. 6655/2021 was suppressed and concealed and on this count alone, the misc. petition was dismissed.

5. Aggrieved by the order dated 03.01.2023, the petitioners approached the Hon'ble Apex Court by way of filing Criminal Appeal No. 2190/2024 and the same was allowed vide order dated 22.04.2024 with the following observations and directions:-





2. The impugned order is sought to be quashed on the sole premise that notwithstanding the specific averments made about the earlier proceedings, it was passed as if the appellant(s) has suppressed the said fact.

3. We have also perused the documents filed which clearly indicate that the appellant(s) did make a mention in the pleadings which was not taken note of by the High Court while passing the impugned order. As it has been passed without going into the merits, we are inclined to set aside the impugned order and remit the matter to the High Court to decide it in accordance with law.

6. Under these circumstances, the instant misc. petition came up before this Court for consideration on its merit.

7. Learned counsel for the petitioners submits that in counter blast to the FIR registered by the petitioners, a false case has been lodged by the other side, wherein after investigation, the police submitted Final Report (Negative). Counsel submits that at the time of conducting the investigation in the FIR registered against the petitioners, the statements of witnesses Kamla and Vikas Kumar were recorded under Section 161 Cr.P.C, wherein they have not alleged anything against the petitioners. Counsel submits that as per the statements of these two witnesses, no such incident has occurred. Counsel submits that taking note of this fact, Final Report (Negative) was submitted by the Investigating Agency against which a protest petition was filed by the complainant, wherein the statements of three witnesses namely CW1-Kamla, CW2-Vikas Kumar and CW3- Hariram Verma were recorded. Counsel submits that these witnesses have improved their version by making contradictory statements and they have levelled false allegations against the petitioners, which





are not corroborated by the medical evidence. Counsel submits that under these circumstances, the order of taking cognizance is not sustainable in the eye of law and the same is liable to be quashed and set aside.



8. Per contra, learned Public Prosecutor as well as counsel for the complainant opposed the arguments raised by counsel for the petitioners and submitted that the police has not investigated the matter in a fair and proper manner and submitted the Final Report (Negative) and that is why a protest petition was submitted by the complainant, wherein the statements of three witnesses namely CW1-Kamla, CW2-Vikas Kumar and CW3- Hariram Verma have been recorded, who have categorically levelled allegations against the petitioners. Counsel submits that after perusal of the statements of all the three witnesses, the Court found that a prima facie case exists against the petitioners to proceed against them and that is why the cognizance has been taken against them for the offences under Sections 452, 323 and 341/34 IPC vide order dated 25.06.2016. Counsel submits that aggrieved by the aforesaid order, a revision petition was preferred by the petitioners and the same was rejected vide order dated 18.09.2021 and the order of cognizance has been upheld. Learned Public Prosecutor submits that under these circumstances, interference of this Court is not warranted.

9. Heard and considered the submissions made at Bar and perused the material available on record.

10. Perusal of the record indicates that cross cases have been lodged between the parties, wherein allegations have been levelled against each other. This fact is not in dispute that in the



FIR registered against the petitioners, the police has submitted the Final Report (Negative) against which a protest petition was submitted by the complainant/respondent wherein the statements of three witnesses namely CW1-Kamla, CW2-Vikas Kumar and CW3- Hariram Verma have been recorded, wherein the allegations have been levelled by them against the petitioners which disclose prima faice case to proceed against them and that is why cognizance has been taken against the petitioners for the offence under Sections 452, 323 and 341/ 34 IPC. A detailed reasoned and cogent order has been passed not only by the Trial Court but also by the Revisional Court.

11. It is settled proposition of law that at the time of taking cognizance only prima facie case is required to be seen and at this stage, the correctness of the allegations is not required to be seen. The evidence of the witnesses cannot be meticulously examined at this stage.

12. The Hon'ble Apex Court in the case of **Rashmi Kumar (SMT) Versus Mahesh Kumar Bhada** reported in **(1997) 2 SCC 397** has held as under:-

"..... It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in *State of Bihar v. Rajendra Agrawalla*, that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out



and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters. If it is a charge-sheet filed under Section 173 of the Code, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court to proceed further in the matter. Thus it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether offence has been made out or not.....”



13. The Hon'ble Apex Court in the case of **Sonu Gupta Versus Deepak Gupta & Others** reported in **(2015) 3 SCC 424** has also held as under:-

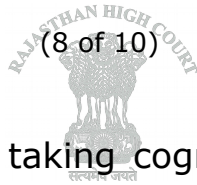
“8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the Appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.”

14. The co-ordinate Bench of this Court in the case of **Rameshwar Lal versus State of Rajasthan & Others** while deciding **S.B. Criminal Misc. Petition No.1341/2006** vide order dated 09.08.2011 has held as follows:-

“7. I am of the considered view that there is no such illegality, irregularity or perversity in the impugned order so as to interfere in it. It is well settled that at the stage of taking cognizance for an offence only prima facie has to be



seen whether there is sufficient material as to take cognizance for an offence and at this stage of the proceedings meticulous analysis of the evidence available on record is not required. It is also well settled that the Court is not bound by the conclusions arrived at by the police in the form of final report and Court even on the negative final report can take cognizance for offence, if it finds that there is sufficient evidence available on record. It is also open to the Court to rely back upon the original complaint filed by the complainant and conduct enquiry under sections 200 and 202, Cr.P.C. and if the Court comes to a conclusion that there is sufficient ground to proceed further, it may summon a person as an accused. This enquiry can also be conducted upon a protest petition filed by the complainant against the negative final report submitted by the police. Although, it is essential that for summoning a person as an accused not only the statements recorded under sections 200 and 202, Cr.P.C. but also evidence collected by the police has also to be considered, but in the present case it cannot be said that the Court below has totally ignored this legal requirement. From the impugned order, it is revealed that the statement of non-petitioner recorded under section 164, Cr.P.C. during investigation was also considered. So far as the submission made on behalf of the petitioner to the effect that the impugned order dated 8.5.2006 is a composite order and the order of cognizance and order of summoning the petitioner and other persons was passed at the same time, I am of the considered view that this objection is very much technical in nature. Although, the Court below has used the word "cognizance" in the last part of the order, but that does not mean that at the initial stage of the proceeding cognizance was not taken and



Court below without taking cognizance proceeded to record statements under sections 200 and 202, Cr.P.C. I am of the view that upon protest petition being filed by the non-petitioner as soon as the Court below decided to hold enquiry by recording statements under sections 200 and 202, Cr.P.C. cognizance was taken and only after that the Court below conducted enquiry under the relevant provisions of Cr.P.C. The Court below by considering the statements recorded under sections 200 and 202, Cr.P.C. and also statement of non-petitioner under section 164, Cr.P.C. decided to summon the petitioner and three other persons as accused. Merely because the Court below in the operative part of the impugned order has used the word "taking cognizance", it cannot be said that the impugned order being a composite order is a clear instance of non-application of mind and is liable to be set aside on this ground only. Similarly, this contention of learned Counsel for the petitioner is also not tenable that when order of cognizance dated 17.2.2005 was set aside by the Revisional Court by way of order dated 16.9.2005, the Court below was not competent to pass second order of taking cognizance. This contention of learned Counsel for the petitioner is self contradictory. When the first order of cognizance has been set aside by the Revisional Court there remained no order of cognizance in existence. After remand, the Court below in compliance of the order of Revisional Court proceeded to record statement of non-petitioner under section 200, Cr.P.C. As soon as the Court below decided to record the statement of non-petitioner under section 200, Cr.P.C., the Court below applied its mind to the material available on record and it took cognizance for an offence and,



therefore, it cannot be said that second order of cognizance was made.”

15. Hence, under these circumstances, both the Courts below have not committed any error in passing the impugned orders and thus require no interference of this Court.

16. The criminal misc. petition stands dismissed.

17. Stay application and all pending application(s), if any, also stand dismissed.

18. Before parting with this order, it is observed by this Court that with regard to similar grievance, the petitioners have approached this Court by way of filing S.B. Criminal Misc. Petition No. 6655/2021 and the same was withdrawn by the petitioners on 27.08.2022 seeking liberty to take all the arguments/averments at the stage/time of framing of charges.

19. In the case of **Bhisham Lal Verma Vs. State of U.P and Anr.** reported in **2023 SCC OnLine SC 1399** it has been held by the Hon'ble Apex Court that there is no blanket rule against filing of successive petition under Section 482 Cr.P.C. before the High Court. It has also been held that if such a petition is filed, it must be seen whether there was any change in the facts and circumstances, necessitating filing of such petition.

20. It is worthy to note here that till date, the charges have not been framed against the petitioners, hence, under these circumstances, there is no change in the facts and circumstances of the case. The successive petition on the same ground cannot be entertained and the same is liable to be dismissed on this count also.





21. It goes without saying that the petitioners would be at liberty to take all the available arguments/averments at the stage of framing of the charge in terms of the light of the order dated 27.08.2022 passed by this Court while deciding the S.B. Criminal Misc. Petition No. 6655/2021.

22. Subject to its convenience, this Court expects that Trial Judge would pass appropriate orders at the time of hearing the arguments at the stage of charge keeping the averments of the petitioner into consideration and would pass appropriate order strictly in accordance with law as soon as possible.

(ANOOP KUMAR DHAND),J

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