SUPREME COURT OF INDIA

Vasanti Dubey

Vs.

State of M.P.

Crl.A.No.166 of 2012

(Asok Kumar Ganguly and Gyan Sudha Misra JJ.)

17.01.2012

JUDGEMENT

GYAN SUDHA MISRA, J.

1. Leave granted.

2. The appellant herein has challenged the order dated 24.1.2011 passed by the High Court of Judicature at Jabalpur by which the Criminal Revision Petition No. 839/2004 was dismissed holding therein that the impugned order passed by the Special Judge (under the Prevention of Corruption Act, 1988) District Narsinghpur did not suffer from any apparent error of jurisdiction.

3. In the backdrop of the facts and circumstances of the case to be related hereinafter, the question inter alia which falls for determination by this Court is whether the Magistrate/Special Judge could straightway direct for submission of charge-sheet in case he refused to accept final report/closure report of the police/investigating agency and thereafter direct the police to submit charge-sheet in case he was of the opinion that the case was not fit to be closed and it required to be proceeded further. The question which also requires consideration is whether the Special Judge could refuse to accept closure report and direct reinvestigation of the case for the second time in order to proceed further although he was confronted with the legal impediment indicating lack of sanction for prosecution in the matter.

4. However, the question for determination is not a new or an extra-ordinary one as the question has cropped up time and again before this Court as to what course is left open for a Magistrate in a situation when the police submits final report under

Section 173, Cr.P.C. or closure report is submitted by any other investigating agency stating that the case is not made out on account of lack of evidence or for any other reason.

5. But before we proceed to deal with the question involved herein, it is essential to state the salient facts and circumstances of this matter which has reached upto this Court by way of this special leave petition. On perusal of the materials on record, it emerges that the appellant - Smt. Vasanti Dubey was posted as the Block Development Officer, Janpad Panchayat, Gotegon, Narsinghpur (M.P.) and in that capacity was competent to award a contract for constructing concrete road in the village Baroda. The contract was awarded to one Dinesh Kumar Patel who was the Sarpanch of village Baroda for constructing the concrete road in the village and was initially paid a sum of Rs.15,000/- vide cheque No. 101626 dated 27.2.2001 for execution of the contract. He was further paid a sum of Rs.15,000/- vide cheque No.101629 dated 8.5.2001 for execution of the contract which was awarded to him. The awardee Sarpanch - Dinesh Kumar Patel was still further paid Rs.10,000/- vide cheque No.101635 dated 23.5.2001 and the balance payment of Rs. 10,000/- was also finally paid to him vide cheque No.319586 dated 1.8.2001 towards full and final settlement of the consideration for the above mentioned contract. Admittedly, all the afore- mentioned payments were made to the Sarpanch contractor - Dinesh Kumar Patel which were due to be paid to him and the cheques were duly encashed.

6. However, the Sarpanch/contractor after several days of receipt of the final payment, filed a complaint against the appellant/BDO - Smt. Vasanti Dubey in the Special Police Establishment, Lokayukta Office, Jabalpur stating inter-alia that the complainant - Dinesh Kumar Patel had been paid a sum of Rs.40,000/- only with respect to the contract awarded to him and when the balance payment of Rs.10,000/- was demanded by him, the appellant demanded a sum of Rs.3,000/- as commission. The complainant's further case is that he although paid a sum of Rs.500/-, he felt aggrieved and hence did not pay any further amount to the appellant but preferred to lodge a complaint on 7.8.2001 in regard to the illegal demand made by her. Since the alleged incident was falling within the jurisdiction of the Special Police Establishment, Lokayukta Office, Bhopal, a case was registered against the appellant on the basis of the complaint on the same date i.e. 7.8.2001 under Sections 7 and 13(1)(d) read with Section 13(1)(2) of the Prevention of Corruption Act, 1988.

7. The Special Police Establishment, Lokayukta Office, proceeded to investigate the matter and carried out detailed investigation and also recorded statements of

various persons including that of the complainant on 26.3.2002. In course of investigation, the complainant resiled from his earlier version and stated that he had made a false complaint at the instance of someone else whose name he did not divulge. Further statement of one Shankar Singh was also recorded that the complainant had paid Rs.2,500/- to the appellant when she had gone to the bathroom and the money thereafter was recovered from her. The police also seized various documents from the office of the BDO located in the office of Janpad Gotegaon which included the files containing the details of the cheques from which payment had been made to the complainant. After completion of the investigation by the Office of Lokayukta who was competent to get the matter investigated by the police and in view of the statement of the complainant that he made false complaint at the instance of someone else as also on account of the fact that the entire payment except Rs. 10,000/- had been made by the appellant - Smt. Vasanti Dubey to the complainant prior to the date on which the complaint was filed, it was inferred that the complaint did not disclose commission of any offence and hence the Lokayukta directed that a closure report be filed in regard to the complaint lodged against Vasanti Dubey and appropriate action be initiated against the complainant for lodging a false complaint.

8. Accordingly, the closure report was submitted before the Special Judge, Narsinghpur but by order dated 5.8.2002, the Special Judge refused to accept the same. He thus rejected the closure report and thereafter directed the police to file charge-sheet in the case against the appellant against which the State Government filed a criminal revision bearing Criminal Revision No. 1206/2002 in the High Court challenging the order of the Special Judge who refused to accept the closure report and issued direction for submission of the charge-sheet against the appellant.

9. The learned single Judge of the High Court by order dated 14.1.2003 was pleased to allow the Revision Petition and quashed the order passed by the Special Judge who had refused to accept the closure report and had directed submission of charge-sheet against the appellant on the ground that there is no power expressly or impliedly conferred under the Code on a magistrate to call upon the police to submit a charge-sheet when police had sent a report under Section 169 of the Code stating that there is no case made out for sending up an accused for a trial. The learned single Judge took this view relying upon the ratio of the authoritative pronouncement of this Court delivered in the matter of Abhinandan Jha Ors. Vs. Dinesh Mishra1 wherein it was observed that the functions of the magistrate and the police are entirely different and though the magistrate may or may not accept the report and take action according to law, he cannot impinge upon the jurisdiction of the police by compelling them to change their opinion so as to

accord with his view. The learned Judge also took notice of the observation of the Supreme Court which had further been pleased to hold therein that the magistrate however, while 1 AIR 1968 SC 117 = (1967) 3 SCR 668 disagreeing with a final report/closure report of a case can take cognizance under Section 190(1)(c) or order further investigation under Section 156(3) of the Code of Criminal Procedure but cannot straightaway direct for submission of charge-sheet to the police. Applying the aforesaid test as laid down by this Court in the case of Abhinandan Jha (supra), the impugned order passed by the Special Judge, Narsinghpur was held to be illegal and without jurisdiction and consequently was quashed. However, the learned single Judge had added an observation in the judgment and order that if the learned Special Judge thinks it fit and appropriate to take cognizance, the same can be taken under Section 190(c) of the Code of Criminal Procedure or he may direct the Lokayukta police for further investigation. As already stated the revision accordingly was allowed and the impugned order of the Special Judge dated 5.8.2002 was quashed.

10. The Special Police Establishment, Lokayukta Office, Jabalpur, thereafter again got the complaint examined in the light of the statement of the witnesses and the evidence and noticed that there were no materials against the appellant to proceed as she had made all payments from 27.2.2001 up to 2.8.2001 yet a complaint dated 7.8.2001 was subsequently filed by the complainant - Dinesh Kumar Patel alleging that the appellant had demanded commission/bribe of Rs.2,500/- from the complainant in order to clear his bills which complaint was found to be untrustworthy and hence unacceptable since all payments had already been received by the complainant prior to the lodgement of complaint specially in view of the subsequent version of the complainant that he had lodged a malicious complaint at the instance of a rival of the appellant.

11. The Special Police Establishment, Lokayukta Office, therefore, once again filed an application/closure report before the Special Judge, Narsinghpur but the Special Judge, Narsinghpur this time again rejected the closure report by order dated 18.5.2004 observing therein that it had been clarified by order dated 5.8.2002 that there is sufficient basis to take cognizance against the appellant - Smt. Vasanti Dubey and there is no change in the circumstance on the basis of which closure report can be accepted clearly overlooking that the High Court had already quashed the order dated 5.8.2002 passed by the Special Judge as it had held that the Special Judge had no jurisdiction to direct the police to submit charge sheet in case he refuses to accept closure report although he could take cognizance under Section 190(C) of the Cr.P.C. or direct further investigation of the case. In pursuance of this, further investigation was done by the Special Police

Establishment, Lokayukta Office and closure report was submitted after completion of reinvestigation. On this occasion, when the Special Judge refused to accept closure report, it was his statutory and legal duty to either pass a fresh order taking cognizance if he refused to dismiss the complaint and proceed with the enquiry under Section 200 Cr.P.C. by examining the complainant after which he had to record reasons why he disagreed with the closure report. But the Special Judge did not discharge this legal obligation and simply in a mechanical manner directed the investigating agency to obtain sanction to prosecute the appellant despite the fact that the investigating agency had consistently reported that sufficient evidence was not there to justify prosecution of the appellant. At this stage, if the Special Judge found that there were sufficient ground to proceed, it could have taken cognizance but having been confronted with the legal impediment that it could not proceed without sanction for prosecution, the Special Judge directed to reinvestigate the matter once again for the second time and also directed the investigating agency to obtain sanction for prosecution.

12. Hence, the appellant assailed the order of the Special Judge dated 18.5.2004 by filing a criminal revision petition No. 839/2004 but the High Court on this occasion dismissed the revision petition and was pleased to hold that the order of the Special Judge who had refused to accept the closure report for the second time did not suffer from any apparent error of jurisdiction. The learned single Judge while dismissing the revision petition observed that it shall still be open to the appellant to raise all such pleas as are available to her under the law in case charge-sheet is filed against her.

13. However, the learned single Judge completely missed the ratio laid down in the case of Abhinandan Jha (supra) which had been relied upon by the learned single Judge of the High Court on an earlier occasion also when the order of the Special Judge refusing to accept closure report and directing submission of charge-sheet was quashed and the entire legal position was summed up in unequivocal terms as follows:-

> There is no power, expressly or impliedly conferred under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the magistrate and the police are entirely different, and though, the Magistrate may or may not accept the report, and take suitable action according to law, he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view.

This position has been further reiterated and reinforced in a recent judgment of this Court delivered in the matter of Ram Naresh Prasad vs. State of Jharkhand2, wherein it has been held that when the police submitted a final report of investigation of the case which in colloquial term is called closure report, the magistrate cannot direct the police to submit the charge-sheet. However, on the basis of the material in the charge-sheet, he may take cognizance or direct further investigation. In fact, this position is clearly laid down 2 (2009) 11 SCC 299 under Section 190 read with Section 156 of the Cr.P.C. itself and the legal position has been time and again clarified by this Court in several pronouncements viz. in the matter of Bains vs. State3, wherein their lordships have summarised the position as follows:-

> 1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;
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> 2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:
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> i. If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.
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> ii. He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.
>
> iii. Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such 3 AIR 1980 SC 1883 = 1980 (4) SCC 631 enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the magistrate cannot direct the police to straightway submit the charge-sheet as was the view expressed in the matter of Abhinandan Jha (supra) which was relied upon in the matter of Ram Naresh Prasad (supra).

14. Thus it is undoubtedly true that even after the police report indicates that no case is made out against the accused, the magistrate can ignore the same and can take cognizance on applying his mind independently to the case. But in that situation, he has two options (i) he may not agree with the police report and direct an enquiry under Section 202 and after such enquiry take action under Section 203. He is also entitled to take cognizance under Section 190 Cr.P.C. at once if he disagrees with the adverse police report but even in this circumstance, he cannot straightway direct submission of the charge-sheet by the police.

15. In the light of the aforesaid legal position, when we examined the merit of the instant matter, we noticed that the order dated 18.5.2004 passed earlier by the Special Judge straightway directing the police to submit charge-sheet was quashed by the learned single Judge of the High Court and liberty was left open to him either to take cognizance under Section 190(c) of the Cr.P.C. or direct the Lokayukta Police for further investigation. In spite of this order, the Special Judge did not pass an order taking cognizance which he could have done under Section 190(c) of the Cr.P.C. However, he chose to direct office of the Lokayukta to enter into further investigation which after further investigation assigned reasons given out hereinbefore, stating that in view of the statement of the complainant that he had complained at the instance of a rival of the accused as also the fact that entire payment had already been made by the complainant prior to the lodgement of complaint, no case was made out against the complainant. In spite of this, if the Special Judge considered it legal and appropriate to proceed in the matter, he could have taken cognizance upon the complaint and could have proceeded further as per the provision under Section 200 of the Cr.P.C. by examining the complainant and if there were sufficient ground for proceeding, he could have issued process for attendance of the accused. However, such process could not have been issued, unless the magistrate found that the evidence led before him was contradictory or completely untrustworthy. Conversely, if he found from such evidence that sufficient ground was not there for proceeding i.e. no prima facie case against the accused was made out, he had to dismiss the complaint, since the complaint did not disclose the commission of any offence. But instead of taking any step either by issuing the process or dismissing the complaint at once, he could have taken immediate step as a third alternative to make an enquiry into the truth or falsehood of the complaint or for an investigation to be made by the police for ascertaining whether there was any prima facie evidence so as to justify the issue of process. In short, on receipt of a complaint, the magistrate is not bound to take cognizance but he can without taking cognizance direct investigation by the police under Section 156(3) of Cr.P.C. Once, however, he takes cognizance he must examine the complainant and his witnesses under Section 200. Thereafter, if he requires police

investigation or judicial enquiry, he must proceed under Section 202. But in any case he cannot direct the Police to straightaway file charge-sheet which needs to be highlighted as this point is often missed by the Magistrates in spite of a series of decisions of this Court including the case of Abhinandan Jha (supra) and Ram Naresh Prasad (supra) referred to hereinbefore.

16. When the facts of the instant matter is further tested on the anvil of the aforesaid legal position, we find that the Special Judge instead of following the procedure enumerated in the Cr.P.C. appeared to insist on rejecting the closure report given by the Special Police Establishment, Lokayukta Office and in the process consistently committed error of law and jurisdiction not only once, but twice. On the first occasion when the order of the Special Judge was quashed and set aside by the High Court granting liberty to the Special Judge either to take cognizance under Section 190(c) or order for further investigation as he had committed an error of jurisdiction by directing the police to straightway submit the charge-sheet against the accused-petitioner, the Special Judge did not consider it appropriate to take cognizance but ordered for further investigation by Lokayukta Police and when the matter was reinvestigated by the Special Police Establishment of the Lokayukta Office, the Special Judge in spite of the finding of the investigating agency holding that no further material to proceed in the matter was found, refused to accept the closure report and this time it further realized that it could not proceed in the matter as there was no sanction for prosecution, which the Special Judge obviously noticed since he was not in a position to take cognizance directly under Sections 7, 13(1)(d) of the Prevention of Corruption Act in absence of sanction which was a statutory requirement. In spite of this, he refused to accept closure report but recorded a direction to obtain sanction for prosecution of the appellant and thereafter ordered for reinvestigation of the complaint for the second time creating a peculiar and anomalous situation which is not in consonance with the provision of the Code of Criminal Procedure enumerated under the Chapter relating to conditions requisite for initiation of proceedings.

17. It may be worthwhile to highlight at this stage that the enquiry under Section 200 Cr.P.C. cannot be given a go- bye if the Magistrate refuses to accept the closure report submitted by the investigating agency as this enquiry is legally vital to protect the affected party from a frivolous complaint and a vexatious prosecution in complaint cases. The relevance, legal efficacy and vitality of the enquiry enumerated under Section 200 Cr.P.C., therefore, cannot be undermined, ignored or underplayed as non compliance of enquiry under Section 200 Cr.P.C. is of vital importance and necessity as it is at this stage of the enquiry that the conflict between the finding arrived at by the investigating agency and enquiry by the

Magistrate can prima facie justify the filing of the complaint and also offer a plank and a stage where the justification of the order of cognizance will come to the fore. This process of enquiry under Section 200 Cr.P.C. is surely not a decorative piece of legislation but is of great relevance and value to the complainant as well as the accused.

18. It is no doubt possible to contend that at the stage of taking cognizance or refusing to take cognizance, only prima facie case has to be seen by the Court. But the argument would be fit for rejection since it is nothing but mixing up two different and distinct nature of cases as the principle and procedure applied in a case based on Police report which is registered on the basis of First Information Report cannot be allowed to follow the procedure in a complaint case. A case based on a complaint cannot be allowed to be dealt with and proceeded as if it were a case based on Police report. While in a case based on Police report, the Court while taking cognizance will straightaway examine whether a prima facie case is made out or not and will not enter into the correctness of the allegation levelled in the F.I.R., a complaint case requires an enquiry by the Magistrate under Section 200 Cr.P.C. if he takes cognizance of the complaint. In case he refuses to take cognizance he may either dismiss the complaint or direct the investigating agency to enter into further investigation. In case, he does not exercise either of these two options, he will have to proceed with the enquiry himself as envisaged and enumerated under Section 200 Cr.P.C. But, he cannot exercise the fourth option of directing the Police to submit a charge-sheet as such a course is clearly not envisaged under the Cr.P.C. and more so in a complaint case. As already stated, this position can be clearly deduced from the catena of decisions including those referred to hereinbefore but needs to be reinstated as time and again this magisterial error reaches up to this Court for rectification by judicial intervention.

19. The instant matter is one such example and is one step ahead wherein the Special Judge was confronted with yet another legal impediment of lack of sanction for prosecution giving rise to a peculiar situation when he noticed and recorded that he could not proceed in the matter under the Prevention of Corruption Act without sanction for prosecution, but in spite of this he directed to obtain sanction, ordered for reinvestigation and consequently refused to accept closure report.

20. Since the Special Judge in the instant matter refused to accept the closure report dated 18.05.2004 without any enquiry or reason why he refused to accept it which was submitted by the Special Police Establishment, Lokayukta Office, Jabalpur after reinvestigation for which reasons had been assigned and there was

also lack of sanction for prosecution against the appellant which was necessary for launching prosecution under the Prevention of Corruption Act, we deem it just and appropriate to hold that the Special Judge clearly committed error of jurisdiction by directing reinvestigation of the matter practically for the third time in spite of his noticing that sanction for prosecution was also lacking, apart from the fact that the Special Police Establishment, Lokayukta Office, after reinvestigation had given its report why the matter was not fit to be proceeded with.

21. We are therefore of the considered view that the Special Judge in the wake of all these legal flaws as also the fact that the Special Judge under the circumstance was not competent to proceed in the matter without sanction for prosecution, could not have ordered for reinvestigation of the case for the third time by refusing to accept closure report dated 18.05.2004. This amounts to sheer abuse of the process of law resulting into vexatious proceeding and harassment of the appellant for more than 10 years without discussing any reason why he disagreed with the report of the Lokayukta and consequently the closure report which would have emerged if the Special Judge had carefully proceeded in accordance with the procedure enumerated for initiation of proceeding under the Code of Criminal Procedure.

22. In view of the aforesaid discussion based on the existing facts and circumstances, we deem it just and appropriate to set aside the impugned order passed by the Special Judge refusing to accept the closure report dated 18.05.2004 and consequently the judgment and order of the High Court by which the order of the Special Judge was upheld, also stands quashed and set aside. Accordingly, the appeal is allowed.