



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 2109/2019



----Respondents

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For Petitioner(s) : Mr. Samarth Sharma  
For Respondent(s) : Mr. Sanjeev Mahala, PP  
Mr. Ashutosh Bhatia

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**HON'BLE MR. JUSTICE ANIL KUMAR UPMAN**

**ORDER**

**DATE OF PRONOUNCEMENT :- 12/03/2024**

1. The instant misc. petition under Section 482 Cr.P.C. has been filed on behalf of the petitioner for quashing the entire criminal proceedings of Case No.1912/17, pending trial before learned Metropolitan Magistrate No.26, Jaipur Metropolitan City (Sanganer), arising out of FIR No.47/17 PS Sanganer Sadar, Jaipur (South) for offences under Sections 341, 323 and 506 IPC.

2. Learned counsel for the petitioner vehemently and fervently contends that the entire criminal proceedings arising out of the impugned FIR is vitiated as investigation of the present case has been conducted by a Head Constable, who was not empowered to



conduct the investigation of the case involving cognizable offence(s). He further submits that not only investigation was conducted by a Head Constable but charge-sheet was also filed by him, which is apparent from the charge sheet filed before the learned court below. He has placed reliance on the following judgments:-



- (i) Pankaj Bansal & Anr vs State of Rajasthan reported in 2018  
(1) Cr.L.R. (Raj.) 1 ;
- (ii) Pharisa Promin & Ors. vs State of Rajasthan reported in 2019  
(4) Cr.L.R. (Raj. 1797

3. Learned counsel also draws attention of the Court to the information received under RTI Act from the office of Addl. Director General of Police, Crime Branch, Rajasthan as per which, only the police officers of and above the rank of ASI are empowered to conduct investigation. The aforesaid information received under RTI Act by the petitioner, is reproduced hereinbelow for the sake of ready reference:-

**कार्यालय अति. महानिदेशक पुलिस, अपराध शाखा,**

**राजस्थान**

क्रमांक:-व-15 (65) उ.म.नि./सी.बी./सू.अ./2019/752

दिनांक:-01.03.2016

श्री भरत कुमार शर्मा,

निवासी - म.न. बी-206, फ्लैट नं. 505,

राजेन्द्र मार्ग, बापू नगर, जयपुर।

विषय:- सूचना का अधिकार अधिनियम, 2005 के तहत चाही गई सूचना के सम्बन्ध में।

महोदय,



उपरोक्त विषयान्तर्गत आप द्वारा प्रेषित आवेदन पत्र दिनांक 14.02.2019 को इस कार्यालय में प्राप्त हुआ। प्राप्त आवेदन पत्र में अनुसंधान के सम्बन्ध में चाही गई सूचना के सम्बन्ध में लेख है कि राजस्थान पुलिस नियम 1965 के नियम 6.1(2) द्वारा सहायक उप निरीक्षक तक के पुलिस अधिकारियों को ही अभियोगों के अनुसंधान के लिए अधिकृत किया गया है।



यदि आप उक्त सूचना से संतुष्ट नहीं हैं, तो अतिरिक्त महानिदेशक पुलिस, अपराध एवं प्रथम अपील अधिकारी, पुलिस मुख्यालय, लाल कोठी, राजस्थान, जयपुर को पत्र प्राप्ति के 30 दिवस में प्रथम अपील प्रस्तुत कर सकते हैं।

सद्भावी

प्रति संलग्न

(विकास कुमार)

उप महानिरीक्षक पुलिस

राज्य लोक सूचना अधिकारी

सी.आई.डी.(सी.बी.)राजस्थान, जयपुर।

4. On these submissions, learned counsel for the petitioner craves acceptance of the instant misc. petition and quashing of the entire criminal proceedings arising out of the impugned FIR.

5. Per contra, learned Public Prosecutor assisted by learned counsel for the complainant oppose the submissions of the petitioner's counsel. Learned counsel for the complainant submits that the issue/argument raised by counsel for the petitioner has already been discussed and considered in the case of **State of Rajasthan vs Kera & Ors. reported in 1998 3 RLW (Raj.) 1577** wherein it was held that Head Constable is well within his power to conduct investigation of a case involving cognizable offence(s).



6. I have given my thoughtful consideration to the submissions advanced at bar and perused the material available on record. I have also gone through the judgments cited by both the sides.



7. The question arises for consideration of this Court is whether a Head Constable can conduct investigation of a case involving cognizable offence or not.

8. Section 157 of Cr.P.C prescribes procedure for investigation. The same is reproduced hereinbelow for the sake of ready-reference:-

**"Section 157 Procedure for investigation.**

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that--

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;



(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

9. Rule 6.1 of the Rajasthan Police Rules, 1965 is also relevant for the issue in question, which provides power to investigate. Same is reproduced hereinbelow for the sake of ready-reference:-

**6.1 Power to investigate.** - (1) An officer incharge of a police station is empowered by section 156, Criminal Procedure Code, to investigate any cognizable offence which occur within the limits of his jurisdiction.

(2) He is also empowered under section 157 (1), Criminal Procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender, Any police officer may be so deputed under this section, but where a police officer below the rank of assistant sub-inspector is deputed the investigation shall invariably be taken up & completed by the officer incharge of





the police station or an assistant sub-inspector at the first opportunity.

(3) An officer incharge of a station shall also render assistance whenever required to all officers of the Criminal Investigation Department working within his jurisdiction.



10. A bare reading of the Rule 6.1 of the Rules of 1965 makes it abundantly clear that an officer incharge of a police station is empowered by Section 156, Criminal Procedure Code, to investigate any cognizable offence which occur within the limits of his jurisdiction and he is also empowered under section 157 (1), Criminal Procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. But where a police officer below the rank of assistant sub-inspector is deputed, the investigation shall invariably be taken up & completed by the officer incharge of the police station or an assistant sub-inspector at the first opportunity. Further, the information provided by the Office of Director General of Police also reveals that the police officers of and above the rank of ASI can conduct investigation and that no general or special order has been issued by the State Government empowering Head Constables to conduct investigation of a case involving cognizable offence. Therefore, in my humble and considered opinion, Head Constable is not empowered to conduct investigation and only the officers in the rank of ASI or above, can conduct the investigation of cognizable offence. It is clear from Section 157 Cr.PC. and Rule 6.1 of the Rajasthan Police Rules, 1965 that "Any police officer" may be deputed for spot investigation, to take measures for the discovery and arrest of the offender and for the purpose of



ascertaining that cognizable offence has been committed or not and if during investigation, it is found that cognizable offence has been committed then, investigation shall be conducted by the officer in charge of the police station or an assistant sub-inspector.



11. Thus, I am not in agreement with the observations made in the case of Kera & Ors (supra) that police officials below the rank of ASI that is to say Head Constables are empowered to conduct investigation of a case involving cognizable offence(s) in view of Section 157 Cr.P.C. read with Rule 6.1 of the Rajasthan Police Rules, 1961.

12. While expressing my disagreement to the observations made in the case of Kera & Ors. (supra), it would be relevant to refer Hon'ble Supreme Court judgment in U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj reported in (2007) 2 SCC 138; (Manu/SC/8775/2006) wherein it was observed as under:-

*"26. Judicial Discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity."*



13. Thus, while keeping judicial discipline and decorum, I express my disagreement with the observation made by learned Coordinate Bench in the case of Kera & Ors. (supra) that investigation of a cognizable offence can be conducted by an officer below the rank of ASI and there is neither any illegality nor any irregularity committed by the Head Constables when they investigated the cases under the orders given to them by the officers Incharge of their respective Police Stations under Section 157(1) of Cr.P.C.

14. I therefore, think fit and proper that the issue raised in this misc. petition should be decided by a Division Bench or by a Larger Bench. I therefore, direct the Registrar (Judicial), Rajasthan High Court, Jaipur Bench to place the matter before Hon'ble the Chief Justice for constituting an appropriate Bench to decide the following question:-

"Whether an officer below the rank of ASI of Police, can conduct investigation of a case involving cognizable offence(s) and if he is not empowered to conduct investigation in such cases, then what would be the consequences of the investigation conducted by such officer ?

15. The file be put up before Hon'ble the Chief Justice for constituting the appropriate bench for authoritative pronouncement on the question formulated above.

(ANIL KUMAR UPMAN),J

Sudhir Asopa/