Devarapalli Lakshminarayana Reddy and Others

Vs

V. Narayana Reddy and Others

Criminal Appeal No. 219 of 1975

(R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

04.05.1976

JUDGMENT

SARKARIA, J. -

1. Whether in view of clause (a) of the first proviso to Section 202(1) of the Code of Criminal Procedure, 1973, a magistrate who receives a complaint, disclosing an offence exclusively triable by the court of session, is debarred from sending the same to the police for investigation under Section 156(3) of the Code, is the short question that falls to be determined in this appeal by special leave. The question arises in these circumstances.

2. Respondent No. 1 herein made a complaint on July 26, 1975 before the Judicial Magistrate, First Class, Dharmavaram, against the appellants herein, alleging that on account of factions existing in village Thippapalli the appellants formed themselves into an unlawful assembly, armed with deadly weapons, such as axes, spears and sticks, on the night of June 20, 1975 and entered the houses of several persons belonging to the opposite party, attacked the inmates and forcibly took away jewels, paddy, groundnuts and other valuables of the total value of two lakhs of rupees. It was further alleged that the miscreants thereafter went to the fields and removed parts of machinery worth over Rs. 40,000, installed at the wells of their enemies. On these facts it was alleged that the accused had committed offences under Sections 147, 148, 149, 307, 395, 448, 378 and 342 of the Penal Code. The offences under Sections 307 and 395 are exclusively triable by the court of session. The magistrate on receiving the complaint forwarded it to the police for investigation with this endorsement :

> Forwarded under Section 156(3), Cr. Procedure Code to the Inspector of Police, Dharmavaram for Investigation and report on or before August 5, 1975.

3. The appellants moved the High Court of Andhra Pradesh by a petition under Section 482 of the Code of Criminal Procedure, 1973 (which corresponds to Sections 561-A of the old Code) praying that the order passed by the magistrate be quashed inasmuch as "it was illegal, unjust and gravely prejudicial to the petitioners". The learned Judge of the High Court, who heard the petition, dismissed it by an order dated October 20, 1975.

4. Hence this appeal.

5. Mr. Bassi Reddy, appearing for the appellants, contends that the High Court has failed to appreciate the true effect of the changes wrought by the Code of 1973. According to the Counsel, under the new Code, if a complaint discloses an offence triable exclusively by a court of session, the

magistrate is bound to proceed with that complaint himself, before issuing process to the accused. The point pressed into argument is that clause (a) of the first proviso to Section 202(1) of the new Code peremptorily prohibits the magistrate to direct investigation of such a complaint by the police or any other person. The cases, Gopal Das v. State of Assam ((AIR) 1961 SC 986 : (1961) 2 Cri LJ 39); Jamuna Singh Bhadai Shah ((1964) 5 SCR 37 : AIR 1964 SC 1541 (1964) 2 Cri LJ 468) referred to by the High Court are sought to be distinguished on the ground that they were decided under he old Code, Section 202 of which did not provide for any such ban as has been expressly enacted in the first proviso to Section 202 of the new Code.

6. As against this, Mr. Rama Reddy, whose arguments have been adopted by Mr. Chaudhary, submits that the powers conferred on the magistrate under Section 156(3) of the Code are independent of his power to send the case for investigation under Section 202 of the Code; that the power under Section 156(3) can be invoked at a stage when the magistrate has not taken cognizance of the case, while Section 202 comes into operation after the magistrate starts dealing with the complaint in accordance with the provisions of Chapter XV. It is urged that since in the instant case, the magistrate had sent the complaint for police investigation, without taking such cognizance, Section 202, including the bar enacted therein was not attracted. In the alternative, it is submitted that the ban in the first proviso to Section 202, becomes operative only when the magistrate after applying his mind to the allegations in the complaint and the other material, including the statement of the complaint and his witnesses, if any, recorded under Section 200, is prima facie satisfied that the offence complained of is triable exclusively by the court of session. The point sought to be made out is that a mere allegation in the complaint that the offence committed is one exclusively triable by the court of session, does not oust the jurisdiction of the magistrate to get the case investigated by the police or other person. The word "appears" according to Counsel, imports a pre-requisite or condition precedent, the existence of which must be objectively and judicially established before the prohibition in the first proviso to Section 202 becomes operative. It is added that in the instant case, the existence of this condition precedent was not, and indeed could not be established.

7. It appears to us that this appeal can be disposed of on the first ground canvassed by Mr. Ram Reddy.

8. Before dealing with the contention raised before us, it will be appropriate to notice the relevant provisions of the old and the new Code.

9. Section 156 of the Code of 1973 reads thus :

> 156. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
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> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which officer was not empowered under this section to investigate.
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> (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.

10. This provision is substantially the same as Section 156 of the Code of 1898, excepting that in

sub-section (1), for the words "Chapter XV relating to the place of inquiry or trial", the words "Chapter XIII" have been substituted.

11. Section 200 and 202 of the 1898 Code and the 1973 Code, placed in juxtaposition, read as follows :

#	1898 Code	1973 Code
	Section 200 : A Magistrate taking cognizance of an offence on complaint	Section 200 : A magistrate taking cognizance of an offence on complaint
	shall at once examine upon oath the complainant	the complaint and the witnesses present, if any,
	and the witness present, if any,	present, if any, upon oath and and the substance of such examination shall
	the substance of the examination be reduced to writing and shall be	shall be reduced to writing and singed by the complainant and the
	shall be signed by the complaint witnesses, and also by the	and the witnesses, and also by Magistrate :
	the Magistrate : Provided as follows : Provide that, when the complaint is made in writing, the Magistrate	(a) when the complaint is made need not examine the complainant
	in writing, nothing herein and the witnesses -contained shall be deemed to require	a Magistrate to examine the (a) if a public servant acting
	complainant before transferring or purporting to act in the discharge	the case under Section 192; of his official duties or a court has made the complainant
	(aa) when the complaint is made and the witnesses -in writing, nothing herein contained	shall be deemed to require the (b) if the Magistrate makes over
	examination of a complainant in any the case for inquiry or trial	case in which the complaint has been to another Magistrate under
	made by a Court or by a public Section 192 :	servant acting or purporting to
	act in the discharge of his Provided further that if the	official duties; Magistrate makes over the case to another Magistrate makes over
	(b) where the Magistrate is the case to another Magistrate	Presidency Magistrate, such under Section 192 after examining
	examination may be on oath or not the complaint and the	as the Magistrate in each witnesses, the latter Magistrate
	case thinks fit, and where the need not re-examine them.	complaint is made in writing need not be reduced to writing;
	but the Magistrate may, if he	thinks fit, before the matter of
	the complaint is brought before	him, require it to be reduced
	to writing;	(c) when the case has been
	transferred under Section 192 and	the Magistrate so transferring i
	has already examined the	complainant, the Magistrate to whom
	it is so transferred shall	not be bound to re-examine the
	complainant.	Section 202 : Postponement of issue
	Section 202 : Postponement of	of process. - (1) Any magistrate, on
	issue of Process. - (1) Any	receipt of a complaint of an offence
	Magistrate on receipt of a complaint	of which he is authorised to take
	of an offence which he is	cognizance, or which has been
	authorised to take cognizance or which	transferred to him under Section 192,
	has been made over to him	may, if he thinks fit, for reasons
	under Section 192 may, if he thinks	to be recorded in writing, postpone
	fit, postpone the issue of	the issue of process for compelling
	process against the accused, and	the attendance of the person
	either inquire into the case	complained against, and either enquire
	himself or direct an investigation	into the case himself or, if he is a
	to be made by a police	Magistrate other than a Magistrate of
	officer or by such other person	the third class direct an inquiry or
	as he thinks fit, for the	investigation to be made by any
	purpose of deciding whether or not	Magistrate subordinate to him, there is
	sufficient groundor by a police officer,	or by such for proceeding :
	other person as he thinks fit, for	the purpose of ascertaining the truth
	Provided that no such direction for	or falsehood of the complaint :
	investigation shall be made -	Provided that, save where the (a) where it

appears to thecomplaint has been made by a Magistrate that the offenceCourt, no such direction shall complained of is triable exclusivelybe made unless the complainant by the Court of Session; orhas been examined on oath underthe provision of Section 200. (b) where the complaint has not(2) If any inquiry or investigation been made by a Court, unless theunder this section is made complainant and the witnessesby a person not being a Magistrate present, if any) have beenor a Police Officer, such examined on oath under Section 200.person shall exercise all thepowers conferred by this Code on (2) In an inquiry under subsection (1),an officer incharge of a police station, the Magistrate may, if he thinks fit,except that he shall not have the take evidence of witnesses on oath :power to arrest without warrant. Provided that if it appears to(2A) Any Magistrate inquiring the Magistrate that the offenceinto a case under this section complained of is triable exclusivelymay, if he thinks fit, take by the Court of Session, heevidence of witnesses on oath. shall call upon the complainants to produce all his witnesses(3) This section applies also to and examine them on oath.the police in the towns ofCalcutta and Bombay. (3) If an investigation under subsection (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer incharge of a police station except the power to arrest without warrant.##

12. Before proceeding further, we may have a look at Section 190 of the new Code. This section is captioned "Cognizance of offences by Magistrates". This section, so far as it is material for our purpose, provides :

> Subject to the provision of this Chapter, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf may take cognizance of any offence -
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> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> #(2) * * * *##

13. It is well settled that when a magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with "must take cognizance". The word "may" gives a discretion to the magistrate in the matter. If on a reading of the complaint he finds that the allegation therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in inquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

> 14. This raises the incidental question : What is meant by "taking cognizance of an offence" by a magistrate within the contemplation of Section 190 ? This expression has not been defined in the Code. But from the scheme of the Code, the content and

> marginal heading of Section 190 and the caption of Chapter XIV under which Section 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the magistrate. Broadly speaking, when on receiving a complaint, the magistrate applies his mind for the purpose of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

15. This position of law has been explained in several cases by this Court, the latest being Nirmaljit Singh Hoon v. State of West Bengal ((1973) 3 SCC 753 : 1973 SCC (Cri) 521).

16. The position under the Code of 1898 with regard to the powers of a magistrate having jurisdiction, to send complaint disclosing a cognizable offence - whether or not triable exclusively by the court of session - to the police for investigation under Section 156(3), remains unchanged under the Code of 1973. The distinction between a police investigation ordered under Section 156(3) and the one directed under Section 202, has also been maintained under the new Code; but a rider has been clamped by the first proviso to Section 202(1) that if it appears to the magistrate that an offence triable exclusively by the court of session has been committed, he shall not make any direction for investigation.

17. Section 156(3) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading : "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct sphere at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the magistrate is in seisin of the case. That is to say in case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the magistrate in completing proceedings already instituted upon a complaint before him.

18. In the instant case the magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under Section 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200, Cr. P.C., which is the first step in the procedure prescribed under that chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by policed under Section 156.

19. This being the position, Section 202(1), first proviso was not attracted. Indeed, it is not necessary for the decision of this case to express any final opinion on the ambit and scope of the first proviso to Section 202(1) of the Code of 1973. Suffice it to say, the stage at which Section 202 could become operative was never reached in this case. We have therefore in keeping with the well established practice of the Court, decided only that much which was essential for the disposal of this appeal, and no more.

20. For the foregoing reasons, we answer the question posed, in the negative, and dismiss this appeal.

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