Hareram Satpathy

Vs

Tikaram Agarwala and Others

Criminal Appeal No. 551 of 1976

(Jaswant Singh, P. S. Kailasam JJ)

24.08.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by Special Leave which is directed against the Judgment and Order dated August 25, 1976 of the High Court of Orissa in Criminal Revision Nos. 344 and 365 of 1975 setting aside the order dated November 20, 1975 of the Sub-Divisional Magistrate, Balangir, directing issue of process against respondents 1 to 3, arises in the following circumstances.

2. On November 27, 1974 Parsuram Satpathy, brother of Hareram Satpathy, the appellant herein, who was a Journalist by profession and a staunch supporter of Bhartiya Lok Dal, sought the help and protection of the Officer-in-charge of the Police Station, Balangir, on the ground that he had learnt from B. Kramanda Bohidar, a member of the Congress Party, that there was a conspiracy to murder him. On the evening of November 29, 1974, the appellant made a report to the Officer-in-charge of the aforesaid Police Station, alleging therein that Premlal Suna, Parsanna Pal, Guna Ghasi, Jagyana Puruseth, Bighna Raj Misra, Jayanarayan Spirpathy, Bikram Bohidar and Tikaram Agarwala, members of Yuva Congress Party and political adversaries of his brother, Parsuram, had been openly declaring since the last 3 or 4 days that they would take the life of Parsuram and had been moving around his house in the Congress Jeep looking out for an opportunity to kill him (i.e. Parsuram). The report went on to say that at or about 7 p.m. of that day he saw Premlal Suna, Guna Ghasi, Dhobai Charanpodh, Jagyana Puruseth, Tikaram Agarwala, Artatran Singh Deo, Prasanna Kumar Pal and some others coming in a jeep from the side of Patita Pavan Academy and killing his brother by dashing the jeep against the cycle on which he was going on Dhobapara Road. On receipt of this report the police took up investigation of the case and on completion thereof submitted a charge-sheet against six persons viz. Premlal Suna, Jagyana Puruseth, Gunaidhi Banchhor Ghasi, Dhobai Podh, Prafulla Bhoi, and Sugyan Sandh on the allegation that they intentionally caused the death of Parsuram Satpathy on November 29, 1974 in the manner stated above. So far as the present respondents were concerned the police submitted a final report saying that from the investigation carried on by it no offence appeared to have been made out against them. As the police did not proceed against all the 13 persons mentioned in the aforesaid report made by him, the appellant filed a complaint in the Court of the Sub-Divisional Magistrate, Balangir, reiterating the allegations made by him against the aforesaid 13 persons including the respondents herein who did not figure as accused in the aforesaid police charge-sheet. After going through the statements made under Section 161 of the Cr.P.C. by the appellant and Bhibudananda Udgata, Harudananda Nanda and Sankar Tripathy and finding a prima facie case under Section 302 of the Indian Penal Code made out against the respondents, the Magistrate directed the issue of nonbailable warrants against them. Aggrieved by this order the respondents took the matter in revision to the High Court. A Single

Judge of the High Court after detailed and meticulous scrutiny of the aforesaid statements made by the appellant and others set aside the order of the Sub-Divisional Magistrate issuing process against the respondents, holding that there was a material on record to make out a prima facie case against the respondents and that the order of the Magistrate issuing process against the respondents was without jurisdiction. Dissatisfied with this order, the appellant has, as already stated, come up in appeal to this Court.

3. Two main questions arise for determination in this case, namely :

> (1) Whether, after submission of the final report by the police stating therein that there was not sufficient evidence to justify the forwarding of the respondents to him, it was open to the Sub-Divisional Magistrate, Balangir to add the respondents as accused in the case and issue process against them.
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> (2) Whether the High Court was justified in going into the merits of the case and interfering with the order of the Sub-Divisional Magistrate impleading the respondents as accused and issuing process against them in exercise of its powers under Section 482 of the Code of Criminal Procedure, 1973.

4. The first point is no longer res integra. It is squarely covered by the decision of this Court in Raghubans Dubey v. State of Bihar ((1967) 2 SCR 423 : AIR 1967 SC 1167 : (1967) 2 SCJ 427) where it was held as follows :

> In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

5. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi (1967 Supp SCR 123 : (1976) 3 SCC 736 : 1976 SCC (Cri) 507) this Court while laying down the categories of the cases in which an order of a Magistrate issuing process against the accused can be quashed observed :

> It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied where there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

6. To the same effect is the decision of this Court in Chandra Deo Singh v. Prokash Chandra Bose ((1964) 1 SCR 639, 648 : AIR 1963 SC 1430 : (1963) 2 Cri LJ 397) where after a full discussion of the matter it was held that at the time of taking a decision whether a process should issue against the accused or not what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant so as to justify the issue of process and commencement of proceedings against the accused, and not whether the evidence is sufficient to warrant his

conviction.

7. From the foregoing it is crystal clear that under Section 190 of the Code of Criminal Procedure the Magistrate takes cognizance of an offence made out in the police report or in the complaint and there is nothing like taking cognizance of the offenders at that stage. As to who actually the offenders involved in the case might have been has to be decided by the Magistrate after taking cognizance of the offence.

8. In the instant case the Sub-Divisional Magistrate took cognizance of the offence on the police report, and after taking cognizance of the offence and perusal of the record he appears to have satisfied himself that there were prima facie grounds for issuing process against the respondents. In so doing the Magistrate did not in our judgment exceed the power vested in him under law.

9. The first point is accordingly decided in the affirmative.

10. The second point does not present any difficulty. It is well settled that once the Magistrate has after satisfying himself prima facie that there is sufficient material for proceeding against the accused issued process against him, the High Court cannot go into the matter in exercise of its revisional jurisdiction which is very limited. The following observations made in Nagawwa v. Veeranna Shivalingappa Konjalgi (supra) and apposite in this connection : (SCC p. 741, para 5).

It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure.

11. Now as the Magistrate was restricted to finding out whether there was a prima facie case or not for proceeding against the accused and could not enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction was very limited the High Court could not in our opinion launch on a detailed and meticulous examination of the case on merits. As the High Court has clearly exceeded its jurisdiction in setting aside the order of the Sub-Divisional Magistrate, we cannot do otherwise than to allow the appeal. In the result the appeal succeeds and the judgment and order of the High Court is set aside.

12. Before parting with the case we wish to observe that the grievance of the respondents that there is no material to support the faked and cooked up story against them is taken care of [as held in Sanjay Gandhi v. Union of India ((1978) 2 SCC 39 : 1978 SCC (Cri) 172) to which one of us (Jaswant Singh, J.) was a party] by Section 227 of the Code of Criminal Procedure, 1973 under which it is open to the Court of Session on committal of the case to it to discharge the accused if upon consideration of the record of the case and documents submitted therewith and after hearing the submissions of the parties it considers that there is no sufficient ground for proceeding against the accused. The respondents would therefore be at liberty to invoke the provisions of Section 227

of the Code on the case being committed to the Court of Session.

13. As the learned Counsel appearing for the respondents has given an undertaking that he will cause the attendance of the respondents before the Sub-Divisional Magistrate, Balangir, on September 18, 1978, the nonbailable warrants issued against the respondents shall not be executed till that date.

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