SUPREME COURT OF INDIA

Har Prasad

Vs

Ranveer Singh

Appeal (crl.) 294 of 2008(Arising out of SLP (Crl.) No. 365 of 2007)

(Dr. Arijit Pasayat and P. Sathasivam)

12/02/2008

JUDGMENT

Dr. ARIJIT PASAYAT, J

Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court allowing the revision filed by respondent No.1. The revision was filed questioning the legality of the order dated 18.11.2000 passed by XIII Additional District and Sessions Judge, Aligarh in Criminal Revision No.272 of 2000 accepting the contention that the informant of the case got a false affidavit filed alongwith protest petition, and therefore no action could have been taken.

Stand taken before the learned Sessions Judge was that by the time the protest petition was filed the informant had died and false affidavit with a thumb impression was filed. Since the informant had

already died, the learned Magistrate could not have been proceeded in the matter. This found acceptance by the learned Sessions Judge. The High Court by the impugned order had held that the order was not passed on the protest petition and was in fact passed on consideration of the report submitted in terms of Section 173 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.').

Learned counsel for the appellants submitted that the High Court fell in grave error by holding that the filing of false affidavit, if any, alongwith protest petition was immaterial. According to him, when the learned Magistrate acted upon the protest petition, the view that the affidavit alongwith the protest petition was not of any consequence, cannot be maintained.

Learned counsel for the respondents on the other hand submitted that a bare reading of the order passed by learned Magistrate shows that the order did not have its foundation on the protest petition, but was relatable to the report submitted under Section 173 Cr.P.C.

The only question that falls for consideration is whether the order was passed by learned Magistrate on protest petition or on the police report.

Reference may be made to a judgment of this Court in Abhinandan Jha and Ors. v. Dinesh Mishra (AIR 1968 SC 117) where it was held as follows:

"8. It is now only necessary to refer to Section 190, occurring in Chapter XIV, relating to jurisdiction of Criminal courts in inquiries and trials. That section is to be found under the heading "Conditions requisite for initiation of proceedings" and sub-section (1) is as follows:

(1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a report in writing of such facts made by any police-officer;

(c) Upon information received from any person other than a police-officer, or upon his own

knowledge or suspicion, that such offence has been committed."

9. From the foregoing sections, occurring in Chapter XIV, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused and is also completed without unnecessary or undue delay. But the point to be noted is that the manner and method of conducting the investigation, are left entirely to the police, and the Magistrate, so far as we can see, has no power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer, in-charge of a police station, or to the officer making an investigation, that there is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate, s. 169 says that the officer shall release the accused, if in custody, on his executing a bond to appear before the Magistrate. Similarly, if, on the other hand, it appears to the officer, in-charge of a police station, or to the officer making the investigation, under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, such an officer is required, under s. 170, to forward the accused to a Magistrate or, if the offence is bailable, to take security from him for this appearance before such Magistrate. But, whether a case comes under s. 169, or under s. 170, of the Code, on the completion of the investigation, the police officer has to submit a report to the Magistrate, under s. 173, in the manner indicated therein, containing the various details. The question as to whether the Magistrate has got power to direct the police to file a charge - sheet, on receipt of a report under s. 173 really depends upon the nature of the jurisdiction exercised by a Magistrate, on receiving a report.

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12. Though it may be that a report submitted by the police may have to be dealt with judicially, by a Magistrate, and although the Magistrate may have certain supervisory powers, nevertheless, we are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for sending up an accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. But, we may make it clear, that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law. We do not also find any such power, under Section 173(3), as is sought to be inferred, in some of the decisions cited above. As we have indicated broadly the approach made by the various High Courts in coming to different conclusions, we do not think it necessary to refer to those decisions in detail.

13. It will be seen that the Code, as such, does not use the expression 'charge-sheet' or 'final report'. But it is understood, in the Police Manual containing Rules and Regulations that a report by the police, filed under Section 170 of the Code, is referred to as a 'charge-sheet'. But in respect of the reports sent under Section 169 i.e. when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, it is termed variously, in different States, as either 'referred charge',

'final report', or 'summary'.

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17. We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the scheme of Chapter XIV, as well as the observations of this Court in Rishbud and Inder Singh's Case (AIR 1955 SC 196) that the information of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack; nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under s. 190(1) (c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under s. 190(1) (c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under s. 170, being a 'charge-sheet', or under s. 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report, either under s. 169, or under s. 170, depending upon the nature of the decision. Such a function has been left to the police, under the Code."

As the factual position goes to show the order passed by learned Magistrate was in consideration of the police report and was not relatable to the protest petition. That being so, the view of the High Court does not suffer from any infirmity and no interference is called for.

The appeal is dismissed.