

R. N. Chatterji

Vs

Havildar Kuer Singh

Criminal Appeal No. 89 of 1967

(A. N. Ray, I. D. Dua JJ)

19.02.1970

JUDGMENT

RAY, J. -

1. This is an appeal from the judgment, dated November 18, 1967 of the High Court at Patna.
2. The question for consideration is whether a Sub-Divisional Magistrate could after submission of a final report by the police direct the police on what is described as a protest petition having been filed by the opposite party to submit a charge-sheet.
3. The facts in short are that on account of an occurrence at the platform of Muzaffarpur Railway Station on March 24, 1964 two cases were instituted before the Railway Police.
4. One of these was instituted by the appellant against the respondent and the other was instituted by the respondent against the appellant.
5. The appellant in the case instituted by him alleged that the respondent wanted to entrain two of his men in an unauthorised way in one of the compartments and the appellant objected to the same, whereupon the respondent pulled the appellant on the platform and assaulted him. A charge-sheet was submitted against the respondent in that case.
6. The present appeal relates to the case instituted by the respondent against the appellant on these allegations. The appellant at the material time was a Travelling Ticket Examiner while the respondent was a police havildar. The respondent alleged that while he was on duty at the railway platform on the relevant date, he found a few smugglers were travelling in a particular compartment. The respondent wanted to enter the compartment. The appellant pushed him back. The appellant and three other Ticket Examiners assaulted the respondent.
7. The Deputy Superintendent of Railway Police who carried on the investigation submitted a report to the Deputy Inspector-General (C.I.D.), Crime Branch and Railways under whom the investigation was carried on, to the effect that there was insufficient evidence against the appellant and further that the respondent's case against the appellant was a palpably false story about the 'smugglers' and the case was therefore to be returned as "F.R.T. insufficient evidence".
8. On April 2, 1964 the respondent filed a "protest petition" against the final report of the police. On September 1, 1964 the Sub-Divisional Magistrate called for the case diary, supervision and progress report of the police case as prayed for by the respondent. On November 14, 1964 the Sub-Divisional

Magistrate passed an order directing the police to submit the charge-sheet under Section 353/379 of the Indian Penal Code.

9. The appellant went up before the Sessions Judge of Muzaffarpur in revision against the order of the Sub-Divisional Magistrate and asked for a reference to the High Court. The appellant's application was rejected by the Sessions Judge. Thereafter, the appellant filed an application in revision before the High Court at Patna. The appellant contended that the Sub-Divisional Magistrate acted without jurisdiction in asking the police to submit the charge-sheet and therefore the order dated November 14, 1964 passed by the Sub-Divisional Magistrate should be quashed.

10. The High Court at Patna held that calling for a charge-sheet by a Magistrate means taking cognizance of the case and then summoning the accused through the police, and, therefore, it did not amount to interference with the police investigation. The High Court at Patna referred to two divergent views expressed by the High Courts. The views of High Courts at Calcutta and Madras are that the Magistrate has no such power whereas the views of the High Courts at Bombay and Patna are to the contrary. The High Court at Patna did not see any reason to depart from the view of that Court.

11. It has been emphasised in several decisions that it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of enquiry. (See *Emperor v. Nazir Ahmed* (71 IA 203)).

12. This Court in the case of *H. N. Rishbud v. State of Delhi*, ((1955) 1 SCR 1150) said that investigation is primarily an ascertainment of facts and circumstances of a case and the proceedings in an investigation are conducted by the police officer. Chapter XIV of the Criminal Procedure Code relates to information to the police and their powers to investigate. The investigation carried on by the police results either in release of accused when evidence is deficient or sending the case to the Magistrate when the evidence is sufficient. It should also be remembered that when a person is released by the police because there is not sufficient evidence to justify the forwarding of the accused to a magistrate a bond is taken to the effect that if and when so required he will appear before a magistrate empowered to take cognizance of the offence on a police report.

13. The provisions of the Criminal Procedure Code do not empower the magistrate to ask the police to submit a charge-sheet. If, however, the magistrate is of opinion that the report submitted by the police requires further investigation the magistrate may order investigation under Section 156 (3) of the Criminal Procedure Code. Directing a further investigation is entirely different from asking the police to submit a charge-sheet. Furthermore, Section 190 (1) (c) of the Criminal Procedure Code empowers the magistrate to take cognizance of an offence notwithstanding a contrary opinion of the police.

14. These provisions in the Criminal Procedure Code, to which I have referred, indicate two broad features : first, the formation of an opinion in an investigation is left to the police; and, secondly, the magistrate exercises judicial functions in dealing with the report submitted by the police.

15. This question came up for consideration in the case of *Abhinandan Jha and Others v. Dinesh Mishra* (AIR 1968 SC 117) where it was held that it was for the police to form their opinion and the final step in the investigation was to be taken only by the police and no other authority. As to the powers of the magistrate it is said that he cannot call upon the police to submit a charge-sheet when they have sent a report, that there is no case for sending up the accused for trial because that would

be dictating to the police to form opinion in accordance with that of the magistrate. Such a course is not desirable. That is why the magistrate can call for a further investigation.

16. The decision of the High Court is erroneous. The order of the Sub-Divisional Magistrate, dated November 14, 1964 is quashed. The appeal is allowed.

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