

PATNA HIGH COURT

Ram Nandan Yadav

Vs

State (Patna)

Criminal Revn. No. 822 of 1963

(Ramratna Singh and A. Ahmad, JJ.)

02.03.1966

JUDGMENT

Ramratna Singh, J.

1. This application is directed against an order of the Third Additional Sessions Judge, Patna, refusing to make a reference to this Court.

2. One Ramchanar Sao lodged an information before the police about a dacoity said to have been committed in his house. The petitioners and one Tengar Beldar were named in the first information report. On the 24th July 1962, the police, after completing the investigation, submitted charge-sheet against Tengar Beldar only under the order of the Deputy Superintendent of Police and final report in respect of the other accused including the petitioners on the ground, it is said, that the Deputy Superintendent of Police was of the opinion that the names of the petitioners had been mentioned in the first information due to enmity. On the same date, Mr. Ramyash Prasad Singh the Sub-divisional Magistrate, Sadar, Patna directed that the record he put up on the 31st July 1962 along with the case-diary for consideration as in whether a prima facie case had been made out against any of the other accused persons including the petitioners. On the 31st July 1962, the case-diary was perused and the learned lawyer for the State as also the learned lawyer for the accused persons were heard by the learned Magistrate and the case was adjourned for orders till the 9th August 1962. On that date, he passed the following order :

"Accused in custody produced. Accused on bail present. Perused the case diary. I am satisfied that a prima facie case is made out against all the accused persons named in the F.I.R., call for supplementary charge-sheet against the remaining 8 accused persons named in the F.I.R. I. O. must submit charge-sheet by 20-8-62.

A supplementary charge sheet was, eventually submitted against the petitioners, and, on the 23rd January 1963, Mr. A.N. Prasad the successor-in-office for the time being of Mr. Ramayash Prasad Singh made an order as follows :

"Accused in custody (1) produced and accused on bail (8) present. Supplementary charge-sheet against the remaining (8) accused persons named in the F.I.R. submitted as called for Cognizance taken. The case is transferred to the Court of Shri D.N. Mishra, M.M. 1st Class, for commitment trial.

Accused to be produced and appear in that Court on 28-1-63". Against this order, the petitioners went up to the Court of Session for making a reference to this Court, but their application was dismissed. Then, the petitioners filed the present application in revision in this Court, and, in Para 5 of this application, reference has been made to a Full Bench decision of the Calcutta High Court in *A.K. Roy v. State of West Bengal*¹ in which it was held that, when the police upon investigation, has submitted a final report, a Magistrate cannot direct the police to submit a charge sheet. Though a Bench of this Court had considered this decision of the Calcutta High Court in *Mohammad Ashiqe Khan v. Mohammad Kalim Khan*², it could not be brought to the notice of Sahai, J., before whom this application was put up, as this decision has not yet been reported. Consequently, his Lordship referred the present application to a Division Bench for hearing. It has now come up before us for hearing.

3. Mr. Akbar Imam, who has appeared for the petitioners, submitted that the Sub-divisional Magistrate, Mr. Ramyash Prasad Singh, had no power to call for a charge-sheet, as such an action would amount to an interference with the investigation by the police. It is well set tied that the functions of the judiciary and the police are independent and each is left to exercise its own function, subject of course, to a right of the Court to interfere in an appropriate case. The question, however, in the instant case is whether the order of the 9th August 1962 calling for charge-sheet amounted to an interference with the investigation, that is, with the function of the police. In my opinion the answer to this question is in the negative. The police, in the instant case, had discharged its function completely by submitting a report under Section 173 of the Code of Criminal Procedure and, thereafter, no part of the investigation was pending before the police. Apparently, on seeing the report under Section 173 of the Code, the Sub-divisional Magistrate, Mr. Ramyash Prasad Singh, passed an order on the 24th July 1962, that the record he put up on the 31st July 1962 along with the case-diary for consideration as to whether a prima facie case had been made out against the petitioners. With that object in view, the learned Magistrate heard the lawyer for the accused persons as well. The petitioners could, therefore, have no grievance that the learned Magistrate decided to call for a charge-sheet against them. It will be noticed from the order dated the 9th August 1962, that the Magistrate perused the case-diary, and, having heard the learned lawyers of both sides on the earlier date he was satisfied that a prima facie case had been made out against all the accused persons named in the first information report, namely the petitioners, for being summoned before the Court. Thus, it cannot be said that, by passing this order, he was interfering with the function of the police.

4. Further, in the Full Bench decision of the Calcutta High Court in *A.K. Roy's case* AIR 1962 Calcutta 135 (FB), the majority view was that a Magistrate could not call for a charge-sheet but the minority view was to the contrary. The Bench of this Court, whose decision in *Mohammad Ashiqe Khan's case* Cri Revn No. 1203 of 1960, D/d. 6-12-1962 (Cal) is yet unreported. adopted, the view taken by this Court in its previous decisions in *Raghupat Narayan Singh v. Emperor*³, *Raghunath Puri v. Emperor*⁴ and *Uma Singh v. Emperor*⁵. Their Lordships also considered the case reported in *Shukadeva Sahay v. Hamid Miyan*⁶,

according to which a charge-sheet could not be called for by a Magistrate; but a Division Bench of this Court, in Uma Singh's case, AIR 1933 Patna 242, dissented from that view of the learned single Judge. In the case before their Lordships Mohammad Ashique Khan's case Cri Revn. No. 1203 of 1960 D/d. 6-12-1962 (Cal) final report was submitted by the police and the same was accepted; but, thereafter, a protest petition was filed on behalf of the first informant, challenging the correctness of the final report submitted by the police, and ultimately, the learned Magistrate passed an order which ran as follows :

"Hajri on behalf of complainant. Perused the C. D. Call for charge-sheet under Section 379 I.P.C. Put up on 6-9-60"

As against this order, the accused persons of that case came up before this Court; it was held that the order calling for charge-sheet did not amount to an interference with the investigation by the police and by asking the police for charge-sheet the Magistrate merely summoned accused through the agency of the police.

5. Another argument advanced by Mr. Akbar Imam was that the Magistrate could not call for a charge-sheet against some of the accused only after the submission of final report by the police without any material before him and that the previous Bench decision of this Court laid down that the Magistrate could do so on the ground that a protest petition was before the Magistrate after final report had been submitted by the police fail to understand what material a protest petition could furnish against the final report except a reiteration of the first information recorded by the police. In my opinion, therefore, the absence of a protest petition does not affect the principle laid down by this Court.

6. The Bench of this Court, in Mohammad Ashique Khan's case Cri Revn No. 1203 of 1960, D/d. 6-12-1962 (Cal) observed that there was no bar against the Magistrate looking into the case-diary to decide whether he could issue processes to the accused, though the Magistrate should read the case diary in conjunction with some other materials In the instant case Mr. Ramyash Prasad Singh, in my opinion, followed this procedure. He perused the case diary and heard learned lawyers for the State as well as for the accused persons. Then, he had, from time to time, heard the State lawyer as well as the lawyer for the accused persons and perused the case-diary of the police in connection with bail from the 7th March to the 24th July 1962 The order of the learned Magistrate dated the 9th August 1962 was, therefore, quite legal and proper.

7. Mr. Akbar Imam, then, referred to the orders dated the 9th August 1962 and the 23rd January 1963 and submitted that, in view of the order passed by Mr. A.N. Prasad taking cognizance of the case, it was not the intention of Mr. Ramyash Prasad Singh, while passing the first order, to take cognizance of the case and summon the petitioners. This argument would have been plausible, if the two orders had been passed by the same Magistrate. The order of Mr. A.N. Prasad cannot be construed to mean that it was not the intention of Mr. Ramyash Prasad Singh to take cognizance of the case and to summon the accused persons. The order of Mr. A.N. Prasad dated the 23rd January 1963 taking cognizance of the case against the petitioners may or may not be erroneous, as held by the learned Additional Sessions Judge; but there could be no doubt that it was redundant.

8. Mr. Akbar Imam relied on an observation in another unreported decision of this Court in

*Ganauri Dusadh v. State of Bihar*⁷, to which I was a party, in that case, the learned Magistrate did not consider the materials in the case-diary at the time when he made the Impugned order nor did the order on its fact Indicate as to what other materials induced him to direct the submission of charge sheet against the petitioners. On this ground, the order of the learned Magistrate was set aside. In the instant case, the order of Mr. Ramyash Prasad Singh shows that he perused the case-diary and he heard the lawyers of both sides before calling for charge-sheet against the petitioners.

9. In view of the facts stated above, there is no merit in this application and it is, accordingly, dismissed.

Anwar Ahmad, J.

10. I agree.

Application dismissed.

Cases Referred.

¹ AIR 1962 Cal 135 (FB)

² Criminal Revn. No. 1203 of 1960, dated 6-12-1962 (Cal)

³ AIR 1924 Pat 597

⁴ AIR 1932 Pat 72

⁵ AIR 1933 Pat 24

⁶ AIR 1928 Pat 585

⁷ Criminal Revn. No. 769 of 1962 D/d. 1-7-1965 (Pat)