Satya Narain Musadi and Others

Vs

State of Bihar

Criminal Appeal No. 272 of 1978

(D.A Desai, O. Chinnappa Reddy JJ)

17.09.1979

JUDGMENT

DESAI, J. –

1. Whether in view of the provision contained in Section 11 of the Essential Commodities Act, 1955, ('Act' for short), a court taking cognizance of any offence punishable thereunder, upon a police report is precluded from looking into the complaint or first information report filed before the court or that it must keep itself exclusively confined to the report submitted by the police, is a question raised in this appeal by special leave from a decision of the Division Bench of the Patna High Court. Incontrovertible facts are that one Mahesh Kant Jha, presumably an Executive Magistrate at Jamtara in Santhal Parganas District of Bihar State, after a raid and search of the residential house in possession of appellant 1, submitted a report to the Sub-Divisional Magistrate, Jamtara, complaining therein that appellant 1 contravened the provisions of the Bihar Foodgrains Dealers Licensing Order, 1967 and he may be proceeded against under Section 7 of the Essential Commodities Act, 1955. The Sub-Divisional Magistrate on receipt of this report made a cryptic order directing the report to be forwarded to the officer-in-charge of police station having jurisdiction in the area to take "legal action". On receipt of this report with the direction of the Sub-Divisional Magistrate the police officer, Jamtara registered an offence and commenced investigation and on completion thereof submitted a report under Section 173 of the Code of Criminal Procedure, 1973 ('Code' for short), to the Sub-Divisional Magistrate who had directed investigation in the matter. The Sub-Divisional Magistrate took cognizance of the offence on this report and transferred the case for disposal to Shri A. K. Sinha, Munsif Magistrate, First Class. The Munsif Magistrate recorded evidence of PW 1 Mahesh Kant Jha and on perusal of the evidence he was of the opinion that appellants 2 and 3 were also involved in the commission of the offence and took cognizance against them and directed the trial to commence de novo in presence of all the three appellants. The appellants thereupon moved the High Court under Section 482 CrPC invoking the inherent powers of the High Court to quash the prosecution on the only ground that the police report submitted by the investigating officer did not disclose any offence and the court was not competent to look into any other paper while taking cognizance of the offence under Section 190 of the Code read with Section 11 of the Act.

2. When the matter came up before the learned Single Judge of the Patna High Court, the learned Judge entertained a doubt in view of certain earlier decisions of the Patna High Court and a decision of this Court in Deo Karan Das Aggarwal v. State of Bihar (Criminal Appeal No. 38 of 1968, decided on November 26, 1968) whether while taking cognizance of an offence on a police on a police report under Section 190 of the Code, the Court can look into the first information report or the original complaint to fill in the lacuna, if any, in the police report, and accordingly referred the

matter to a Division Bench. The Division Bench was of the opinion that the doubt entertained by the learned Single Judge may have to be resolved in an appropriate case but on the facts found in the case no doubt can arise because Section 11 of the Act is fully complied with when Mahesh Kant Jha submitted his report to the Sub-Divisional Magistrate who took cognizance of it and directed investigation by the police in the matter.

3. Section 11 of the Act reads as under :

> 11. No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code.

4. The court is precluded from taking cognizance of any offence punishable under the Act except (i) on a report in writing of the facts constituting such offence; (ii) such report must be made by a person who is a public servant as defined in Section 21 of the Indian Penal Code.

5. Section 10-A of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure 1973 every offence punishable under the Act shall be cognizable which would imply that an officer-in-charge of police station on receipt of the information of such cognizable offence may without the order of a magistrate investigate into the offence according to the procedure prescribed in Chapter XII of the Code. On completion of the investigation the police officer shall submit a report to the magistrate empowered to take cognizance of the offence on a police report. This report has to be in the prescribed form and the details to be mentioned in the report are specified in Section 173(2). While submitting this report in connection with the offence to which Section 170 of the Code applies meaning thereby that a case in which such investigating officer has found sufficient evidence for a trial to be held by the court, it is incumbent upon such officer to forward to the magistrate along with his report (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and (b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

6. Section 190 provides for cognizance of an offence magistrate. The magistrate as described in Section 190(1) may take cognizance of any offence in three different manners; (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. The expression 'police report' has been defined in Section 2(r) of the Code to mean a report forwarded by a police officer to a magistrate under sub-section (2) of Section 173. In view of the specific definition the controversy raging round the expression 'upon a police report of such facts' as found in Section 190(1)(b) of the Code of 1898 prior to its amendment in 1923 by Act 18 of 1923 when the words 'report in writing of such facts made by a police report' were substituted for the words 'police report of such facts' has lost its edge and significance. The section as it now stands demonstrably manifests the legislative intention that the magistrate can take cognizance under Section 190(1)(b) upon a police report meaning thereby the report submitted by a police officer under Section 173(2) of the Code.

7. Section 11 of the Act precludes a Court from taking cognizance of the offence punishable under the Act except upon a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code. The question is, if such police officer investigating into an offence which the Act has declared as cognizable submits a report in

writing under the Section 173(2) disclosing an offence under the Act and requesting for proceeding further into the matter, would it satisfy the requirements of Section 11 for taking cognizance of the offence so disclosed. Undoubtedly the police officer submitting the report would be a public servant within the meaning of Section 21, IPC and his report has to be in writing as required by Section 173(2). It must disclose an offence of which cognizance can be taken by the magistrate. Apparently Section 11 would stand fully complied with. This question was raised before this Court in slightly different context in Pravin Chandra Mody v. State of Andhra Pradesh ((1965) 1 SCR 269 : AIR 1965 SC 1185 : (1965) 2 Cri LJ 250). The question was whether a report submitted by the police officer after investigating into an offence under Section 420, IPC and Section 7 of the Act as it then stood would enable the magistrate to take cognizance under Section 190(1)(a) or Section 190(1)(b) of the Code so as to require the magistrate to proceed to try the offence under Section 252 or Section 251-A of the Code, as the case may be. If such police report would provide sufficient compliance with Section 11 even though at the relevant time the offence punishable under the Act were not declared cognizable it was contended that it may nonetheless be at best a complaint under Section 190(1)(a) and in that event the magistrate taking cognizance of the offence under Section 190(1)(a) of the Code will have to proceed to try the offence according to procedure prescribed under Section 252. On the other hand it was contended that where the police officer was investigating into allegations of facts constituting some cognizable and some non-cognizable offence the report submitted by such officer would be under Section 190(1)(b) and the magistrate taking cognizance of the offence on such report would be so doing under Section 190(1)(b) and the case would have to be tried according to the procedure prescribed in Section 251-A. This Court held that "the police officer is a public servant" and this was not denied. The requirements of Section 11 are, therefore, satisfied though Section 11 does not make the report, if filed by a police officer, a chargesheet. It was also contended that the report under Section 11 could not be treated as a report under Section 173 but only as a complaint under Section 190(1)(a). The police officer was investigating under Section 156(1) of the Code of Criminal Procedure a cognizable offence under Section 420, IPC which was based on the same facts as the offence under Section 7 of the Essential Commodities Act. He investigated the latter offence along with the former and joined it with the former in the charge-sheet which he presented. Negativing the contention it was held that where the law requires a report in writing by a public servant to the magistrate for taking cognizance of an offence, the requirement of law are satisfied when a report is forwarded by a public servant who is a also a police officer. By a subsequent amendment and insertion of Section 10-A in the Act, the offences under the Act are declared as cognizable and, therefore, the police officer would be entitled to investigate into such offences without the order of a magistrate and if the police officer proceeds to investigate into the offence it is obligatory upon him to submit a report under Section 173(2). Such a report would be police report for purposes of Section 190(1)(b) and if the magistrate takes cognizance of an offence under the Act upon such a police report, Section 11 would be complied with in its entirety.

8. Mr. Nag, however contended that if cognizance of an offence were to be taken on such a police report, the Court could look merely at the report and not into any other documents even including the original information of the offence to fill in the lacuna. It was contended that a bare look at the police report in this case would show that the facts constituting the offence as required by Section 11 or as required by Section 190(1)(b) were not clearly set out therein and the report did not disclose any offence, and, therefore, learned Magistrate clearly had not material on which he could take cognizance of the offence and the proceedings deserve to be quashed.

9. Section 173(2)(1) provides that on completion of the investigation the police officer investigating into cognizable offence shall submit a report in the form prescribed by the State Government and

stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. Sub-section (5) of Section 173 makes it obligatory upon the police officer to forward along with the report all documents or relevant extracts thereof on which the prosecution proposes to rely and the statement recorded under Section 161 of all the persons whom the prosecution proposes to examine as witnesses at the trial.

10. Section 173(2) thus provides what the report in the prescribed form should contain. In this case the report did contain the name of the accused and the nature of the offence. In fact Section 170 provides that if upon an investigating under Chapter XII it appears to the officer-in-charge of the police station that there is sufficient evidence or reasonable ground to proceed against the accused such officer shall forward the accused custody to a magistrate empowered to take cognizance of the offence upon a police report etc. If the accused is on bail that fact will be notified in the final report submitted under Section 173(2). Therefore, the statutory requirement of the report under Section 173(2) would be complied with if the various details therein prescribed are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 179(2) purports to be an opinion of the investigation officer that as far as he is concerned he has been able to procure sufficient evidence for the trial of the accused by the Court and when he states in the report not only the names of the accused, but names of the witnesses, the nature of the offence and a request that the case be tried, there is compliance with Section 173(2). The report as envisaged by Section 173(2) has to be accompanied as required by sub-section (5) by all the documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by sub-section (5) from its accompaniments which are required to be submitted under sub-section (5). The whole of it is submitted as a report to the Court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be sufficient compliance if what is required to be mentioned by the statute has been set down in the report. To say that all the details of the offence must be set out in the report under Section 173(2) submitted by the police officer would be expecting him to do something more than what the Parliament has expected him to set out therein. If the report with sufficient particularity and clarity specifies the contravention of the law which is the alleged offence, it would be sufficient compliance with Section 11. The details which would be necessary to be proved to bring home the guilt to the accused would emerge at later stage, when after notice to the accused a charge is framed against him and further in the course of the trial. They would all be matters of evidence and Section 11 does not require the report to be or to contain the evidence in support of the charge, its function being merely to afford a basis for enabling the magistrate to take cognizance of the case (see Bhagwati Saran v. State of U. P. ((1961) 3 SCR 563, 577 : AIR 1961 SC 928 : (1961) 2 Cri LJ 24)). It was, however, contended that this Court in Deo Karan Das Aggarwal case (Criminal Appeal No. 38 of 1968, decided on November 26, 1968) has in terms held that one has merely to look at the police report described as charge-sheet and to no other document for taking cognizance of an offence under Section 190(1)(b) to ascertain whether any offence was disclosed. The proposition canvassed on behalf of the appellant is not borne out by the decision relied upon. In that case the accused was prosecuted for having conducted business in a commodity governed by the Bihar Edible Oils Wholesale Dealers Licensing Order, 1965 without obtaining a licence thereunder. On a motion for quashing the prosecution it was found that the only allegation in the charge-sheet was

that the accused carried on business in edible oils without obtaining a requisite licence. On the facts found it transpired that the accused had already applied for a licence and had paid necessary charges and carried on business in the bona fide belief that they had sufficiently complied with the requirements of the order. This Court held that even though no actual licence was issued to them, they could not be said to have committed any offence. On this view of the matter the prosecution was quashed. There is nothing in the decision to support the submission of the appellant before us that the prosecution in that case, ever attempted to invite this Court to look into some document other than the charge-sheet or the police report in support of the submission or that the Court ignored documents other than charge-sheet and quashed prosecution on the sole ground that averments in the charge-sheet did not disclose any offence. Therefore, this decision is of no assistance to the appellants.

11. In this connection Mr. Nag referred to Rachpal Singh v. Rex (AIR 1949 Oudh 66 : (1949) 50 Cri LJ 469) wherein after observing that the failure to mention facts constituting the contravention of a rule means the absence in the report of the very first of the numerous steps in the course of the trial of something which is vital and goes to the very root of the case, a further contention on behalf of the State that the Court may at that stage look into the first information report filed in the case was negatived. This very narrow view of the matter does not commend to us. In fact, on the introduction of Section 173 in its form in the Code of Criminal Procedure, 1973, the police officer investigating into a cognizable offence is under a statutory obligation to submit along with his report under Section 173(2) documents purporting to furnish evidence collected in the course of the investigation and the statements of the witnesses and the Court before proceeding into the case is under a duty to inquire whether the accused has been furnished with copies of all relevant documents received under Section 173 by the Court, and the entire complexion of what would normally be styled as report submitted under Section 173(2) of the Code has undergone a change. Court can look at the report in prescribed form along with its accompaniments for taking cognizance of the offence.

12. Turning now to the charge-sheet submitted in this case it sets out all the details as required by Section 173(2) of the Code. The name of the accused is mentioned. The nature of the offence is mentioned. It is further stated that the information of the offence was given by Mahesh Kant Jha. It is also stated that there was sufficient evidence to proceed against Satya Narain Musadi appellant 1 herein under Section 7 of the Act. Maybe that the charge-sheet could have been more informative or the information set out in the charge sheet could be styled as scanty. Some more details may have been helpful. It, however, could not be said that it did not disclose an offence of which the magistrate could take cognizance under Section 190(1)(b). Ultimately when a magistrate looks at police report also styled as charge-sheet under Section 190(1)(b) he takes cognizance upon a police report and prima facie he does so of the offence or offences set out in the report (vide Darshan Singh Ram Kishan v. State of Maharashtra ((1972) 1 SCR 571, 574)). And the report under discussion does disclose an offence under Section 7 of the Act.

13. It thus appears that the police report submitted under Section 173(3) after the information received from Mahesh Kant Jha by the Sub-Divisional Magistrate was forwarded to police officer-in-charge of the police station for investigation disclosed sufficient information for the Sub-Divisional Magistrate to take cognizance of the offence alleged against the accused and to proceed further with the trial, and no case is made out to interfere with the same.

14. Accordingly this appeal fails and is dismissed.

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