

SUPREME COURT OF INDIA

Ram Naresh Prasad

Vs.

State of Jharkhand

Crl.A.No.290 of 2009

(Dr. Arijit Pasayat and Dr.M.K.Sharma JJ.)

12.02.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Jharkhand High Court. Appellant filed writ petition (Crl.) No. 284 of 2002 with the prayer to quash the order dated 18.2.2002 passed by learned Sessions Judge Palamau in Criminal Revision No. 53 of 2001. By the said order learned Sessions Judge set aside order of learned Chief Judicial Magistrate accepting the final report submitted by the police and directed him to pass a fresh order after perusing the case diary and after hearing the informant. Further prayer was to quash the order passed by learned Chief Judicial Magistrate on remand taking cognizance of offences punishable under Sections 413 and 414 of the *Indian Penal Code, 1860* (in short the `IPC').

3. Background facts in a nutshell are as follows:

“One Arun Kumar Mishra (hereinafter referred to as the `informant'- Respondent No.4) in the present appeal filed the First Information Report (in short the `FIR') at the Bishrampur Police Station in Palamau District against unknown persons. It was stated that in the preceding night some unknown persons had stolen five idols from Thakur Bari. On the basis of the FIR police instituted case relating to offence punishable under Sections 457 and 380 IPC. Investigation was carried out but in the absence of any definite clue, the final report was submitted on 4.1.1997, which was accepted by learned Judicial Magistrate. After about one week one Raghu Thakur was arrested on 12.1.1997 and he made an extra judicial confession before the villagers. On the basis of the said extra judicial confession four persons were detained who were Raghu Thakur, Alak Singh, Dwarika Saw and Vijay Kumar Soni. On 12.3.1997 police submitted supplementary Final Form against the aforesaid four persons indicating commission of offences punishable under Sections 457, 380, 411 and 414 IPC. Final Form was filed so far as appellant is concerned. Learned Judicial

Magistrate, First Class, by his judgment dated 27.1.1999 convicted all the four accused persons.

During trial an application under Section 319 of the *Code of Criminal Procedure, 1973* (in short the `Cr.P.C.´) was filed by prosecution with a prayer to summon the appellant as an accused. The said application was dismissed by the trial court. The same was not challenged before any higher court but the investigation was kept alive. Investigation was taken over by the CID Police from the district police. After investigation on 22.5.1999 final report was submitted so far as the appellant was concerned. The same was accepted. On 18.2.2002 after about two years, respondent No. 2, a practicing advocate who was neither the complainant nor having any connection with the alleged offence, filed a revision petition before the learned Sessions Judge, Palamau, against the order dated 22.5.1999. By order dated 18.2.2002 the revision petition was allowed and learned CJM was directed to hear the informant or APP, peruse case diary both original as well as supplementary and then pass order in accordance with law.

According to the appellant no notice was issued to the appellant nor was he heard. Though the revision petition was highly belated, the same was admitted ex parte and that too without condonation of delay. The appellant had no knowledge about these subsequent events. On 29.8.2002 learned Chief Judicial Magistrate passed an order taking cognizance for offences punishable under Sections 413 and 414 IPC and non-bailable warrant was issued so far as the appellant is concerned. Aggrieved by the order dated 29.8.2002 of learned CJM, appellant filed a revision petition before learned Sessions Judge who dismissed the same. Questioning correctness of both the aforesaid orders, a writ petition was filed which was dismissed by the impugned order.”

4. Learned counsel for the appellant submitted that the course adopted by the revisional courts at the first instance is unknown to law. At no stage before the order was passed by the learned Sessions Judge in revision, the appellant was heard. The revision petitioner had no locus standi to file the petition as he was not the informant. Learned Sessions Judge did not decide about the question of maintainability of the revision petition at first instance. The question of limitation was also not examined.

5. The respondent No.2 had appeared in person and according to him the State was taking the sides of the appellant, and he was forced to file the revision petition.

6. Learned counsel for the State accepted that if under Section 319 Cr.P.C. the petition was rejected, no further steps were required to be taken by the State to question the correctness of the order on that behalf.

7. In *Abhinandan Jha and Ors. v. Dinesh Mishra*¹ it was observed as under:

"5. On behalf of the appellants, in Criminal Appeal No. 218 of 1966, Mr. Jha, learned counsel, pointed out that when a final report is submitted by the police, under Section 173(1) of the Code, stating that no case is made out, the Magistrate has no jurisdiction to direct the police to file a charge-sheet. It may be open, counsel points out, to the Magistrate, to direct further investigation to be made by the police, or to treat the protest petition filed by the second respondent, as a complaint, and take cognizance of the offence and proceed, according to law.

The scheme of Chapter XIV of the Code, counsel points out, clearly indicates that the formation of an opinion, as to whether or not there is a case to place the accused on trial, is that of the investigating officers, and the Magistrate cannot compel the police to form a particular opinion on the investigation and to submit a report, according to such opinion. In this case, there is nothing to show that the protest petition, filed by the second respondent, has been treated as a complaint, in which case, it may be open to the Magistrate to take cognizance of the offence; but, in the absence of any such procedure being adopted according to counsel, the order of the Magistrate directing a charge-sheet to be filed, is illegal and not warranted by the provisions of the Code. These contentions have been adopted, and reiterated, by Mr Nuruddin Ahmed, on behalf of the appellants, in Criminal Appeal No. 238 of 1966."

6. Both the learned counsel pressed before us, for acceptance, the views, as expressed by the Gujarat High Court, in its Full Bench judgment, reported as *State of Gujarat v. Shah Lakhamshi*². On the other hand, Mr. U.P. Singh, learned counsel for the respondent, in Criminal Appeal No. 218 of 1966, has pointed out that the Magistrate has jurisdiction, in proper cases, when he does not agree with the final report submitted by the police, to direct them to submit a charge-sheet. Otherwise, counsel points out, the petition will be that the entire matter is left to the discretion of the police authorities, and the Courts will be powerless, even when they feel that the action of the police is not justified.

"Quite naturally, counsel prays for acceptance of the views expressed by the dissenting Judges, in *A.K. Roy v. State of W.B.*³ and by the Bombay and Patna High Courts, in the decisions reported as *State v. Murlidhar Govardhan*⁴, and *Ram Nandan v. State*⁵, respectively."

7. In order, properly, to appreciate the duties of the police, in the matter of investigation of offences, as well as their powers, it is necessary to refer to the provisions contained in Chapter XIV of the Code. That chapter deals with "Information to the Police and their Powers to investigate"; and it contains the group of sections beginning from Section 154, and ending with Section 176. Section 154 deals with information relating to the commission of a cognizable offence, and the procedure to be adopted in respect of the same. Section 155, similarly, deals with information in respect of non-cognizable offences.

"Sub-section (2), of this section, prohibits a police officer from investigating a non-cognizable case, without the order of a Magistrate. Section 156 authorises a police officer, in-charge of a police station, to investigate any cognizable case, without the

order of a Magistrate. Therefore, it will be seen that large powers are conferred on the police, in the matter of investigation into a cognizable offence. Sub-section (3), of Section 156, provides for any Magistrate, empowered under Section 190, to order an investigation. In cases where a cognizable offence is suspected to have been committed, the officer in-charge of a police station, after sending a report to the Magistrate, is entitled, under Section 157, to investigate the facts and circumstances of the case and also to take steps for the discovery and arrest of the offender. Clause (b), of the proviso to Section 157(1), gives a discretion to the police officer not to investigate the case, if it appears to him that there is no sufficient ground for entering on an investigation. Section 158 deals with the procedure to be adopted in the matter of a report to be sent, under Section 157. Section 159 gives power to a Magistrate, on receiving a report under Section 157, either to direct an investigation or, himself or through another Magistrate subordinate to him, to hold a preliminary enquiry into the matter, or otherwise dispose of the case, in accordance with the Code. Sections 160 to 163 deal with the power of the police to require attendance of witnesses, examine witnesses and record statements. Sections 165 and 166 deal with the power of police officers, in the matter of conducting searches, during an investigation, in the circumstances, mentioned therein. Section 167 provides for the procedure to be adopted by the police, when investigation cannot be completed in 24 hours. Section 168 provides for a report being sent to the officer in charge of a police station, about the result of an investigation, when such investigation has been made by a subordinate police officer, under Chapter XIV. Section 169 authorises a police officer to release a person from custody, on his executing a bond, to appear, if and when so required, before a Magistrate, in cases when, on investigation under Chapter XIV, it appears to the officer in-charge of the police station, or to the police officer making the investigation, that there is no sufficient evidence or reasonable ground of suspicion, to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer, in charge of a police station, after investigation under Chapter XIV, and if it appears to him that there is sufficient evidence, to forward the accused, under custody, to a competent Magistrate or to take security from the accused for his appearance before the Magistrate, in cases where the offence is bailable. Section 172 makes it obligatory on the police officer making an investigation, to maintain a diary recording the various particulars therein and in the manner indicated in that section. Section 173 provides for an investigation, under Chapter XIV, to be completed, without unnecessary delay and also makes it obligatory, on the officer in charge of the police station, to send a report to the Magistrate concerned, in the manner provided for therein, containing the necessary particulars.”

8. It is now only necessary to refer to Section 190, occurring in Chapter XV, 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, Section 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 Section 170, to forward the accused to a Magistrate; or, if the offence is bailable, to take security from him for his appearance before such Magistrate. But, whether a case comes under Section 169, or under Section 170, of the Code, on the completion of the investigation, the police officer has to submit a report to the Magistrate, under Section 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 Section 173 really depends upon the nature of the jurisdiction exercised by a Magistrate, on receiving a report."

10. In this connection, we may refer to certain observations, made by the Judicial Committee in *King Emperor v. Khwaja Nazir Ahmed*⁶ and by this Court, in *H.N. Rishbud and Inder Singh v. State of Delhi*⁷.

In Nazir Ahmed case (supra), Lord Porter observes, at p. 212, as follows:

"Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged

cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then."

These observations have been quoted, with approval, by this Court, in *State of West Bengal v. S.N. Basak*⁸. This Court in *Rishbud and Inder Singh case*⁹ observes, at p. 1156, as follows:

"Investigation usually starts on information relating to the commission of an offence given to an officer in-charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in-charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender.

Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case.

By definition, it includes all the proceedings under the Code for the collection of evidence conducted by a police officer."

Again, after a reference to some of the provisions in Chapter XIV of the Code, it is observed at p. 1157:

"Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under Section 173.... It is also clear that the final step in the investigation viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in-charge of the police station."

11. We are referring to these observations for the purpose of emphasizing that the scheme of Chapter XIV, clearly shows that the formation of an opinion as to whether or not there is a case to place the accused on trial, has been left to the officer in-charge of a police station. Bearing in mind these principles referred to above, we have to consider the question that arises for consideration, in this case. The High Courts which have held that the Magistrate has no jurisdiction to call upon the police to file a charge-sheet, under such circumstances, have rested their decision on two principles viz. (a) that there is no express provision in the Code empowering a Magistrate to pass such an order; and (b) such a power, in view of the scheme of Chapter XIV, cannot be inferred vide *Venkata Subba v Anjanavulu*¹⁰, *Abdul Rahim v. Abdul Muktadin*¹¹; *Amar Premanand v. State*¹²; the majority view in *A.K. Roy v. State of W.B.2*; and *State of Gujarat v. Shah Lakhamsi*. On the other hand, the High Courts which have recognised such a power, rest their decision again on two grounds viz. (a) where a report is submitted by the police, after investigation, the Magistrate has to deal with it judicially, which will mean that when the report is not accepted, the Magistrate can give suitable directions to the police; and (b) the Magistrate is given supervision over the conduct of investigation by the police, and therefore, such a power can be recognised in the Magistrate vide *State v. Murlidhar Goverdhan*; and *Ram Nandan v. State*.

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."

8. Accordingly we set aside the impugned order of the High Court and remit the matter to it to consider the following aspects :

(a) Whether the revision petition before the Sessions Judge was maintainable at the instance of Respondent No.2 and that too after considerable length of time; (b) Whether the appellant needs to be heard; and (c) whether the informant has to be given the notice.

9. Appeal is allowed to the aforesaid extent.

¹(AIR 1968 SC 117) ²(1966 AIR Guj. 283 (FB)) ³(AIR 1962 Cal 135 (FB)) ⁴(AIR 1960 Bom 240)
⁵(AIR 1966 Pat. 438) ⁶(AIR 1945 PC 18) ⁷AIR 1955 SC 196) ⁸(AIR 1963 SC 447)
⁹(AIR 1955 SC 196) ¹⁰(AIR 1932 Mad 673) ¹¹(AIR 1953 Assam 112) ¹²(AIR 1960 Madh. Pra 12)