Ravish Chandra Vs State of Uttar Pradesh

Criminal Revision No. 526 of 1985 in Case No. 132/85 (Arising out of Crime No. 27 of 1984)

Court: Allahabad High Court

Date of Decision: Oct. 17, 1985

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 154, 154(2), 156(3), 169, 170#Penal Code, 1860 (IPC) â€" Section 147, 148, 306, 307, 323

Citation: (1986) 10 ACR 79

Hon'ble Judges: N.N. Sharma, J

Bench: Single Bench

Advocate: Rajeev Sharma, for the Appellant; Jagdish Tewari, AGA and Rati Ram and V.P. Sharma, for the Respondent

Judgement

N.N. Sharma, J.
This revision is directed against order dated 30-1-1985 recorded by Sri R.D. Pandey, learned Judicial Magistrate,

Kanpur Dehat in Criminal Case No. 132 of 1985 arising out of Crime No. 27 of 1984 by which the learned Magistrate took the cognizance of the

offence u/s 190(1)(c) of Code of Criminal Procedure and summoned the revisionist to face trial u/s 306 IPC. The impugned order runs as below:

This is an FR in case Crime No. 27 of 1984 u/s 306 IPC P.S. Sheorajpur against accused Ravish Chandra, Kishori Lal, Smt. Vindvasni, Km.

Prem Sakhi and Satish Chandra.

The complainant Balak Ram of aforesaid FR has moved a protest note alongwith affidavit. It is alleged that FR has been submitted collusively by

police.

Taking into consideration the FIR, medical report and protest note, I am of the opinion that there exists a prima facie case against accused u/s 306

IPC and FR is not fit to be accepted.

Hence rejected.

Taking cognizance u/s 190(C) of Code of Criminal Procedure agaiast accused Ravish Chandra, Kishori Lal, Smt. Vindvasni, Km. Prem Sakhi and

Satish Chandra u/s 306, I hereby summon above mentioned accused. Let a case be registered u/s 306 IPC.

Issue summons to accused flixing 16-3-1985 for appearance.

2. On behalf of revisionist, it was argued that it was not open to the learned Magistrate to have taken the cognizance of the offence against

revisionist u/s 190(1)(c) of Code of Criminal Procedure (Act No. 2 of 1974) without examination of the complainant u/s 200 Code of Criminal

Procedure and of the witnesses u/s 202 Code of Criminal Procedure. Section 190 of Code of Criminal Procedure leads as 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)....

3. The contention was that in the instant case, cognizance cannot be treated to have been taken by the Magistrate on a "police report" but upon.

"information received from any person other than a police officer" or "upon his own knowledge".

4. In case the cognizance is taken by Magistrate on a "police report", he was not under the necessity to have examined the complainant or the

witnesses u/s 200 or 202 of Code of Criminal Procedure prior to the summoning of the accused. The argument further developed was that the

police did not submit a challan report as contemplated by Section 173(2) of Code of Criminal Procedure. A mere look at Section 173(2) Code of

Criminal Procedure shows the requirements of any report in the prescribed form mentioned therein which need not be repeated here.

5. "Police report" has been defined in Section 2(r) of the said Code to mean a report forwarded by a police officer to a. Magistrate under Sub-

section (2) of Section 173 of aforesaid Code. It does not contemplate a report u/s 169 Code of Criminal Procedure which empowers the

investigator to release the accused when evidence is deficient. Such report may be accepted or rejected by the Magistrate concerned but it could

not constitute a report on which cognizance could be taken by Magistrate u/s 190(b) of Code of Criminal Procedure.

6. The Magistrate, on perusal of police report u/s 169 Code of Criminal Procedure, medical report and protest petition dated 18-1-1985 of

informant Balak Ram alongwith his affidavit, summoned the revisionist and his co-accused straightway. Such procedure was illegal as was pointed

out by this Court in Shaukat Ali v. State of U.P. 1978 ACR 375. In that case also the police had submitted a final report (report u/s 169 Code of

Criminal Procedure) and the complainant filed a protest petition assailing the correctness of the final report. The Magistrate took the cognizance of

the offences under Sections 420/468 IPC and ordered the police to make further investigation in the matter. Such order was upheld on the ground

that while exercising the powers u/s 202 Code of Criminal Procedure the Magistrate could postpone the issue of process and direct the

investigation into the matter by police also in order to decide as to whether there was sufficient ground for proceeding against the accused or not.

In that event, an obligation was cast on the Magistrate to follow the procedure prescribed under Sections 200 and 202 of Code of Criminal

Procedure.

7. It appears that in that case the report of the police submitted u/s 169 Code of Criminal Procedure, was accepted by the Magistrate but on the

protest petition by complainant, Chief Judicial Magistrate directed a re-investigation of the matter.

8. The next authority relied upon by learned Advocate for revisionist has been reported in Chandra Shekhar v. Mate of U.P. 1979 AWC 39

(D.B.). in that case also the police submitted a report u/s 169 Code of Criminal Procedure and forwarded it to the Magistrate alongwith FIR

(under Section 154 Code of Criminal Procedure), the medical report. However, the Magistrate took cognizance of the offence u/s 190(1)(c)

Code of Criminal Procedure. It was further held that Section 190(1)(b) Code of Criminal Procedure contemplates the police report u/s 173(2)

Code of Criminal Procedure. If the Magistrate takes cognizance on a report u/s 169 Code of Criminal Procedure and the papers sent by police

officer along with that report, cognizance could have been taken by the Magistrate only u/s 190(1)(c) Code of Criminal Procedure.

9. Such matter came up for consideration in Ram Adhar Vs. Rama Kirat Tiwari, when the aforesaid view was dissented from. It was observed

that the word "police report" u/s 190(1)(b) could not be restricted to the police report as mentioned in the definition Clause of Section 2(r) of

Code of Criminal Procedure, i.e. the report u/s 173(2) Code of Criminal Procedure. The functions of the Magistrate and police were different.

Police could be influenced by so many considerations other than judicial. Even in a case where the police submitted a final report u/s 169, Code of

Criminal Procedure, if the Magistrate after perusal of the facts found in the course of investigation from the case diary, he could reach a conclusion

different from that of the investigating agency. It was clearly open to the Magistrate not to agree with the conclusion in the final report and to take

cognizance of the case. Reliance was placed upon Abhinandan Jha and Others Vs. Dinesh Mishra, . It was laid down in that case that even if the

Magistrate, after perusal of final report submitted by police, opined that the facts constitute an offence, he could take cognizance of the offence u/s

190(1)(b) of Code of Criminal Procedure. A similar view was taken by the Supreme Court in H.S. Bains v. State (Union Territory of Chandigarh)

1980 AWC 619. In that case also, it was held that on receiving police report, Magistrate could take cognizance of the offences u/s 190(1)(b) and

straightaway issue process. The earlier authorities of this Court were not followed as good law.

10. In Qasim v. State of U.P. 1984 ACR 408 the police submitted a report u/s 169. of Code of Criminal Procedure. Investigator opined that it

was not a fit case to send the accused for trial However, the Magistrate disagreed with that view and after perusal of the case diary, protest

petition and other papers, he issued process against the accused under Sections 147, 148, 324, 323, 307 IPC. The contention that the order was

illegal and without jurisdiction as complainant was not examined before issuing the warrant was repelled. Learned Judge also relied upon Phulgend

v. State 1978 ACR 291 where it was held that Magistrate was not bound to treat the protest petition as a complaint. Gajadhar Singh v. Mahesh

Chandra 1981 ACR 218 was also cited in support of the view that even though there may be a protest petition against the police report u/s 169

Code of Criminal Procedure, the case was cognizable by Magistrate u/s 190(1)(b) and not 190(a).

11. In Basudeo v. State of U.P. 1983 ACR 513 it was held that even assuming that the protest petition filed in the instant case fulfilled the

requirement of the definition of word "complaint" under the Code of Criminal Procedure and the Magistrate applied his mind to the contents of the

petition, it could not be said that he has taken cognizance u/s 190(1)(a) Code of Criminal Procedure as he had not followed the procedure for

proceeding in a particular way as indicated in the subsequent provisions of Chapter XV of Code of Criminal Procedure. R.R. Chari Vs. The State

of Uttar Pradesh, was cited in support of that view.

12. In the instant case, the protest petition did not satisfy the requirement of a complaint as defined in Section 2(d) of Code of Criminal Procedure

which reads as below:

(d) "" Complaint "" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person,

whether known or unknown, has committed an offence, but does not include a police report.

13. Petitioner did not mention the names of all the accused nor of the witnesses etc. in the petition. The mere fact that the Magistrate wrongly

observed in the order that he was taking cognizance u/s 190(1)(c) of Code of Criminal Procedure could not vitiate the proceedings when the case

clearly falls u/s 190(1)(b) of Code of Criminal Procedure.

14. In H.S. Bains v. State (Union Territory of Chandigarh) 1980 AWC 619 (supra) proceedings were initiated on a complaint. Magistrate did not

take cognizance on that complaint but ordered investigation by police u/s 156(3) of Code of Criminal Procedure. On completion of investigation,

police reported that the case of complainant was not true and must be dropped.

However, the Magistrate disagreed with the conclusion of the police and took cognizance of the case under Sections 448, 451 and 506 IPC and

directed the issue of process straightway without examination of the complainant or witnesses. This procedure was upheld. It was further observed

at page 622:

... Section 190(1)(c) was never intended to apply to cases where there was a police report u/s 173(1). We find it impossible to say that a

Magistrate who takes cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the

offence on suspicion and not upon a police report merely because the Magistrate and the police arrived at different conclusions from the facts. The

Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a

complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence u/s 307 IPC the Magistrate

is not bound by the conclusion of the complainant. He may think that the facts disclose an offence u/s 324 IPC only and he may take cognizance of

an offence u/s 324 instead of Section 307. Similarly, if a police report mentions that half a dozen persons examined by them claim to be eye

witnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the

police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and

take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report. He

would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police. It would not be

said in such a case that he was taking cognizance on suspicion.

15. In Bhagwant Singh Vs. Commissioner of Police and Another, it was pointed out that in cases initiated on first information report lodged by

informant u/s 154(2) of Code of Criminal Procedure, if the officer-in-charge of the police station refuses to take cognizance, he was obliged to

inform the first informant that his case would not be investigated u/s 173(2)(ii) of Code of Criminal Procedure. The investigator was obliged to

communicate the information, the action taken by him, and the report forwarded by him to the Magistrate. If the Magistrate refuses to take

cognizance on such first information report and the report of investigator, the informant has a right to be heard at the time of consideration of such

report. It was further held that on the principles of natural justice even an injured person who may not be an informant, could appear before the

Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on

the report. When the investigation is not complete on a report as sent to the Magistrate by investigator u/s 170 Code of Criminal Procedure, the

Magistrate could take cognizance of the offence u/s 190(1)(b) of Code of Criminal Procedure. Similarly, when the facts disclosed by a police

report do constitute an offence, the case is neither covered by Section 190(1)(a) nor 190(1)(c) and must fall u/s 190(1)(b) even though such

report may not be a report within the meaning of Section 173(3) (sic) of Code of Criminal Procedure.

16. So, there was nothing illegal on the part of Magistrate in issuing a process straightaway on perusal of case diary, medical report and other

papers.

17. Thus, the revision is devoid of force and is dismissed. Ad interim order dated 26-3-1985 is vacated herewith.

18. Send the record expeditiously to the court concerned for a quick disposal.

Revision dismissed.