(2007) 01 AHC CK 0023

Allahabad High Court

Case No: Criminal M.W.P. No. 15892 of 2006

Executive Director, Chhata Sugar Company Ltd.		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Jan. 3, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173(2), 190(1), 200, 202
- Penal Code, 1860 (IPC) - Section 120B, 406, 420

Citation: (2007) 1 ACR 964

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Advocate: Sanjay Singh, for the Appellant; A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.
Heard learned Counsel for the Petitioner and learned A.G.A. for the State.

2. The prayer in the instant writ petition is to quash the proceedings of Case No. 96/IX/2001, Charan Singh v. Navin Kumar and another, arising out of Case Crime No. 25 of 2001, under Sections 406, 420 and 120B, I.P.C. Police Station Chhata, district Mathura and also to quash the order dated 5.12.2003 passed by the Magistrate (1st Class) Chhata, Mathura confirmed in revision on 23.11.2006 by the assistant Sessions Judge (Court No. 1), Mathura.

3. The facts of the case are, an application u/s 156(3), Cr. P.C. was filed by the complainant. The Magistrate passed an order on 23.2.2001 to register a case against the Secretary of the Co-operative Cane Development Society and Executive

Director/Authority of Chhata Sugar Company Limited (Petitioner). A first information report was registered against the Petitioner and Navin Kumar Secretary. The police investigated the matter and submitted a final report after arriving at a conclusion that the offence alleged in the report does not appear to be committed by both the accused. The complainant, Respondent No. 2 filed a protest petition which was numbered as 4B. The Magistrate by means of the order dated 5.12.2003 accepted the final report and passed an order treating the protest petition as a complaint and fixed a date for recording the statement u/s 200, Cr. P.C. This order was challenged in a criminal revision which was dismissed on 23.11.2006 by the Incharge Sessions Judge (A.S.J.) Court No. 1, Mathura with an observation that since the statement of the first informant has already been recorded u/s 200, Cr. P.C., therefore, the order impugned in the said revision stood complied.

4. Learned Counsel for the Petitioner has annexed the statement of one of the witnesses u/s 202, Cr. P.C. recorded on 27.2.2004, vide Annexure-9 to the writ petition. Reliance has been placed by the learned Counsel on a decision of the Apex Court in the case of Gangadhar Janardan Mhatre v. State of Maharashtra and others, (L) 2004 ACC 650: 2004 (3) ACR 2758 (SC). The submission on the basis of the aforesaid decision is that in the event, the police report is submitted on the basis of conclusion that no offence appears to have been committed by the accused, the Magistrate could (i) either accept the report and drop the proceedings or (ii) disagree with the report and take the view that there are sufficient ground to take cognizance or (iii) to ask for further investigation by the police. Since the Magistrate has accepted the final report, he could not treat the protest petition as a complaint and proceed to record the statements under Sections 200 and 202, Cr. P.C.

5. After hearing the counsel for the parties at length and going through the decision relied upon by the learned Counsel for the Petitioner, it is apparent that the order impugned in the instant writ petition is the decision of the Magistrate to proceed as a complaint case and record the statement of the complainant and witnesses. The statements have been recorded but no orders have been passed taking cognizance. It is thus clear that final orders are yet to be passed and on perusal of the decision cited above, the stage has not yet arrived and the Magistrate has not passed any order taking cognizance.

6. Chapter XVI of the Code deals with "commencement of proceedings before the Magistrate" and Section 204, Cr. P.C. empowers a Magistrate to issue summons or a warrant as the case may be, to secure the attendance of the accused. Section 190(1), Cr. P.C. provides cognizance of an offence by Magistrate which is quoted below:

190. Cognizance of offences by Magistrate.--(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence:

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

(b) upon a police report of such facts ;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

7. On perusal of the aforesaid provision, it is clear that Section 190(1)(a), Cr. P.C. empowers a Magistrate to take cognizance of an offence upon receiving a complaint of facts which constitute such an offence but before that the Magistrate is required to examine the complainant u/s 200 and the witnesses u/s 202, Cr. P.C. Section 203, Cr. P.C. empowers the Magistrate to dismiss the complaint if, after considering the statements on oath of the complainant and the witnesses, he is of the opinion that there is no sufficient ground for proceedings.

8. In the case of M/s. India Carat P. Ltd. v. State of Karnataka and others, (XXVI) 1989 ACC 280 (SC): 1989 ACR 178 (SC), the Apex Court ruled as under:

Chapter XVI deals with "Commencement of Proceedings before the Magistrates" and Section 204 empowers a Magistrate to issue summons or a warrant as the case may be, to secure the attendance of the accused if in the opinion of the Magistrate taking cognizance of the offence there is sufficient ground for proceeding. From the provisions referred to above, it may be seen that on receipt of a complaint a Magistrate has several courses open to him. The Magistrate may take cognizance of the offence at once and proceed to record statements of the complainant and the witnesses present u/s 200. After recording those statements, if in the opinion of the Magistrate there is no sufficient ground for proceeding, he may dismiss the complaint u/s 203. On the other hand if in his opinion there is sufficient ground for proceeding he may issue process u/s 204. If however, the Magistrate thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceedings or dismiss the complaint if there is no sufficient ground for proceeding. Yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down u/s 200 or Section 202, he may order an investigation to be made by the police u/s 156(3). When such an order is made, the police will have to investigate the matter and submit a report u/s 173(2). On receiving the police report the Magistrate may take cognizance of the offence u/s 190(1)(b) and issue process straightaway to the accused. The Magistrate may exercise his powers in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the police report u/s 173(2) will contain the facts discovered or unearthed by the police as well as the

conclusion drawn by the police therefrom. If the Magistrate is satisfied that upon the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence and issue process, the Magistrate may do so without reference to the conclusion drawn by the Investigating Officer because the Magistrate is not bound by the opinion or the police officer as to whether an offence has been made out or not. Alternately the Magistrate, on receiving the police report, may without issuing process or dropping the proceedings proceed to act u/s 200 by taking cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statement upon oath of the complainant and the witnesses present and thereafter decide whether the complaint should be dismissed or process should be issued.

9. In view of the aforesaid decision, it is apparent that the Magistrate has not committed any illegality whatsoever in recording statements of the complainant and the witnesses under Sections 200 and 202, Cr. P.C. and the revisional court had rightly dismissed the revision. There is yet another circumstance, which requires consideration as to whether this Court should exercise jurisdiction under Article 226 of the Constitution of India and grant the prayer made on behalf of the Petitioner. The situation at present is, the statement under Sections 200 and 202, Cr. P.C. have been recorded in the year 2004 itself but no orders have been passed so far. The Magistrate has no doubt accepted the final report and, therefore, the Petitioner, who is an Executive Director of Chhata Sugar Company, cannot be said to be an aggrieved party. It is also to be noticed that the Petitioner has not been arrayed by his name. Copy of the first information report also shows that the Executive Director is an accused by his designation and not by name and since no orders summoning the accused is either brought on record or challenged in the writ petition, the Petitioner does not appear to be an aggrieved party.

10. In the circumstances, I am not inclined to interfere and quash the proceeding, which is only to the limited extent of recording statement under Sections 200 and 202, Cr. P.C. of one of the witnesses namely Hare Kishan son of Mangu. The writ petition lacks merit and is accordingly dismissed.