
AIR 1962 All 456 : (1962) 32 AWR 759

Allahabad High Court (Lucknow Bench)

Case No: Criminal Ref. No. 4 of 1961

Surendra Bahadur
Singh

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision: Jan. 3, 1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) â€” Section 202(1)

Citation: AIR 1962 All 456 : (1962) 32 AWR 759

Hon'ble Judges: S.D. Singh, J

Bench: Single Bench

Advocate: Hyder Husain, M.P. Srivastava and Umesh Chandra Srivastava, for the Appellant;
S.P. Misra and P.N. Choudhry, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.D. Singh, J.

This reference has been made by the learned Sessions Judge, Gonda u/s 438 of the Code of Criminal Procedure in respect

of certain proceedings pending before Sri A.S. Misra, Sub-Divisional Magistrate, Utraula, Gonda. The applicant in the case is Sri Surendra

Bahadur Singh, Station Officer, police station Mankapur in district Gonda, in order to understand the points involved in the decision of this

reference, the facts giving rise to it have to be narrated in detail. While the applicant Sri Surendra Bahadur Singh was posted as Station Officer,

Police Station Mankapur, some complaints regarding bribery, corruption, coercion and misconduct were made to the Uttar Pradesh Home

Minister by Sri Baldeo Singh, M. L. A. Copies of these complaints were forwarded by the Government to the District Magistrate, Gonda, and a

magisterial enquiry was desired into these allegations. The exact order which was received by the District Magistrate is not on the record, but the

following order was passed by the District Magistrate on receipt of the Government orders: ""No. 720/ST SDM Utraula (by name) The attached is

the copy of a communication sent to the Government by Sri Baldeo Singh, M.L.A., against Shri Surendra ""Bahadur Singh, Station Officer, Police

Station Mankapur, containing allegations of bribery, corruption, coercion and misconduct against the said S. O.

The government desire a magisterial enquiry into these allegations. Will you please, therefore, conduct this enquiry in respect of all the allegations

except in regard to those matters which are sub judice.

As stated in this communication the incidents relating to P.S. Kauria are sub judice as also with regard to the treatment meted out to Sri

Nageshwar Brahmin of Kirtapur on 9-7-60 and 22-7-60.

I shall be glad if you will kindly finish this enquiry as quickly as possible and send me a detailed report. The enclosed copy of the petition submitted

to the Government may please be returned with your proper:

Sd/- M. Ahmad

Encl. Distt Magtt, Gonda

As above. 26-9-60.

2. When the Sub-Divisional Magistrate received this order, he directed issue of summons against the Station Officer, Mankapur. Sri Surendra

Bahadur Singh as also Sri Baldeo Singh M.L.A. and other connected persons who are not specifically named in the order. The reference probably

was to persons, atrocities in respect of whom were alleged in the complaint made by Sri Baldeo Singh. What subsequently happened before Sri

A.S. Misra is not material, except perhaps in respect of an order passed by the District Magistrate on 1st November, 1960, about a matter which

was brought to his notice by Sri A.S Misra. When Sri Baldeo Singh appeared before Sri A.S. Misra, he moved an application before him on 27th

October, 1960, in which it was alleged that influence was being brought to bear upon the witnesses by the Station Officer and a request was made

that proper authority may be moved for Sri Surendra Bahadur Singh being transferred from this particular area pending the enquiry against him, Sri

A.S. Misra passed the following order on this application:

D. M. (by name)

This application has been presented by Sri Baldeo Singh today. It is a fact that a magisterial enquiry is being made against the S. O. Mankapur Sri

Sudendra Bahadur Singh into the allegations made by Sri Baldeo Singh. It is not possible at this stage, to comment whether witnesses are being

influenced by S. O. or not as the evidence has not yet started. His application is being forwarded to you for necessary orders.

Sd. A. S. Misra,

27/X/60 S. D. M.

3. The District Magistrate passed the following order:

S.D. M. (U)

A magisterial enquiry is in the nature of semi-judicial proceeding and you are fully competent to prevent intimidation of and undue influence upon

witnesses by either of the parties including S. O. The transfer of the S. O. can be considered only when you are satisfied that he is misusing his

presence in the circle to prevent an impartial and fair enquiry.

4. An application which has resulted of this reference to this Court was moved by Surendra Bahadur Singh before the Magistrate on 27th

October, 1960, in which he mentioned five points on which he desired "the Magistrate to make an appropriate reference to the learned District

Magistrate. These five points are:

1. The typed sheet, undated and unsigned delivered to the applicant, cites six different items and transactions, 1, 5 and 6 of which are sub judice.

2. Any allegations of bribery and corruption referred to in the order of the learned District Magistrate, are outside the jurisdiction of and the scope

of enquiry by this learned Court, in the eye of law.

3. Various items and transactions of the so-called charges or accusations, cannot all be enquired into at one and the same enquiry or trial together.

4. Accusations of misconduct not amounting to offences can be enquired, into only according to the Police Regulations and not at any magisterial

enquiry or trial.

5. The citation of accusations and allegations as they stand, and as mentioned in the typed sheet, cannot be the subject of a magisterial enquiry

within, the meaning of law.

5. The Sub-Divisional Magistrate heard arguments in respect of the points raised before him and under his order dated 10th November, 1980,

rejected the same. The main argument which appears to have been advanced before the Sub-Divisional Magistrate was that paragraphs 483 and

484 of the U. P. Police Regulations were ultra vires and not in conformity with the pre-visions of Section 7 of the U. P. Police Act and that no

magisterial enquiry could be directed to be made on the basis of the communication which was sent by Sri Baldeo Singh. The Sub-Divisional

Magistrate held that a magisterial enquiry could be ordered in respect of the allegations made by the complainant Sri Baldeo Singh, except in

respect of those allegations which were already sub judice and which were even except-ed out of the enquiry under the order of the District

Magistrate. It is against this order that Sri Surendra Bahadur Singh filed the revision application in the Court of the Sessions Judge. Several

grounds were raised in the revision petition including that paragraphs 483 and 484 of the Police Regulations were ultra vires that the District

Magistrate could not order a magisterial enquiry, that all those allegations which are covered by Section 5 (a) of the Prevention of Corruption Act,

II of 1947, could not be the subject matter of a magisterial enquiry and that the Code of Criminal Procedure did not contemplate or provide for

such a procedure as is mentioned in the aforesaid paragraphs of the U. P. Police Regulations. It was further alleged that no special order of the

Government or of any competent authority had been made for a magisterial enquiry, that political personages were not granted under the law the,

competence to initiate and have conducted the so-called magisterial enquiry, that under the law magisterial enquiry is unwarranted and that the

magisterial enquiry which was being made was multifarious and omnibus in nature and was against law.

6. The Sessions Judge held that the Sub-Divisional Magistrate to whom the enquiry was entrusted is enquiring into the matter as a Court, that the

enquiry pending before him amounts to a Judicial proceeding within the four corners of the Code of Criminal Procedure and that, therefore, the

orders passed by him are open to revision by this Court under the Code. The question whether paragraphs 483 to 490 of the Police Regulations

were ultra vires the rule making powers of the Government was also considered by the Sessions Judge, and though no clear finding is recorded by

him, he appears to have taken the view that they were.

7. Then the Sessions Judge came to the conclusion that the District Magistrate had no jurisdiction or power to order the enquiry in the manner he

did, and that even the Sub-Divisional Magistrate, Utraula, had no power or jurisdiction to hold the enquiry in the manner he is proceeding. Then

the learned Sessions Judge held that there is multi-fariousness and misjoinder of charges in this enquiry, that the law contemplates that a man can

be tried for only one transaction in each trial and that since a large number of charges has been combined in one enquiry, it is vitiated on that

account. It has also been held by him that some of the charges levelled against the applicant relate to corruption in respect of which an enquiry

could be made only by a Special Judge and not by the Magistrate. Then it has been pointed out that the applicant had a right to be tried in

accordance with law. What is exactly meant by the Sessions Judge by this observation is not quite dear from his judgment. What he probably

meant was that there could be no enquiry against the applicant other than the one in connection with a regular trial or a commitment proceeding

with a view to the accused being committed to a Court of Session. The learned Sessions Judge ultimately came to the conclusion that no enquiry

could be held against the applicant in the manner it is being held and that the proceedings are liable to be quashed.

8. Before I consider the questions raised in this reference on merit, it may be stated at the very outset that the contention that paragraphs 483 to

490 of the Police Regulations in Uttar Pradesh were ultra vires the ruler-making powers of the Government was not pressed before me. This being

so, it will be assumed for purposes of this reference that the applicant Sri Surendra Bahadur Singh, who is a Sub-Inspector in the U. P. Police

Force, will be governed by these Police Regulations to the extent they apply to him.

9. Paragraph 483 of the Police Regulations reads:

483. Subject to the special provision contained in paragraph 500 and to any special orders which may be passed by the Governor in particular

cases a proceeding against a police officer will consist of-

A--A magisterial or police inquiry, followed, if this inquiry shows the need for further action, by

B-- A Judicial trial, or

C-- A departmental trial, or both, consecutively."

Then follow paragraphs 484 to 490 which paragraphs are themselves classified under three heads: The first head bears the title "A-Inquiry" and

contains paragraphs 484 to 487. The second head bears the title ""B--Judicial Trial"" and contains paragraph 488. The third head bears the title ""C-

-Departmental Trial"" and includes paragraphs 489 to 494. These three sets of rules contained in paragraphs 484 to 494 thus refer to the three

types of proceedings referred to in paragraph 483. A bare reading of paragraph 483 quoted above, will indicate that there may be four types of

enquiries against a police officer, namely, a magisterial enquiry, a police enquiry, a judicial trial and a departmental trial. The magisterial and police

enquiries referred to in this paragraph should be different from, and preliminary to, a judicial trial or a departmental trial, or both. A departmental

trial generally takes place u/s 7 of the Police Act, V of 1861. A judicial trial will also take place under and in accordance with the provisions of the

Code of Criminal Procedure. A new provision is, however, made under the head ""A"" for a magisterial or a police enquiry, which according to the

terms of paragraph 483 itself, is to be an enquiry upon which would depend whether there is need for a judicial trial or a departmental trial under

heads ""B"" and ""C"".

10. The main question that was canvassed during the hearing of this reference was whether the enquiry, which is being made by the Sub-Divisional

Magistrate, Utraula, is a purely departmental enquiry in respect of which this Court or the Court of Session could not possibly have any

jurisdiction, or if it is an enquiry under the Code of Criminal Procedure--an enquiry which is conducted by a Magistrate acting as a Magistrate or

to be more precise, acting as a Court, which would give jurisdiction to this Court as well as the Court of Session to entertain an application in

revision within the four corners of the Code of Criminal Procedure. The learned Sessions Judge has devoted considerable time and space in

discussing this matter. He has been at pains to show that the enquiry is a judicial enquiry which is being conducted by a Magistrate as a Court and

that he had jurisdiction to entertain the application in revision. While the finding arrived at by the learned Sessions Judge is correct, most of the

discussion by him was almost unnecessary. The order of the District Magistrate under which the enquiry was ordered itself indicates that it was a

magisterial enquiry which was wanted by him. Had it been a departmental, enquiry, it could not have been designated a "magisterial enquiry in the

order of the District Magistrate. The District Magistrate, as a matter of fact, further clarified him-self in his subsequent order on the report of the

Sub-Divisional Magistrate dated 27th October, 1960, when he said that the magisterial enquiry was in the nature of a semi-judicial proceeding.

What the learned District Magistrate meant by designating this enquiry to be a semi-judicial enquiry is not quite clear, but what he appears to be

certain about is that it was not a purely departmental enquiry.

11. A "magisterial enquiry" is contemplated under the police Regulations. It is referred to in paragraph 483 quoted above and also in paragraph

484, which says that if an offence is cognizable or non-cognizable according to the Schedule II of the Criminal Procedure Code and information of

it is received by the District Magistrate, he may ""in exercise of his powers under the Criminal Procedure Code" make or order a magisterial

enquiry or order an investigation by the police. If a magisterial enquiry has been ordered by the District Magistrate under, this paragraph 484 of the

police Regulations, as it obviously appears to be, then in that case the paragraph itself provides that the District Magistrate may make the

magisterial enquiry or order a magisterial enquiry ""in exercise of his powers under the Criminal Procedure Code." It was, therefore, in exercise of

his powers under the Code of Criminal Procedure that the District Magistrate ordered the Sub-Divisional Magistrate, Utraula, to make the enquiry.

12. Paragraph 485 of the Police Regulations further provides that where a magisterial-enquiry is ordered, it will be made ""in accordance with the

Criminal procedure Code"". Thus here again, it has been clearly provided that the enquiry would be made in accordance with the provisions of the

Code of Criminal Procedure. While exercising his powers under the Code, the District Magistrate and the Sub-Divisional Magistrate, who is

making the enquiry, can only be believed to be exercising jurisdiction as a Court and in accordance with the provisions of the Code. That by itself

should be sufficient to show that the District Magistrate as also the Sub-Divisional Magistrate were acting under the jurisdiction, of this Court and

the Court of Session.

13. Some cases were referred to at the Bar to indicate whether or not the High Court could exercise its revisional jurisdiction in respect of a case

pending before a Magistrate. Wali Mahammad Vs. Manik Chandra Raul, is one of them. It has been held in that case that where a Sub-Divisional

Magistrate passes an order u/s 66 of the Bengal Village Self Government Act, V of 1919, the High Court has no revisional jurisdiction over him. It

is pointed out, however, in that very case that in passing an order u/s 66 of the aforesaid Act the Magistrate does not act as a Magistrate as

defined in the Code, but as a persona designate and, he does not, in passing the aforesaid order, exercise jurisdiction under the Code of Criminal

Procedure. It is obvious, under the circumstances, that the High Court should not have any revisional jurisdiction over him.

14. Mt. Mithan and Another Vs. Municipal Board of Orai and State of U.P., is the next case referred to. In that case the High Court was held not

to have any revisional jurisdiction in respect of an order passed by a Magistrate u/s 247(1), of the Municipalities Act, II of 1916. Even this case is

not of any help to the State, inasmuch as a Magistrate while exercising jurisdiction under Action 247(1) of the Municipalities Act, does not act as a

Court and does not exercise jurisdiction under the Code of Criminal Procedure.

15. The only provision under which a District Magistrate may direct a Sub-Divisional Magistrate to make an enquiry in respect of al-legations

made against a person is Sub-section (1) of Section 202 of the Code of Criminal Procedure. Any Magistrate may under that subsection direct an

enquiry or an investigation to be made by any Magistrate subordinate to him for the purpose of ascertaining the truth or falsehood of a complaint.

That is the only provision under which the District Magistrate could, as contemplated under paragraph 484 of the Police Regulations, exercise his

powers under the Code of Criminal Procedure in directing a magisterial enquiry in respect of the conduct of the applicant. Neither side could point out any other provision under the Code under which such an enquiry might have been, ordered by the District Magistrate. As I have pointed out earlier, the enquiry which is being made by the Sub-Divisional Magistrate could not be a departmental enquiry. If it is not a departmental enquiry and if it was in exercise of his powers under the Code of Criminal Procedure that the District Magistrate ordered this enquiry, it could be only under Sub-section (1) of Section 202 of the Code of Criminal Procedure and if that was the provision under which the District Magistrate ordered the enquiry, he was obviously acting as a Court and even the Magistrate to whom the enquiry is entrusted under this provision would be acting as a Court, even though after making the enquiry he will be required to submit a report to the District Magistrate; and since there is no other provision under the Code under which this enquiry could be ordered, in any case none was pointed out to me at the time of the hearing of this revision, this is the only provision under which the Sub-Divisional Magistrate, Utraula, would be deemed to have been making the enquiry against the present applicant.

16. That being so, this Court definitely has revisional jurisdiction over the orders passed by the District Magistrate or the Sub-Divisional

Magistrate. The fact that the words ""(by name) were added by the District Magistrate against the letters and words ""SDM Utraula"" in directing an

enquiry being made by him, does not make any difference. The District Magistrate could order an enquiry being made by the Sub-Divisional

Magistrate, Utraula. He could even designate a Magistrate by name for making the enquiry. If the enquiry was ordered by him in the form indicated

above, that would not make any difference in the nature of the enquiry which is being made against the applicant.

17. It being settled that the enquiry, which is being made by the Sub-Divisional Magistrate, Utraula, is being made by him at the instance of the

District Magistrate under Sub-section (1) of Section 202 of the Code of Criminal Procedure, the next question to be considered is whether there is

any justification for interference in revision. The learned Sessions Judge has recommended in favour of interference. In doing so he has pointed out

a number of circumstances. One of them is that an accused person can be tried for only one transaction in each trial. He is of opinion that there is

multi-fariousness and misjoinder to the prejudice of the applicant. The Sessions Judge has however, not kept in view the fact that the trial has not

yet started. The complaint has been received by the District Magistrate. It cannot be thrown out by him without an enquiry. That enquiry is being

made. It will be after the re-suit of this enquiry is put up before the District Magistrate that he will proceed further in the matter in accordance with

the provisions of the Code of Criminal Procedure. If it is found that more than one offence have been alleged against the applicant and the report

indicates that the allegations in respect of those offences are correct, then the District Magistrate would decide whether the trial should be

proceeded with in one case or split up into different cases so that the law relating to the joinder of charges may not be infringed. The proceedings

before the Sub-Divisional Magistrate cannot be quashed on that account. Then it is mentioned that there are some allegations regarding corruption

and that these allegations cannot be enquired into by a Magistrate, the jurisdiction for the same being restricted, to Special Judges appointed under

the Criminal Law Amendment Act, XLVI of 1952. That is also a point which would arise for decision before the District Magistrate when he

proceeds further in the matter. If he finds that an offence is alleged against the applicant which offence cannot be tried by him, he will certainly drop

the proceedings in respect of those allegations. If the District Magistrate does frame a charge, even in respect of the allegations relating to

corruption, it would be open to the applicant to come up in revision against the framing of the charge at that stage.

18. The learned Sessions Judge points out in his order of reference:

The Sub Inspector wants that he should be tried in a court of law for each offence where, if the offences are proved, he is prepared to receive the punishment and if they are not proved, he would be in a position to vindicate his honour and prestige in service"".

19. This is, according to the findings given above, what is happening. A magisterial enquiry has been ordered under Sub-section (1) of Section 202

of the Code of Criminal Procedure. If any offence is made out, regular trial will take place in accordance with law and the applicant, therefore,

cannot entertain any grievance on that account. In fact, if the contention of the applicant were that the proceedings before the Magisterial are not

judicial proceedings u/s 202 of the Code of Criminal Procedure then and then alone, he could urge that proceedings may be taken against him in

accordance with law. Having himself attempted to show that the proceedings are u/s 202(1) of the Code of Criminal Procedure, this plea is no

longer open to him.

20. Then the learned Sessions Judge mentions:

I have expressed my opinion that the District Magistrate while ordering the S. D. M. Utrala acted as a court and the learned SDM in issuing

processes to the complainant (informant) to the S. O. applicant before me (accused) and to the witnesses acted as a court because in such matters

every ""Magistrate"" is in essence the "Court of a Magistrate.

(20a) Then he proceeds to observe

There is no other provision in the Criminal Procedure Code under which the learned, District Magistrate or the learned S. D. M. Utrala could

proceed when information of cognizable offences against the applicant before me, had come to their knowledge.

21. As I have pointed Out, the only provision in which the District Magistrate can order enquiry is Sub-section (1) of Section 202 and if in

directing an enquiry against the applicant the District Magistrate has complied with, the provisions of Section 202 of the Code of Criminal

Procedure, the enquiry would be perfectly in order and no exception can be taken to it. What remains, therefore to be seen is whether in ordering

the enquiry the District Magistrate acted in accordance with the provisions of Section 202.

22. This Section 202 has been ignored by the District Magistrate in one respect. This point does not appear to have been raised before "the

Sessions Judge, but there is no reason why it may not be taken into consideration at this stage. The proviso to Section 202 reads:

""provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined

on oath under the provisions of Section 200.

23. According to the provisions of this proviso, except in cases where a complaint is made by a Court, a direction regarding enquiry Or

investigation cannot be given by the Magistrate acting under Sub-section (1) of Section 202 Unless the complainant has been examined on oath

under the provisions of Section 200. That is a mandatory provision, non-compliance of which would vitiate further proceedings. The District

Magistrate, who received the complaint made by Sri Baldeo Singh, M.L.A., did not record his statement u/s 300. Unless that statement is

recorded, he cannot direct an enquiry into the allegations made in-to the complaint by the Sub-Divisional Magistrate, Utraula, or by any

Magistrate. From that point of view the enquiry which is being made by the Sub-Divisional Magistrate, even the order that was passed by the

District Magistrate on 26th September, 1960 requiring the Sub-Divisional Magistrate to make an enquiry in respect of the complaint, are illegal and

liable to be set aside. The District Magistrate should first examine the complainant u/s 200 of the Code. It is only after his statement has been

recorded under that section, that it would be possible for him to direct under Sub-section (1) of Section 202 that an enquiry be made against the

applicant either by a Magistrate or any other person.

24. The reference is, therefore, accepted. The order passed by the Sub-Divisional Magistrate on 10th November, 1960, on the applicant's

application dated 27th October, 1960, and Re order passed by the District Magistrate on 26-9- 1960, are set aside. The District Magistrate may

proceed with the complaint in accordance with law after the proviso to Sub-section (1) of Section 202 of the Code of Criminal Procedure has

been complied with.