

GIRRAJ PRASAD MEENA

v.

STATE OF RAJASTHAN & ORS.  
(Criminal Appeal No. 1547 of 2013)

SEPTEMBER 30, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

*Code of Criminal Procedure, 1973:*

*s.252 and Chapter XXI-A - FIR u/s. 365 IPC - Alleging offence of kidnapping against 7 persons - Police filed charge-sheet u/s.323 and 343 r/w. s.34 IPC only against two accused - Both the accused filed application pleading guilty for the offences charged - Trial court without notice to the victim convicted the accused u/ss.323 and 343 r/w. s.34 IPC and concluded the trial same day - Application u/s. 482 by the appellant dismissed by High Court - Held: Order of trial court stands vitiated as it proceeded not only in great haste but adopted a procedure not known in law - The Court was obliged to put the victim to notice before extending the benefit to the accused persons.*

*s. 216 - Finality of charges - Filing of charge-sheet and taking cognizance has nothing to do with finality of charges, as the charges can be altered, amended, changed and added at any stage upto the stage of conviction.*

*Probation of Offenders Act, 1958 - s.12 - Conviction of accused u/ss. 323 and 343 r/w. s.34 IPC, on their having pleaded guilty - Further held that conviction would not affect their Government service - Held: Trial court had no competence to make any observation having civil consequences.*

**Pursuant to order u/s. 156(3) Cr.P.C. for investigation,**

A FIR u/s. 365 IPC was lodged, alleging that appellant was kidnapped by the private respondents alongwith 5 other accused. Police, after completing the investigation, filed charge-sheet against only two accused (private respondents) u/ss. 323 and 343 r/w Section 34 IPC. Both the accused-respondents filed an application pleading guilty for the offences u/ss. 323 and 343 IPC, before the statements of the witnesses were recorded. The trial court entertained the application forth with and concluded the trial immediately convicting the accused u/ss. 323 and 343 r/w Section 34 IPC, without issuing notice to the appellant. The accused were further granted benefit of provisions of s.12 of Probation of the Offenders Act, 1958, holding that the order passed in the criminal case, shall not have any adverse affect on the Government service of the accused persons. Appellant challenged the order of trial court by filing application u/ s. 482 Cr.P.C. High Court dismissed the application holding that the appellant had not challenged the order taking cognizance nor any objection was raised when charges were read over to the accused. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The appellant has been raising the grievance from the very beginning that the police has not been investigating the case properly and for that purpose, he had also approached the High Court by filing Writ Petition, wherein several directions had been issued by the Division Bench of the High Court to the Director General of Police for a fair investigation. In the statement of the appellant recorded under Section 164 Cr.P.C., appellant gave a full version as to how he had been kidnapped and illegally detained. Appellant named 7 persons and serious allegations of criminal intimidation, threats, terrorising and causing physical harm had been

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levelled. The police after concluding the investigation filed a charge sheet only against the two accused and, that too, only for the offences punishable under Sections 323 and 343 IPC. [Para 7] [401-C-F]

1.2. Had the trial court applied its mind to the material collected during investigation and particularly the statement recorded under Section 164 Cr.P.C., the charges could have been framed also under Section 365 IPC. In that case, the Gram Nyayalaya would have no jurisdiction to deal with the matter as the maximum sentence for that offence is 7 years imprisonment with fine, and the Magistrate in that situation, was bound to commit the matter to the Sessions court. Further, before the statements of the witnesses could be recorded, the private respondents filed an application admitting their guilt. Had the statements of the witnesses been recorded, perhaps the court could have issued summons to other accused under Section 319 Cr.P.C. or charges could have been amended/alterd/modified under Section 216 Cr.P.C. More so, at that stage, the appellant was not heard as no notice had been issued to him. The trial court proceeded not only in great haste, but adopted a procedure not known in law, and the judgment and order of the trial court therefore stands vitiated. [Paras 8 and 9] [401-G-H; 402-A-C]

1.3. The High Court rejected the application under Section 482 Cr.P.C. filed by the appellant only on the ground that the appellant neither challenged the order of taking cognizance nor raised any objection at the time of reading over of the charges to the accused. The High Court failed to appreciate that before the statement of the appellant or any other witness could be recorded, the trial court disposed off the matter on the date when the application itself had been submitted admitting the guilt. Even otherwise if the trial court wanted to entertain any issue of plea bargaining under Chapter XXI-A, inserted

A w.e.f. 5.7.2006, then too the court was obliged thereunder to put the victim to notice before extending any such benefits that have been given in the present case. The procedure therefore appears to have been clearly violated. Therefore, in the facts and circumstances of the case, the appellant had no opportunity to raise any grievance before the appropriate forum. [Para 13] [404-B-E]

C 1.4 Filing of charge sheet and taking cognizance has nothing to do with the finality of charges, as charges framed after the cognizance is taken by the court, can be altered/amended/changed and any charge can be added at any stage upto the stage of conviction in view of the provisions of Section 216 Cr.P.C. The only legal requirement is that, in case the trial court exercises its power under Sections 228/251 Cr.P.C., the accused is entitled to an opportunity of show-cause/hearing as required under the provisions of Section 217 Cr. P.C. [Para 6] [400-H; 401-A-B]

E *Umesh Kumar vs. State of A.P.* JT 2013 (12) SC 213: 2013 (10) SCC 591 - relied on.

F 2. The trial court had no competence to make any observation having civil consequences so far as the private respondents are concerned. Section 12 of the Probation of Offenders Act, 1958 does not take away the effect of conviction for the purpose of service also. [Paras 11 and 13] [402-G; 404-B]

G *State of U.P. vs. Ranjit Singh* AIR 1999 SC 1201: 1999 (1) SCR 786; *Shankar Dass vs. Union of India and Anr.* AIR 1985 SC 772: 1985 (3) SCR 163; *Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank* (2010) 8 SCC 573: 2010 (9) SCR 796; *Aitha Chander Rao vs. State of A.P.* 1981 Supp SCC 17; *Harichand vs. Director of School Education* AIR 1998 SC 788: 1998 (1) SCR 143; *Divisional Personnel Officer, Southern Railway and Anr. vs. T.R. Chellappan* AIR

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**1975 SC 2216; 1976 (1) SCR 783; *Trikha Ram vs. V.K. Seth and Anr.* AIR 1988 SC 285; 1987 Suppl. SCC 39; *Karamjit Singh vs. State of Punjab (2009) 7 SCC 178* - relied on.** A

**Case Law Reference:**

<b>2013 (10) SCC 591</b>	<b>relied on</b>	<b>Para 6</b>	<b>B</b>
<b>1999 (1) SCR 786</b>	<b>relied on</b>	<b>Para 10</b>	
<b>1985 (3) SCR 163</b>	<b>relied on</b>	<b>Para 11</b>	
<b>2010 (9) SCR 796</b>	<b>relied on</b>	<b>Para 12</b>	<b>C</b>
<b>1981 Suppl SCC 17</b>	<b>relied on</b>	<b>Para 12</b>	
<b>1998 (1) SCR 143</b>	<b>relied on</b>	<b>Para 12</b>	
<b>1976 (1) SCR 783</b>	<b>relied on</b>	<b>Para 12</b>	<b>D</b>
<b>1987 Suppl. SCC 39</b>	<b>relied on</b>	<b>Para 12</b>	
<b>(2009) 7 SCC 178</b>	<b>relied on</b>	<b>Para 12</b>	

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1547 of 2013.** E

**From the Judgment and Order dated 23.04.2012 of the  
High Court of Judicature for Rajasthan Bench at Jaipur in S.B.  
Criminal Misc. Petition No. 1260 of 2012.**

**H.D. Thanvi, Abhishek Gupta, Preeti Thanvi, Sarad Kumar  
Singhania for the Appellant.** F

**Nilofar Qureshi, Rehnuma, Vivek Singh, Pragati Neekhra  
for the Respondents.**

**The Judgment of the Court was delivered by** G

**DR. B.S. CHAUHAN, J. 1. This appeal has been preferred  
against the impugned judgment and order dated 23.4.2012  
passed by the High Court of Judicature of Rajasthan (Jaipur  
Bench) in S.B. Criminal Misc. Petition No. 1260 of 2012, by** H

- A which the High Court rejected the application filed by the appellant under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for setting aside the judgment and order dated 15.7.2011 passed by the Judge, Gram Nyayalaya, Gangapur City, District Sawai Madhopur, Rajasthan, in Case No. 269 of 2011, whereby the trial court has allowed the application of the respondents-accused for pleading guilty for the offences punishable under Sections 323 and 343 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and has further given them the benefit of Section 12 of the Probation of the Offenders Act, 1958, (hereinafter referred to as the 'Act 1958'), in the case arising out of FIR No. 115 of 2009 lodged at Police Station Wazirpur under Section 365 IPC.

D 2. Facts and circumstances giving rise to this appeal are that:

E A. The learned Magistrate passed an order under Section 156 (3) Cr.P.C. for the investigation whereunder FIR No. 115 of 2009 under Section 365 IPC was lodged on the complaint filed by one Kamlesh Meena, who is brother-in-law of the appellant, alleging that the appellant had been kidnapped by the private respondents alongwith other accused when he was returning from the school duty as a teacher.

F B. Police investigated the matter, located the appellant from village Jeevli on 4.7.2009 and recorded the statements of various persons under Section 161 Cr.P.C, and the statement of the appellant was recorded under Section 164 Cr.P.C. After completing the investigation, the police filed a charge sheet dated 4.8.2010 against the accused - namely G private respondents only for offences punishable under Sections 323, 343 read with Section 34 IPC.

H C. After filing of the charge sheet, the trial commenced. On 3.1.2011, the court ordered the presence of the witnesses for recording their statements on 9.6.2011. However on the said

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date, the summons were issued to three witnesses, including the appellant for recording their evidence on 7.7.2011. But on the date so fixed, the trial could not proceed.

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D. On 15.7.2011, both the accused-respondents appeared before the learned trial court and filed an application pleading guilty for the offences under Sections 323 and 343 IPC. The said application was entertained forthwith and the learned trial court concluded the trial on that day itself, without issuing notice to the appellant, convicting the respondents under Sections 323 and 343 IPC and imposing a fine of Rs.500/-, and further granting them the benefit of provisions of Sections 3 & 12 of the Act 1958. The learned Magistrate further held that the order passed in criminal case herein shall not have any adverse affect on the government service of the accused persons.

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E. Aggrieved, the appellant challenged the said judgment and order dated 15.7.2011 before the High Court on various grounds including that the court below had committed an error in not taking into consideration the statement of the appellant under Section 164 Cr.P.C., wherein serious allegations had been made against the accused persons and others particularly that the appellant was kidnapped and illegally detained from 29.6.2009 to 4.7.2009; terrorising and threatening him that his hand and legs would be chopped of; abusing the complainant persistently. The case was disposed off hastily in one day without notice to the appellant. More so, the court below had no right to make the observation that the order of conviction would not adversely affect the services of the respondents-accused.

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F. The High Court dismissed the said application vide order dated 23.4.2012 on the ground that the appellant has not challenged the order taking cognizance nor any objection was raised when charges were read over to the accused and the respondents-accused had been convicted on their pleading guilty regarding the aforesaid offences. The High Court held that there was no obligation in law to hear the appellant or any other

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A witness at this stage and the trial court was right in passing the impugned order.

Hence, this appeal.

3. Shri H.D. Thanvi, learned counsel appearing on behalf of the appellant, has raised a large number of issues and insisted that the trial court had no right to make any observation that the conviction could not have adverse affect on the service of the respondents. More so, the courts below had committed an error in exceeding the scope of the provisions of Section 12 of the Act 1958. The trial stood concluded without framing the charges, without issuing notice to the appellant.

4. On the other hand, Ms. Nilofar Qureshi, learned counsel appearing on behalf of the private respondents, has opposed the appeal contending that the judgment and order impugned is passed in consonance with law and does not require any interference. In fact, appellant is the father of son-in-law of respondent no.2-accused Kirodi Lal Meena. Respondent's daughter Hemlata had been ill-treated by the appellant and his family. There had been various civil and criminal cases between the parties and the present case is just a counter blast to such proceedings.

Shri Vivek Singh, learned Standing counsel appearing on behalf of the State of Rajasthan, has supported the case of the respondents-accused contending that the orders of the courts below are in consonance with the statutory provisions and once a charge sheet is filed, the charges become final, and as the charges so framed were not so serious, the benefit of Act 1958 has rightly been granted to the private respondents. Thus, the appeal is liable to be rejected.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Filing of charge sheet and taking cognizance has nothing to do with the finality of charges, as charges framed



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after the cognizance is taken by the court, can be altered/  
amended/changed and any charge can be added at any stage  
upto the stage of conviction in view of the provisions of Section  
216 Cr.P.C. The only legal requirement is that, in case the trial  
court exercises its power under Sections 228/251 Cr.P.C., the  
accused is entitled to an opportunity of show-cause/hearing as  
required under the provisions of Section 217 Cr. P.C. (Vide:  
*Umesh Kumar v. State of A.P.*, JT 2013 (12) SC 213).

7. In fact, the appellant has been raising the grievance from  
the very beginning that the police has not been investigating  
the case properly and for that purpose, he had also approached  
the High Court by filing Writ Petition No. 14272 of 2009, wherein  
several directions had been issued by the Division Bench of  
the High Court of Rajasthan to the Director General of Police  
for a fair investigation vide orders dated 10.2.2010 and  
11.8.2010. In the statement of the appellant recorded under  
Section 164 Cr.P.C. before the learned magistrate, appellant  
has given a full version as to how he had been kidnapped while  
returning from school duty and forcibly lifted by the private  
respondents and five others in a Innova Car and was illegally  
detained from 29.6.2009 till 4.7.2009 when he was located by  
the police. Appellant named 7 persons and serious allegations  
of criminal intimidation, threats, terrorising and causing physical  
harm had been levelled. The police after concluding the  
investigation filed a charge sheet only against the two accused  
and, that too, only for the offences punishable under Sections  
323 and 343 IPC.

8. Had the trial court applied its mind to the material  
collected during investigation and particularly the statement  
recorded under Section 164 Cr.P.C., the charges could have  
been framed also under Section 365 IPC. In that case, the  
Gram Nyayalaya would have no jurisdiction to deal with the  
matter as the maximum sentence for that offence is 7 years  
imprisonment with fine, and the Magistrate in that situation, was  
bound to commit the matter to the Sessions court. Further,

A before the statements of the witnesses could be recorded, the private respondents filed an application admitting their guilt. Had the statements of the witnesses been recorded, perhaps the court could have issued summons to other accused under Section 319 Cr.P.C. or charges could have been amended/  
 B altered/modified under Section 216 Cr.P.C. More so, at that stage, the appellant was not heard as no notice had been issued to him. The trial court proceeded in great haste and disposed off the matter on 15.7.2011 the same date when the application was filed by the private respondents.

C 9. On the said facts, we are of the considered opinion that the learned trial court proceeded not only in great haste, but adopted a procedure not known in law, and the judgment and order of the trial court therefore stands vitiated.

D 10. In *State of U.P. v. Ranjit Singh*, AIR 1999 SC 1201, this Court has held that the High Court, while deciding a criminal case and giving the benefit of the U.P. First Offenders' Probation Act, 1938, or similar enactment, has no competence to issue any direction that the accused shall not suffer any civil  
 E consequences. The Court has held as under:

F *"5. We also fail to understand how the High Court while deciding a criminal case, can direct that the accused must be deemed to have been in continuous service without break and, therefore, he should be paid his full pay and [dearness allowance] during the period of his suspension. This direction and observation is wholly without jurisdiction...."*(Emphasis added)

G 11. In *Shankar Dass v. Union of India & Anr.*, AIR 1985 SC 772, this Court has held that the order of dismissal from service, consequent upon a conviction, is not a disqualification within the meaning of Section 12 of the Act 1958 observing as under:

H *"4. ... There are statutes which provide that persons who*

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are convicted for certain offences shall incur certain A  
disqualifications. For example, Chapter III of the  
Representation of the People Act, 1951, entitled  
'Disqualifications for membership of Parliament and  
State Legislatures' and Chapter IV entitled B  
'Disqualifications for Voting' contain provisions which  
disqualify persons convicted of certain charges from  
being members of legislatures or from voting at elections  
to legislatures. That is the sense in which the word  
'disqualification' is used in Section 12 of the Probation  
of Offenders Act. [Therefore, it is not possible to accept C  
the reasoning of the High Court that Section 12 of the  
1958 Act takes away the effect of conviction for the  
purpose of service also.]

12. The provision of the Act 1958 has been dealt with by D  
this Court elaborately in *Sushil Kumar Singhal v. Regional  
Manager, Punjab National Bank*, (2010) 8 SCC 573, wherein  
after considering the judgments of this court in *Aitha Chander  
Rao v. State of A.P.*, 1981 Supp SCC 17; *Harichand v.  
Director of School Education*, AIR 1998 SC 788; *Divisional  
Personnel Officer, Southern Railway & Anr. v. T.R. E  
Chellappan*, AIR 1975 SC 2216; and *Trikha Ram v. V.K. Seth  
& Anr.*, AIR 1988 SC 285, the court held as under:

"In view of the above, the law on the issue can be F  
summarised to the effect that the conviction of an  
employee in an offence permits the disciplinary authority  
to initiate disciplinary proceedings against the employee  
or to take appropriate steps for his dismissal/removal  
only on the basis of his conviction. The word  
"disqualification"-contained in Section 12 of the 1958 Act G  
refers to a disqualification provided in other statutes, as  
explained by this Court in the abovereferred cases, and  
the employee cannot claim a right to continue in service  
merely on the ground that he had been given the benefit  
of probation under the 1958 Act."

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A (See also: *Karamjit Singh v. State of Punjab*, (2009) 7 SCC 178).

B 13. Thus, we are also of the considered opinion that the trial court had no competence to make any observation having civil consequences so far as the private respondents are concerned.

C The High Court rejected the application under Section 482 Cr.P.C. filed by the appellant only on the ground that the appellant neither challenged the order of taking cognizance nor raised any objection at the time of reading over of the charges to the accused. The High Court failed to appreciate that before the statement of the appellant or any other witness could be recorded, the trial court disposed off the matter on the date when the application itself had been submitted admitting the guilt. Even otherwise if the trial court wanted to entertain any issue of plea bargaining under Chapter XXI-A, inserted w.e.f. 5.7.2006, then too the court was obliged thereunder to put the victim to notice before extending any such benefits that have been given in the present case. The procedure therefore appears to have been clearly violated. Therefore, in the facts and circumstances of the case, the appellant had no opportunity to raise any grievance before the appropriate forum.

F 14. In view of the above, the appeal succeeds and is allowed. The judgment and order of the trial court dated 15.7.2011 as well as of the High Court dated 23.4.2012 are set aside. The matter is remitted to the trial court to be decided afresh in accordance with law. As the matter is very old, we request the trial court to conclude the trial afresh adopting the procedure as explained hereinabove expeditiously, preferably within a period of six months from the date of filing certified copy of the order before it.

Before parting with the case, we would clarify that we have expressed no opinion on the merits of the ensuing trial.

H K.K.T.:

Appeal allowed.