M/S. India Carat Pvt. Ltd.

Vs

State of Karnataka and Another

Criminal Appeal No. 105 of 1989

(CJI R. S. Pathak, S. Natarajan, M. N. Vankatachaliah JJ)

15.02.1989

JUDGMENT

NATARAJAN, J. –

1. Special leave granted.

2. This appeal by special leave is directed against an order of the High Court of Karnataka under Section 482 Criminal Procedure Code (for short 'the Code') setting aside the order of the Second Additional Chief Metropolitan Magistrate, Bangalore directing the registration of a calendar case against the second respondent under Section 408 and 420 of the Indian Penal Code and the issue of summons to him under Section 204 of the Code.

3. So far as the facts are concerned, they are as follow. The appellant gave a report to the Commissioner of Police, Bangalore on February 20, 1980 against the second respondent alleging that he had committed the offences of cheating and criminal breach of trust. It was averred that the second respondent, was its Divisional Manager (Export-Import) and had negotiated on its behalf with an Italian firm in July 1979 for supply of quality granite stones and had obtained a letter of credit. Availing the credit facility, he had drawn a sum of Rs. 13,69,750 but failed to supply granite stones to the Italian firm and instead had misappropriated the amount.

4. On the foot of the report, a case was registered against the second respondent in Ulsoor Police Station as Crime No. 145 of 1980 under Section 408 and 420 of the Indian Penal Code and the case was investigated by Shri Bayar, Inspector of Police. When Shri. Bayar went away on promotion, his successor took over the investigation but subsequently he sent a 'B' report to the court stating that further investigation was not required as the case was of a civil nature.

5. Aggrieved by the report sent by the police, the appellant approached the second Additional Chief Metropolitan Magistrate, Bangalore for the report being quashed and permission granted to him to prove the commission of offences by the second respondent. The learned Magistrate, after perusing the investigation records came to the view that a prima facie case was made out against the second respondent and consequently he passed an order for the calendar case being registered against him for offences punishable under Section 408 and 420 of the Indian Penal Code and for summons being issued to him under Section 204 of the Code.

6. Thereupon, the second respondent filed a petition under Section 482 of the Code before the High Court and sought the quashing of the order of the Magistrate. The High Court allowed the petition and set aside the order of the Magistrate on the ground the Magistrate had not followed the

procedure laid down by the Code for taking cognisance of the case and issuing process to the accused after the police had sent a 'B' report in the case. The High Court has held that on receipt of the 'B' report, the Magistrate should have issued notice to the appellant to find out whether he was disputing the correctness of the 'B' report and, if so, to comply with the requirements of Section 200 of the Code. The High Court has further stated that only after examining the appellant on oath and his witness, the Magistrate should have decided whether a case should be registered and process issued to the accused. The High Court has referred to the ratio laid down in an earlier case K. Sham Rao v. A. R. Diwakar ((1979) 2 Kar LJ 441) and followed it. Aggrieved by the order of the High Court, the appellant has come forward with this appeal.

7. Mr. B. R. G. K. Achar, learned counsel for the appellant contended that the second respondent had no locus to question the order of the Second Additional Chief Metropolitan Magistrate and therefore, the High Court was in error in entertaining the petition filed by him under Section 482 of the Code and setting aside the order of the learned Magistrate. In support of this contention he placed reliance on the decision in Nagawwa v. Veeranna S. Konjalgi ((1976) 3 SCC 736 : 1976 SCC (Cri) 507). He further submitted that the Second Additional Chief Metropolitan Magistrate was entitled to take cognizance of the offences alleged to have been committed by the second respondent and order the issue of process to him and that the Magistrate's powers under Sections 190 and 204 of the Code could well be exercised without advertance to any possible defence the second respondent may have. The learned counsel also stated that since the police had made a perfunctory investigation and sent a 'B' report stating that the case was of a civil nature, the Magistrate was perfectly justified, in the facts and circumstances of the case in taking cognizance of the offence and directing the issue of process to the second respondent.

8. Controverting these arguments, the learned counsel for the respondent submitted that since the police had sent a 'B' report stating that the investigation disclosed that the dispute between the parties was only of a civil nature and that no offence had made out against the second respondent, the Second Additional Chief Metropolitan Magistrate, ought to have called upon the appellant to find out whether he was challenging the police report and if so, to make a sworn statement and also examine his witnesses and thereafter only the learned Magistrate should have decided whether cognizance should be taken of the offences and process issued to the second respondent. The learned counsel, therefore, argued that since the Magistrate had not followed the procedure laid down in Section 200 or Section 202, the second respondent was entitled to seek quashing of the order of the Magistrate and as such the High Court has acted correctly in allowing the second respondent's petition and setting aside the order of the Magistrate.

9. Before we examine the contentions of the learned counsel for the appellant and the second respondent, we may briefly refer to some of the provisions in Chapter XII, XIV, XV, XVI of the Code. Section 155 in Chapter XII pertains to information laid to the police regarding non-cognizable cases and sub-section (2) lays down that no police officer shall investigate a non-cognisable case without the order of a Magistrate having power to try such case or commit the case for trial. Section 156(1) confers power on an officer in charge of a police station to investigate any cognisable case without the order of a Magistrate. Section 156(3) authorities a Magistrate, empowered under Section 190 to order the police to make an investigation as provided for in Section 156(1). The other provisions in the chapter from Section 157 onwards set out the powers of investigation of the police and the procedure to be followed. Section 169 prescribes the procedure to be followed by an officer in charge of a police station if it appears to him upon investigation of a case that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 prescribes the procedure to be followed by the officer in

charge of police station if it appears to him upon investigation that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 173(1) enjoins a police officer to complete the investigation without unnecessary delay. Section 173(2) lays down that as soon as the investigation is completed the officer in charge of a police station should forward to a Magistrate empowered to take cognizance of an police report, a report in the prescribed form stating the various particulars mentioned in that sub-section.

10. Chapter XIV deals with the conditions requisite for initiation of proceedings and as to the powers of cognizance of a Magistrate. For our purpose it is enough if we extract Section 190(1) alone.

> 190(1) Cognizance of offence by Magistrate. - Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -
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> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a police report of such facts;
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> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

11. Chapter XV which contains Section 200 to 203 deals with "Complaints to Magistrate". A Magistrate taking cognizance of an offence on complaint is required by Section 200 to examine the complainant and the witnesses present, if any. Section 202 provides that a Magistrate taking cognizance of a case, upon complaint, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Section 203 empowers the Magistrate to dismiss the complaint, if after considering the statements on oath (if any) of the complaint and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding.

12. Chapter XVI deals with "Commencement of Proceedings before Magistrates" and Section 204 empowers a Magistrate to issue summons or a warrant as the case may be, to secure the attendance of the accused if in the opinion of the Magistrate taking cognizance of the offence there is sufficient ground for proceeding.

13. From the provisions referred to above, it may be seen that on receipt of a complaint a Magistrate has several courses open to him. The Magistrate may take cognizance of the offence at once and proceed to record statements of the complaints and the witnesses present under Section 200. After recording those statements, if in the opinion of the Magistrate there is no sufficient ground for proceeding, he may dismiss the complaint under Section 203. On the other hand if in his opinion there is sufficient ground for proceeding he may issue process under Section 204. If, however, the Magistrate thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is

sufficient ground for proceeding. Yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down under Section 200 or Section 202, he may order an investigation to be made by the police under Section 156(3). When such an order is made, the police will have to investigate the matter and submit a report under Section 173(2). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and issue process straightway to the accused. The Magistrate may exercise his powers in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the police report under Section 173(2) will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom. It the Magistrate is satisfied that upon the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence and issue process, the Magistrate may do so without reference to the conclusion drawn by the Investigating Officer because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not. Alternately the Magistrate, on receiving the police report, may without issuing process or dropping the proceeding proceed to act under Section 200 by taking cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statement upon oath of the complainant and the witnesses present and thereafter decide whether the complaint should be dismissed or process should be issued.

14. Since in the present case the Second Additional Chief Metropolitan Magistrate has taken cognizance of offences alleged to have been committed by the second respondent and ordered issue of process without first examining the appellant and his witnesses, the question for consideration would be whether the Magistrate is entitled under the Code to have acted in that manner. The question need not detain us for long because the power of a Magistrate to take cognisance of an offence under Section 190(1)(b) of the Code even when the police report was to the effect that the investigation has not made out any offence against an accused has already been examined and set out by this Court in Abhinandan Jha v. Dinesh Mishra ((1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97) and H. S. Bains v. State ((1980) 4 SCC 631 : 1981 SCC (Cri) 93 : (1981) 1 SCR 935). In Abhinandan Jha v. Dinesh Mishra ((1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97) the question arose whether a Magistrate to whom a report under Section 173(2) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a chargesheet but it was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect under Section 156(3) and if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police, the court observed that the Magistrate could take cognizance under Section '190(1)(c)'. The reference to Section 190(1)(c) was a mistake for Section 190(1)(b) and this has been pointed out in H. S. Bains ((1980) 4 SCC 631 : 1981 SCC (Cri) 93 : (1981) 1 SCR 935).

15. In the case of H. S. Bains ((1980) 4 SCC 631 : 1981 SCC (Cri) 93 : (1981) 1 SCR 935) one Gurnam Singh submitted a complaint to the Judicial Magistrate First Class, Chandigarh alleging that H. S. Bains trespassed into his house along with two others on August 11, 1979 at about 8 a.m. and threatened to kill him and his son. The Magistrate directed the police under Section 156(3) of the Code to make an investigation. After completing the investigation, the police submitted a report to

the Magistrate under Section 173(2) of the Code stating that the case against the accused was not true and that the case may be dropped. The learned Magistrate disagreed with the conclusion of the police and took cognisance of the case under Sections 448 and 506 of the Indian Penal Code and directed the issue of process to the accused. Thereupon, the accused moved the High Court for quashing the proceedings before the Magistrate. As the High Court declined to interfere, the accused approached this Court by way of appeal by special leave. Various contentions were advanced on behalf of the accused and one of them was that the Magistrate was not competent to take cognisance of the case upon the police report since the report was to the effect that no offence the Magistrate was not satisfied with the police report, there were only two courses open to him, viz. either to order a further investigation of the case by the police or to take cognisance of the case himself as if upon a complaint and record the statements of the complainant and his witnesses under Section 200 of the Code and then issue process if he was satisfied that the case should be proceeded with. Repelling those contentions this Court held as follows : (SCC pp. 635-36, para 7)

The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence under Section 307, Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under Section 324, Indian Penal Code only and he may take cognizance of an offence under Section 324 instead of Section 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eye-witnesses to a murder but that for various reasons witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognisance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report. He would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police.

16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognisance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognisance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognisance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusions arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognisance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

17. The fact that in this case the investigation had not originated from a complaint preferred to the Magistrate but had been made pursuant to a report given to the police would not alter the situation in any manner. Even if the appellant had preferred a complaint before the learned Magistrate and the Magistrate had ordered investigation under Section 156(3), the police would have had to submit a

report under Section 173(2). It has been held in Tula Ram v. Kishore Singh ((1977) 4 SCC 459 : 1977 SCC (Cri) 621 : (1978) 1 SCR 615) that if the police, after making an investigation, send a report that no case was made out against the accused, the Magistrate could ignore the conclusion drawn by the police and take cognizance of a case under Section 190(1)(b) and issue process or in the alternative he can take cognizance of the original complaint and examine the complainant and his witnesses and thereafter issue process to the accused, if he is of opinion that the case should be proceeded with.

18. In the light of our conclusion, the appeal succeeds and the order of the High Court is set aside. The order of the Second Additional Chief Metropolitan Magistrate, Bangalore will stand restored and the case against the second respondent will be proceeded further in accordance with law.

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