



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 108/2016

Champa Lal Ojha S/o late Shri Prabhu Ram Ojha, R/o Napasar,
District Bikaner.

-----Petitioner

Versus

1. State of Rajasthan
2. Satish S/o Jai Narayan Ojha, R/o Napasar, District Bikaner

-----Respondent

For Petitioner(s) : Mr. Nishant Bora
For Respondent(s) : Mr. Vikram Rajpurohit, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

11/02/2025

1. By way of filing the instant misc. petition a challenge has made to the order dated 11.02.2013 passed by learned Magistrate whereby he took cognizance of the offence as well as the order dated 15.05.2015 passed in revisional jurisdiction who affirmed the order taking cognizance. I have heard learned counsel for the petitioner and public prosecutor. None present for the respondent despite service.

2. Bereft of elaborate details, the fact necessary for disposal of the petition would be that an FIR No.9/1994 got lodged at Police Station Napasar for offence under Section 420, 467 & 468 IPC alleging interalia that a plot belonging to Sugni Devi was sold to Smt. Saraswati Devi. The Sarpanch issued a NOC, took Rs.4,800/- then issued a receipt and sold it to Smt. Saraswati. Allegations of giving a fake receipt were also leveled.



3. Interestingly, one FIR No.02/1994 dated 04.01.1994 was also lodged in relation to the same transaction but that was lodged at the instance of son of Smt. Saraswati. In FIR No.9/1994 after investigation, police filed a negative final report No.13/2003 avvering therein that no offence was disclosed against the petitioner. Upon making protest by the complainant and hearing the learned public prosecutor, learned trial court took cognizance of the offence and issued process against the petitioner vide order dated 11.02.2013.

4. The fact and allegations leveled in FIR No.02/1994 and the FIR No.09/1994 in which offence are exactly the same and are in relation to a transaction which took place on 19.03.1990 whereby a plot was sold to Smt. Saraswati which belonged to Smt. Sugni Devi. This Court feels that the learned Magistrate has not taken care of settled legal proposition that for the same set of accusation, two cases cannot run simultaneously. In the case of ***T.T. Antony Vs. State of Kerala and Ors., 2001 (6) SCC 181*** Hon'ble the Supreme Court has expounded that where the truth, the substance, nature of allegation and transaction is the same then lodging a second FIR cannot be permitted. Having not considered the above issue, the learned trial court has indeed committed an error of law.

5. The fact that after investigation, it was reported by the investigating agency that no case was found against the petitioner has not been dealt with by the learned Magistrate before passing an order of cognizance. It is well settled principle of law that whenever a Magistrate is supposed to take cognizance of the offence on a negative final report, it is imperative upon him to



take note of the grounds mentioned in the negative final report. In the order under assail no such task has been undertaken by the learned Magistrate and I am of the view that the learned Magistrate was supposed to show his disagreement with the police report before taking cognizance of offence and issuance of process. Examining further, this Court feels that the learned Court of Revision has failed to exercise its revisional jurisdiction. He was expected to examine the legality and correctness of the order passed by learned Magistrate but he did not bother to ponder over the question of law rather lean to concur with the opinion of the Magistrate. I am of the view that both the orders are patently illegal and passed after misappreciation of legal and factual aspect of the matter and therefore, the same are not sustainable.

6. Accordingly, the instant misc. petition is allowed.

7. Both the orders dated 15.05.2015 passed by the learned Sessions Judge, Bikaner in Criminal Revision Petition No.275/2014 and the order dated 11.02.2013 passed by learned Judicial Magistrate in Criminal Case No.07/02 are hereby quashed and set aside. The petitioner is exonerated from the charges.

8. Stay petition is disposed of.

(FARJAND ALI),J

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