

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5448/2016
CNR: RJHC020553322016 | URN: CRLMP / 8665U / 2016

Hoti Lal S/o Mukat Chand, R/o Town Nagar, aged about 54 years,
resident of Town Nagar, District Bharatpur (Rajasthan).

-----Petitioner

Versus

1.

Suresh S/o Ramju @ Thukri, R/o Village Mudia, Police Station Nagar, District Bharatpur Rajasthan
2.

Ram Babu S/o Ramju @ Thukri, R/o Village Mudia, Police Station Nagar, District Bharatpur Rajasthan
3.

Anil S/o Ram Babu, R/o Village Mudia, Police Station Nagar, District Bharatpur Rajasthan
4.

Neeraj S/o Ram Babu, R/o Village Mudia, Police Station Nagar, District Bharatpur Rajasthan
5.

Kishore @ Ram Kishore S/o Hari Ram R/o Village Mudia, Police Station Nagar, District Bharatpur Rajasthan
6.

Taiyab Khan S/o Himmat Khan R/o Village Mudia, Police Station Nagar, District Bharatpur Rajasthan

-----Respondents

For Petitioner(s)	:	Mr. Kapil Bardhar
For Respondent(s)	:	Mr. Amit Choudhary & Mr. Dharamsheel Sharma for Mr. Anshuman Saxena Mr. Vijay Singh Yadav, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

05/08/2026

1. The instant criminal miscellaneous petition under section 482 of CrPC is filed aggrieved from order dated 28th September 2016 in Criminal Revision No.17/2014 passed by learned Additional Sessions Judge No. 2, Deeg, District Bharatpur, whereby after allowing the revision petition filed by respondents-accused, an

order of cognizance dated 03-03-2013 in FIR No. 275/2013 registered at Police Station Nagar passed by learned Judicial Magistrate was set aside.

2. Learned counsel for the petitioner-complainant while placing reliance upon a written submission, has submitted that the complainant Hoti Lal has lodged FIR No. 275/2013 on 17th June 2013 by filing a criminal complaint as police has failed to register the criminal case, on his report. He also submits that after registration of FIR, the police has filed a closure report (F.R.) and the present petitioner has filed a protest petition. He also submits that after filing of the protest petition, the statement under Sections 200 and 202 of CrPC were recorded by learned Judicial Magistrate. He also submits that on basis of evidence, the police has taken a cognizance against non-petitioners/accused. He submits that the non-petitioners have filed a criminal revision before learned Additional Sessions Judge and without considering the provision under Sections 397 and 401 of CRPC, learned Revisional Court has allowed the revision petition.

3. Learned counsel has further placed reliance upon judgment in case of **Amit Kapoor versus Ramesh Chander : (2012) 9 SCC 460** and submitted that the Revisional Court cannot re-appreciate evidence or substitute its own view for that of the Magistrate because another view is possible on same facts. He further referred judgment in case of **Mehmod Ul Rehman versus Khazir Mohammad Tunda : (2015) 12 SCC 420** and submitted that at the stage of cognizance and issuance of process, only a prima facie satisfaction is required and the Court is not required to

go into proof or detailed evidentiary evaluation. He further referred the principle of criminal law and submitted that an order of cognizance is passed for taking cognizance of offense and after due application by the criminal Court having competent jurisdiction, a superior Court has no authority to re-appreciate the fact in exercise of revisional jurisdiction. He also submitted that any of the minor discrepancies are out of purview of deliberation by a Revisional Court. He also submitted that the facts as referred by the Revisional Court are immaterial at the stage of examination of cognizance order by Revisional Court. He submitted that it hardly matters whether a firearm has been recovered or not, but the trial Court has proceeded on basis of evidence as submitted by complainant and his witnesses. At last, he submitted that the order by Revisional Court is contrary to all settled propositions of law, hence, same is liable to be quashed.

4. Aforesaid contentions were opposed by learned counsel for non-petitioners accused and submitted that after a delay, a complaint has been filed which was sent for registration of FIR. He also submitted that the police has submitted a closure report on the ground that the facts narrated in the reports are false. He also submits that the learned trial Court has exceeded its jurisdiction in considering closure report and protest petition. He further submitted that when any firearm has not been recovered, even then a cognizance order under Section 3/25 of Arms Act was passed. He further pointed out that the trial Court has taken cognizance in a false case and same is an abuse of process of law.

5. Heard learned counsel for the parties and learned public prosecutor. Perused the material placed on record.

6. The complainant Hoti Lal has filed a criminal complaint in the Court of the Judicial Magistrate, Nagar against Suresh, Ram Babu, Anil, Neeraj and two unknown persons for committing offense under section 395, 147, 148, 149 IPC and 3/25 of Arms Act for incident of 03-04-2013. The complaint was forwarded under Section 156(3) of CrPC to Police Station Nagar for registration of FIR and on basis of complaint, FIR No. 275/2013 was registered on 17th June 2013 for offence under Sections 379, 323 and 341 IPC. The matter is investigated by police and after investigation, the police has mentioned that on 3rd April, 2013, Anil Singh son of Ram Babu Sharme has registered a FIR No. 152/2013 against Hoti, Kanha, Bhola, Monu for incident on 1st April 2013. The police has investigated FIR No. 152/2013 and filed a charge sheet against Kahaiya, Hoti, Bhola and Monu Singh under Section 394 & 341 IPC. As a counterblast, current report is registered by complainant and police has proposed a proceeding under Section 182/211 of IPC against the present petitioner.

7. After closure report, the present petitioner has filed a protest petition and learned Judicial Magistrate, Nagar has recorded statement of complainant and his witnesses under Sections 200 and 202 of CrPC. The statement of witnesses Jitendra Kumar, Prakashchand and Mohan Lal are placed on record and we have gone through the statements of all witnesses. The contents of FIR registered by petitioner indicate that he named Prakash Khatik and Mohan as the persons who rescued him. The petitioner has

examined Mohan Lal who is brother of the present petitioner under Section 202 CrPc and Prakash also under section 202 CrPC. One additional witness Jitendra Kumar has been examined.

8. In case of **Amit Kapoor versus Ramesh Chander** (supra), Hon'ble Supreme Court has considered admittedly scope of power of Revisional Court under Section 397 of CrPC. A Revisional Court has a very limited jurisdiction, but it cannot be exercised in routine manner. The only restriction is that it should not be exercised in relation to an interim order. In case of **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda** (Supra), the Court is required to look into prima facie case for taking cognizance.

9. In the instant case, learned Magistrate has failed to consider a police report which clearly indicated that FIR No.152/2013 was registered on 01.04.2013 against the present petitioner-complainant and after investigation, police has filed a charge sheet under Section 394 and 342 of IPC. This is sufficient for the trial Court to call for and consider case diary and further conduct an inquiry under Section 202 of CrPC as the witnesses produced by the complainant are all interested witnesses and they never be termed as independent witness. If any incident has taken place in the market and a firearm is used, then certainly many people would have heard sound of firearm. Similarly, there are other witnesses may not be related with the complainant and available in the vicinity, and same are required to be considered. When a criminal complaint is filed as a counterblast by way of criminal complaint in any criminal Court and a cross FIR is already registered against said complainant, then the duty lies upon the

Magistrate to adopt a process of inquiry under Section 202 of CrPC but in the instant case, only on basis of mechanical statement of complainant and his three witnesses, an order of cognizance was passed.

10. In the instant case, there is no recovery of firearm and police has closed the matter with a clear opinion that the facts narrated are false. The prosecution under Section 3/25 of Arms Act requires a prosecution sanction from the District Magistrate but in absence of prosecution sanction, a Court cannot proceed when there is no firearm. The entire record does not suggest use of firearm as neither any bullet was found nor marks of firing were mentioned by the Investigating Officer, therefore, use of firearm in such an eventuality is not the question. Moreover, Section 3 of Arms Act prohibits any person from acquisition, possession or carrying any firearm or ammunition unless he hold a valid license. Neither is there any recovery nor is a question of use of firearm or identification of firearm, therefore, the trial Court has not applied its own mind in taking cognizance under Section 3/25 of the Arms Act.

11. We agree to the proposition that a revisional Court under Sections 397 and 401 of CrPC has very limited jurisdiction and it cannot appreciate the evidence or substitute its own view but when the matter is investigated by police and FR has been submitted, then it is duty of the Magistrate to consider the reason of closure assigned by the police but in the instant case, the order of cognizance has been passed without even considering the

closure report submitted by police. It is a non-application of mind, hence, the order of cognizance was itself bad in eye of law.

12. In case of **M/S. Pepsi Foods Ltd. & Anr vs Special Judicial Magistrate & Ors (1998) 5 SCC 749**, Hon'ble Supreme Court has laid down the duty of the Magistrate while passing summoning order in a complaint case in following manner:

"Summoning of an accused in a criminal case is a serious matter-

Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

13. An order of cognizance is a foundational step where it is expected from a Judicial Magistrate to apply its own mind upon the allegations and the material placed before him and further decide whether to proceed against the accused. In any case, he is not free to proceed in mechanical manner, ignoring the material available on record. A counter case is permissible but when police report is available on record, which indicate filing of charge sheet

against the present petitioner, then duty lies upon the trial Court to take into consideration the material forwarded by police but in the instant case, the order of cognizance which was tested by learned revisional Court clearly indicate that it is a non-application of mind. Thus, the revisional Court has not committed any error in interfering in the order of cognizance passed by learned Judicial Magistrate.

14. The entire material is sufficient to draw a conclusion that the revisional Court has rightly applied its own mind and after application of mind has allowed the revision petition and there is no infirmity and illegality in the order passed by the revisional Court.

15. In view of the discussion made hereinabove, the instant criminal misc. petition is hereby dismissed with pending application, if any.

(ASHOK KUMAR JAIN),J