

SUPREME COURT OF INDIA

State of Bihar

Vs.

Lalu Singh

Crl.A.No.1883 of 2013

(Chandramauli Kr. Prasad and Jagdish Singh Khehar, JJ.)

29.10.2013

JUDGMENT

Chandramauli Kr. Prasad, J.

1. While dismissing the Writ Petition, the High Court has made observations which have far reaching consequences and accordingly the State of Bihar, aggrieved by the same has preferred this Special Leave Petition. The observations made read as follows:

"I have no doubt in taking this view that under Section 36 of the Code of Criminal Procedure, the higher police officials have got same powers as available to the officer-in-charge of a police station under them but the power is available only with respect to supervising the investigation or participating into the investigation to some extent but under section 173(2) of the Code of Criminal Procedure, the final view over the investigation of a case with regard to filing charge sheet or final form has to be taken by the concerned officer-in-charge only and he only has the authority to file the charge sheet in the case"

2. While doing so, however, the High Court has not quashed the report submitted by the Inspector of the Criminal Investigation Department of the State Government.

3. It is the aforesaid observation, which is the subject matter of this special leave petition.

4. Leave granted.

5. Facts lie in a narrow compass:

6. On the basis of an oral statement made by one Shail Kumari Devi before the officer-in-charge of Marhaura Police Station, Marhaura, P.S. Case No. 148 of 2004 was registered under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The officer-in-charge of the Police Station took up the investigation, but before he could complete the same, and submit report in terms of Section 173 of the Code of Criminal Procedure (hereinafter referred to as the "Code"), the Director General of Police entrusted the investigation to the Criminal Investigation Department, (hereinafter referred to as "C.I.D.") and the task for conducting the investigation was assigned to an Inspector. The Inspector of C.I.D. conducted the investigation and submitted the charge-sheet against the accused persons. On consideration of the charge-sheet and the materials collected during the course of investigation, the Chief Judicial Magistrate, Saran took cognizance of the offence and directed for issuance of process. One of the accused, namely Lalu Singh, aggrieved by the same, preferred writ petition before the High Court for quashing the prosecution, inter alia, on the ground that under Section 173(2) of the Code only an officer in-charge of a Police station has the authority to do that and, therefore, the charge-sheet submitted by the Inspector, C.I.D. is fit to be quashed.

7. The High Court considered the aforesaid submission and though it declined to quash the charge-sheet, it made the observation quoted above and held that it is the officer-in-charge only who can file the charge-sheet.

8. We have heard Mr. Manish Kumar, learned Counsel for the appellants and Mr. Nagendra Rai, learned Senior Counsel for the respondent.

9. Mr. Kumar contends that the Inspector of C.I.D. possesses the power to submit report under Section 173(2) of the Code and the observation made by the High Court is erroneous. Mr. Rai, however, submits that in the facts of the present case, the High court was justified in making the observations as quoted above.

10. In view of the rival submissions, we deem it expedient to analyse the scheme of the Code and the provisions of the Bihar Police Manual. Section 173 of the Code contemplates submission of report on completion of investigation. Section 173(2) of the Code which is relevant for the purpose reads as follows:

"173 - Report of police officer on completion of investigation-

(1) xxx xxx xxx

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

(a) The names of the parties;

(b) The nature of the information;

(c) The names of the persons who appear to be acquainted with the circumstances of the case;

(d) Whether any offence appears to have been committed and, if so, by whom;

(e) Whether the accused has been arrested;

(f) Whether he has been released on his bond and, if so, whether with or without sureties;

(g) Whether he has been forwarded in custody under section 170;

(h) Whether the report of the medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

Xxx xxx xxx"

11. From a plain reading of the aforesaid provision, it is evident that it is the officer-in-charge of a police station who is authorized to forward report in the prescribed form to the Magistrate empowered to take cognizance. Section 36 of the Code deals with the power of superior officers of police with reference to the officer-in-charge of a police station, same reads as follows:

"36. Powers of superior officers of police.- Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

12. Therefore, under the scheme of the Code the power to submit report in terms of Section 173(2) of the Code is with the officer-in-charge of the police station. Further, in view of Section 36 of the Code, police officers superior in rank to an officer-in-charge of

the police station throughout the local area have been conferred with the authority to exercise the same power as that of officer-in-charge of police station. In the present case, the investigation has been conducted by Inspector of C.I.D. and he had submitted the report under Section 173(2) of the Code. Therefore, the question is as to whether the Inspector of C.I.D. can be treated in law as the officer-in-charge of the police station for the purpose of submitting the report contemplated under Section 173(2) of the Code. The State Government, in exercise of the powers under Sections 7 and 12 of the Police Act, 1861, has framed the Bihar Police Manual. Chapter 15 thereof deals with the constitution and functions of the Criminal Investigation Department. Rule 431, with which we are concerned in the present appeal, reads as follows:

"431.(a) Sub-Inspectors of the department deputed to districts have not the powers of an officer in charge of a police-station nor of the subordinate of such an officer, unless they are posted to a police- station for the purpose of exercising such powers. It follows that unless so posted they have not the powers of investigation conferred by Chapter XII, Cr.P.C. and their functions are confined to supervising or advising the local officers concerned. If for any reason it be deemed advisable that a Sub-Inspector of the department should conduct an investigation in person, the orders of the Inspector-General shall be taken to post him to a district where he shall be appointed by the Superintendent to the police-station concerned. Such a necessity will not arise in case of Inspectors of C.I.D. as given in sub-rule (b) below.

Sub-Inspectors of the department shall not be employed to conduct investigations in person unless such orders have been obtained.

(b) Under section 36, Cr.P.C. Inspectors and superior officers of the C.I.D. are superior in rank to an officer in charge of a police-station and as such may exercise the same powers throughout the State as may be exercised by an officer in charge of a police-station within the limits of his station."

13. Rule 431(b) makes the Inspectors and superior officers of the C.I.D. superior in rank to an officer-in-charge of a police station and they have been conferred with the same powers as may be exercised by an officer-in-charge of a police station. This Rule, therefore, envisages that an Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station. Here, in the present case, as stated earlier, the investigation was conducted by the Inspector of C.I.D. and it is he who had submitted the report in terms of Section 173 of the Code. In view of what we have observed above, the Inspector of C.I.D. can exercise the power of an officer-in-charge of a police station and once it is held so, its natural corollary is that the Inspector of C.I.D. is competent to submit the report as contemplated under Section 173 of the Code. The case in hand is not one of those cases where the officer-in-charge of the police station had deputed the Inspector of C.I.D. to conduct some steps necessary during the course of investigation. Rather, in the present case, the investigation itself was entrusted to the Inspector of C.I.D. by the order of the Director General of Police. In such circumstances, in our opinion, it

shall not be necessary for the officer-in-charge of the police station to submit the report under Section 173(2) of the Code. The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer-in-charge of the police station or the officers superior in rank to them, but in a case investigated by the Inspector of C.I.D., all these powers have to be performed by the Inspector himself or the officer superior to him. In view of what we have discussed above, the observations made by the High Court in the impugned judgment is erroneous and deserve to be set aside.

14. The High Court while coming to the aforesaid conclusion has greatly been swayed by the observation of this Court in the case of

*M.C.Mehta (Taj Corridor Scam) vs. Union of India*¹. In that case the Court was considering the scope of Section 173(2) of the Code in case of difference of opinion between the team of investigating officers and the law officers on one hand and the Director of Prosecution of the same investigating agency i.e. C.B.I., on the other hand, on the question as to whether there exist adequate materials for judicial scrutiny against the accused persons. In this background this Court held that it is the officer-in-charge of the police station, who is competent to form final opinion. In this connection, it has been observed as follows:

”31. As stated above, the formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. Under the CBI Manual, the officer in charge of the police station is the SP. In this connection, we quote herein below the CBI Manual, which though not binding on this Court in Supreme Court monitored cases, nonetheless, the said Manual throws light on the controversy in hand.”

15. In the case in hand, there is no such controversy. The case was transferred to the C.I.D. and it was entrusted for investigation by an Inspector of C.I.D., who possesses a rank superior to an officer-in-charge of the police station as per Rule 431(b) extracted above and, therefore, competent to form opinion in terms of Section 173(2) of the Code, subject of course to the power of superior officer.

16. In the result, we allow this appeal, set aside the impugned observations, but without any order as to the costs.

Judgment referred

12007(1) SCC 0110