

Bhagat Ram

v.

Surinder Kumar & Others

HON'BLE MR. JUSTICE S. RAJENDRA BABU HON'BLE MR. JUSTICE
B.N. AGRAWAL HON'BLE MR. JUSTICE G.P. MATHUR

(Supreme Court Of India)

Criminal Appeal No. 236 Of 2004 | 13-02-2004

1. Leave granted.

2. A complaint was filed before the Additional Chief Judicial Magistrate, Dehra. On 22-5-2000 he made an order, after examining the complainant and his witnesses, that the matter needs further probe and, therefore, directed the investigation to be done by the police and referred the matter for investigation/inquiry by the police. On receipt of the police report, the matter was heard afresh by the learned Magistrate and, thereafter, summons were issued to the respondents herein. It is that action of the learned Magistrate that was challenged before the High Court on the ground that having once taken cognizance and proceeded to hold the inquiry under S.202 of the Code of Criminal Procedure, could not have referred the matter for inquiry/investigation by the police at all and he should have proceeded in the matter himself.

3. The High Court adverted to a decision of this Court in Suresh Chand Jain v. State of M.P.(2001 (2) SCC 628 : 2001 SCC (Cri) 377) to the effect that the Magistrate is deemed to have taken cognizance of the offence when after entertaining the complaint he proceeds to hold preliminary inquiry in the matter. The High Court allowed the petition and set aside the order made by the learned Magistrate. Hence this appeal by special leave.

4. It is clear from a perusal of the order made by the learned Magistrate that he has not done anything other than to comply with the provisions of S.202(1) proviso (b) of the Code of Criminal Procedure, that after examining the complainant and his witnesses he found that it was necessary to further probe into the matter and, therefore, directed investigation to be done by the police

and after the investigation was done by the police and on report being filed by them, he heard the matter afresh and directed issue of summons. We find that the procedure adopted by the learned Magistrate is perfectly in order. However, Shri S.B. Wad, learned Senior Advocate who appears for Respondent 1 drew our attention to the decision of this Court in *Suresh Chand Jain v. State of M.P.* (2001 (2) SCC 628 : 2001 SCC (Cri) 377) and contended that the learned Magistrate had already taken cognizance in the matter before directing the investigation/inquiry by the police and such a course was not permissible. But on the facts in the said case the question that fell for consideration is that whether a Magistrate can direct investigation of the matter before taking cognizance of an offence and without examining the complainant on facts. It was held that he could direct the police to register an FIR and investigate the matter. Even if the scope of investigation is limited as noticed in the said decision, the Magistrate has powers under S.202(1) of the Code of Criminal Procedure to direct investigation and in the meanwhile he may postpone issue of process against the accused by adopting any one of the courses mentioned in S.202(1). As to when cognizance of an offence is taken will depend upon the facts and circumstances of each case and it is not possible to state the same with precision. Obviously, it is only when the Magistrate applies his mind for the purpose of proceeding under S.200 CrPC and subsequent sections that it can positively be stated that he has taken cognizance. To derive this inference we rely upon the decision in *Narayandas Bhagwandas Madhavdas v. State of W.B.* (AIR 1959 SC 1118 : 1959 Cri LJ 1368) and *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy* (1976 (3) SCC 252 : 1976 SCC (Cri) 380 : AIR 1976 SC 1672). In the instant case the learned Magistrate has called for an investigation before proceeding further even after examining the complainant and his witnesses on oath. Hence the observation therein would not be of assistance to the respondents in this case. Therefore, we set aside the order made by the High Court and restore the proceedings before the learned Magistrate. The appeal is allowed accordingly.