SUPREME COURT OF INDIA

State of Karnataka and Another

Vs

Pastor P. Raju

Criminal Appeal No. 814 of 2006

(G. P. Mathur and Dalveer Bhandari, JJ)

04.08.2006

JUDGMENT

G. P. MATHUR, J.

Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 23-2-2005 of the Kamataka High Court (Pastor P. Raju v State by Superintendent of Police, Bangalore Rural District and Another 2005 (2) (Kar)LJ 380 by which initiation of criminal proceedings against the respondent under Section 153-B of the IPC were quashed in exercise of jurisdiction under Section 482 of the Cr. P.C.

3. One R.N. Lokesha son of R.S. Narayanappa resident of Ramapura, Channapatna, lodged an FIR alleging that at about 7.30 p.m. on 14-1- 2005. he along with some other persons was celebrating Sankranti festival when the respondent Pastor P. Raju, who is a member of Christian Community, came there and made an appeal to them to get converted to Christian religion where they would get many benefits and facilities which were not available to them in Hindu Religion to which they belong. It is also alleged that many persons who were present there resented the appeal made by the respondent and strongly opposed the plea or assertion for their conversion from Hindu religion to Christian Religion. On the basis of the FIR, a case as Crime No. 8 of 2005 was registered under

Section 153-B of the IPC at the concerned police station. The respondent was arrested on 15-1-2005 and was produced before a Magistrate on the same day who remanded him to judicial custody as no application for bail had been filed. Subsequently, a bail application was moved under Section 436 of the Cr. P.C. before the learned Magistrate which was rejected on the ground that the offence under Section 153-B of the IPC being a non-bailable offence, the power under the aforesaid provision could not be exercised as the said provision empowered the Court to grant bail in bailable offences only. The respondent filed a petition under Section 482 of the Cr. P.C. on 27-1-2005 for quashing of the proceedings initiated against him under Section 153-B of the IPC in case Crime No. 8 of 2005. This petition was allowed by the High Court by the order under challenge and the entire proceedings initiated against the respondent were quashed.

4. The principal submission which was made before the High Court on behalf of the respondent was that before initiating any proceedings under Section 153-B of the IPC, the police ought to have obtained previous sanction of the Central Government or of the State Government or of the District Magistrate as required by Section 196(1-A) of the Cr. P.C. and in the absence of such a sanction having been obtained, the proceedings initiated against the respondent were illegal and without jurisdiction. After hearing Counsel for the parties, the learned Judge framed the question for consideration in the following manner.

"Having heard the arguments of the learned Counsel appearing for the petitioner and the learned High Court Government Pleader for the respondent-State, the point that arises for my consideration and decision is whether initiation of criminal proceedings against the petitioner is bad in law and whether prior sanction to prosecute a person who tries to instigate Hindus to convert into Christianity requires any prior sanction to register a case and arrest the accused under Section 153-B(1) of the IPC?"

(Emphasis supplied)

5.The High Court has held that as the investigating agency had not obf ;aed previous sanction of the Central Government or of the State Government or of the District Magistrate as required by Section 196'1-A) of the Cr. P.C, the initiation of criminal proceedings against the respondent is bad in law and consequently it was liable to be quashed.

6. We have heard learned Counsel for the appellant-State of Karnataka, learned Counsel for the respondent-Pastor P. Raju and have perused the record.

7. The heading of Chapter XIV of Code of Criminal Procedure is "Conditions requisite for Initiation of Proceeding's". The first provision in this Chapter is Section 190 and it deals with the power of the Magistrate to take cognizance of offences. There are some other provisions in this Chapter which create an embargo on the power of the Court to take cognizance of offences committed by persons enumerated therein except on the complaint in writing of certain specified persons or with the previous sanction of certain specified authorities. Section 196'1-A) of the Cr. P.C. with which we are concerned here reads as under:

"196. (1-A) No Court shall take cognizance of.-

(a) Any offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, 1860 (45 of 1860); or

(b)a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate".

A plain reading of this provision will show that no Court can take cognizance of an offence punishable under Section 153-B or sub-section 2: or sub-section (3.) of Section 505 of the Indian Penal Code or a criminal conspiracy to commit such offence except with the previous sanction of the Central Government or of the State Government or of the District Magistrate. The opening words of the Section are "No Court shall take cognizance" and consequently the bar created by the provision 3.v against taking of cognizance by the Court. There is no bar against registration of a criminal case or investigation by the police agency or of a report by the police on completion of investigation, as contemplated by Section 173 of the Cr. P.C. If a criminal case is registered, investigation of the offence is done and the Police submits a report as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) of the Cr. P.C. and no illegality of any kind would be committed.

8. After the FIR had been lodged and a criminal case had been registered against the respondent under Section 153-B of the IPC, the police arrested him as the offence disclosed was a cognizable offence. Thereafter, the respondent was produced before a Magistrate and the Magistrate remanded him to judicial custody. The High Court seems to have taken the view that as the learned Magistrate remanded the respondent to judicial custody when he was produced before him in accordance with Section 167 of the Cr. P.C, it amounted to taking cognizance of the offence. The question that arises is whether passing of an order of remand "would amount to taking of cognizance of the offence.

9. Several provisions in Chapter XTV of the Code of Criminal Procedure use the word "cognizance". The very first section in the said Chapter, viz., Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word "cognizance" has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word "cognizance" is - 'judicial hearing of a matter5. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is R.R. Chari v State of Uttar Pradesh [AIR 19!)] SC 207: 52 CrLJ 775 (SC)], wherein it was held:

"Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence".

In Darshan Singh Ram Kishan v State of Maharashtra 1959 CrLJ 13 (SC)], while considering

Section 190 of the Cr. P.C, it was observed that "taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer". In Narayandas Bhagwandas Madhavdas v State of West Bengal

"... In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons".

It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial state when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to police report or upon information : -received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom aprima facie case is made out.

10. In the present case neither any complaint had been filed nor any police report had been submitted nor any information had been given by any person other than the police officer before the Magistrate competent to take cognizance of the offence. After the FIR had been lodged and a case had been registered under Section 153-B of the IPC, the respondent was arrested by the police and thereafter he had been produced before the Magistrate. The Magistrate had merely passed an order remanding him to judicial custody. Section 167 of the Cr. P.C. finds place in Chapter XII which deals with "information to the police and their powers to investigate". This section gives the procedure which has to be followed when investigation cannot be completed within twenty-four hours and requires that whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57 and there are grounds for believing that the accusation or information is well-founded, he shall be forthwith transmitted to the nearest judicial Magistrate along with copy of the entries in the diary. Sub-section (2) of Section 167 will show that even a Magistrate who has no jurisdiction to try the case can authorise the detention of the accused. A limited role has to be performed by the judicial Magistrate to whom the accused has been forwarded viz., to authorize his detention. This is anterior to Section 190 of the Cr. P.C. which confers power upon a Magistrate to take cognizance of an offence. Therefore, an order remanding an accused to judicial custody does not amount to taking cognizance of an offence. In such circumstances Section 196(1-A) of the Cr. P.C. can have no application &'" all and the High Court clearly erred in quashing the proceedings on the ground that previous sanction of the Central Government or of the State Government or of the District Magistrate had not been obtained. It is important to note that on the view taken by the High Court, no person accused of an offence, which is of the nature which requires previous sanction of a specified authority before taking of cognizance by the Court, can ever be arrested nor such an offence can be investigated by the police. The specified authority empowered to grant sanction does

so after applying his mind to the material collected during the course of investigation. There is no occasion for grant of sanction soon after the FIR is lodged nor such a power can be exercised before completion of investigation and collection of evidence. Therefore, the whole premise on the basis of which the proceedings have been quashed by the High Court is wholly erroneous in law and is liable to be set aside.

11. There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15-1-2005 and the petition under Section 482 of the Cr. P.C. was filed within 12 days on 27-1-2005 when the investigation had just commenced. The petition was allowed by the High Court on 23-2-2005 when the investigation was still under progress. No report as contemplated by Section 173 of the Cr. P.C. had been submitted by the in charge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 of the Cr. P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in Union of India v Prakash P. Hinduja and Another : : 2003 CrLJ 31 17 (SC) : 2003 SCC(Cr) 314, where after referring to Emperor v Khwaja Nazir Ahmad : 46 CrLJ 413 (PC)]; H.N. Rishbud and Another v State of Delhi : 1955 CrLJ 526 (SC)]; State of West Bengal v S.N. Basak : J 963 Cn. L.J. 341 (SC)]; Abhinandan Jha and Others v Dinesh Mishra : 1968 CrLJ 97)] and State of Bihar and Another v JA.C. Saldanha and Others : : 1980 CrLJ 98)] , it was observed as under in para 20 of the reports:

"20. Thus the legal position is absolutely clear and also settled b3' judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in Court under Section 173(2) of the Cr. P.C., this field being exclusively reserved for the investigating agency".

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 of the Cr. P.C. when the matter was still at the investigation stage.

12. In the concluding paragraph of the judgment under challenge, the High Court has also observed that considering the facts and circumstances and the allegations made in the complaint it could be said that the initiation of criminal proceedings is abuse of process of Court and miscarriage of justice. No reasons in support of the aforesaid observation have been given. As already stated, the case was still under investigation and the police was in the process of collecting evidence. The sweeping remark made by the High Court in the circumstances of the case was wholly unjustified.

13. For the reasons mentioned above, the appeal is allowed and the judgment and order dated 23-2-2005 of the High Court is set aside. It is made clear that any observation made in this order is only for the limited purpose of deciding the appeal and shall not be construed as an expression of opinion on the merits of the case.

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