

## Safdar Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** May 16, 2008

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 156, 173, 182, 190, 200

Penal Code, 1860 (IPC) â€” Section 182, 307, 323, 452, 504

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**Hon'ble Judges:** Vijay Kumar Verma, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Vijay Kumar Verma, J.

""Can a Magistrate even after accepting the final report filed by the police still take cognizance of an offence upon a

protest petition or complaint on the same or similar allegations of fact?"" is the main point that falls for consideration in this proceeding u/s 482 of the

Code of Criminal Procedure (in short, ""the Cr.P.C.), by means of which, the applicant has invoked inherent jurisdiction of this Court, praying for

quashing of the order dated 17.09.2007 passed by the then Sessions Judge, Rampur in criminal revision No. 149 of 2007 (Safdar v. State of

U.P.) and order dated 19.06.2007 passed by the Judicial Magistrate/ 2nd Additional Civil Judge/(J.D.) Rampur in criminal misc. case No. 523 of

2007.

2. Shorn of unnecessary details, the facts leading to the filing of the application u/s 482 Cr.P.C., in brief, are that an application u/s 156(3) Cr.P.C.

was moved by the applicant in the Court of Judicial Magistrate, Rampur on 12.12.2005, which was allowed. Pursuant to the order passed on that

application by the learned Magistrate, an F.I.R. was lodged on 23.12.2005 and a case u/s 323, 504, 506, 452 and 307 of Indian Penal Code (in

short, ""the I.P.C."" ) was registered against Yaseen S/o Pyare and Guddu S/o Ahmad Navi (opposite parties No. 2 and 3 herein) at P.S.

Bhot(Rampur). After investigation, final report was submitted by the police and a report u/s 182 I.P.C. was also sent for taking action against the

applicant/complainant. Notice of the final report and application u/s 182 I.P.C. was sent to the complainant on 20.02.2006. On getting

information, the complainant appeared in the Court of Magistrate concerned and sought time to file objections against the final report. On

06.06.2006, the complainant did not appear in the Court and hence, the learned Magistrate accepted the final report and adjourned the case for

taking action u/s 182 I.P.C. against the complainant. Thereafter, the complainant filed protest petition against the final report on 01.08.2006. After

hearing the counsel of the complainant, the learned Judicial Magistrate/2nd Additional Civil Judge(J.D.), Rampur vide his order dated 19.06.2007

dismissed the protest petition holding that since the final report has already been accepted on 06.06.2006, hence the protest petition is not

maintainable. Order dated 19.06.2007 passed by the learned Magistrate was challenged by the complainant/applicant in the Court of Sessions

Judge, Rampur by means of criminal revision No. 149 of 2007, which has been dismissed by the then learned Sessions Judge, Rampur vide his

order dated 17.09.2007. Both these orders have been challenged in this proceeding u/s 482 Cr.P.C.

3. Since no adverse order has been passed against the accused/opposite parties, hence notices of the proceeding have not been issued to them.

4. I have heard Sri Haji S. Kamal Akhtar Khan, learned Counsel for the applicant, learned A.G.A. for the State and perused the record.

5. It was vehemently contended by the learned Counsel for the applicant that the order dated 19.06.2007 passed by the Judicial Magistrate/ 2nd

Additional Civil Judge(J.D.), Rampur in criminal misc. case No. 523 of 2007 and order dated 17.09.2007 passed by the Sessions Judge, Rampur

in criminal revision No. 149 of 2007 are wholly illegal, as even after acceptance of the final report by the Magistrate, the complainant has right to

file protest petition and cognizance still can be taken by the Magistrate upon the protest petition.

6. The learned A.G.A. on the other hand contended that there is no illegality in the impugned orders, as after acceptance of the final report by the

Magistrate, protest petition of the complainant was not maintainable and hence the same was rightly dismissed by the learned Magistrate and the

learned Sessions Judge also did not commit any illegality in affirming the order of Magistrate dismissing the protest petition.

7. Having given my thoughtful consideration to the rival submissions made by the learned Counsel for the parties, I find force in the above

mentioned contention of the learned Counsel for the applicant. The matter of maintainability of the protest petition after acceptance of the final

report by the Magistrate was considered by the Division Bench of Patna High Court in the case of Munilal Thakur and Others etc. Vs. Nawal

Kishore Thakur and Another etc., After considering various authorities, it has been held by the Division Bench that a Magistrate even after

accepting the final report can still take cognizance of the offence upon a complaint or a protest petition on the same or similar allegations of fact.

This matter came before the Hon"ble Apex Court in the case of Kishore Kumar Gyanchandani Vs. G.D. Mehrotra and Another, In that case also,

final report was submitted after investigation by the police, which was accepted by the Magistrate. Thereafter, the complainant had filed a protest

petition, which was treated as complaint by the Magistrate and after holding inquiry u/s 202 Cr.P.C., summoning order was passed, which was

challenged by the accused in the High Court. In exercise of its inherent power, the High Court had set-aside the order of taking cognizance and

issuance of process in the complaint proceeding. When appeal against the order of High Court was preferred in the Hon"ble Apex Court, the

following observations have been made in para 4 of the judgement:

...It is too well settled that when police after investigation files a final form u/s 173 of the Code, the Magistrate may disagree with the conclusion

arrived at by the police and take cognizance in exercise of power u/s 190 of the Code. The Magistrate may not take cognizance and direct further

investigation in the matter u/s 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to

file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure u/s 202 of the Code and

takes cognizance if the materials produced by the complainant make out an offence. With these observations, the appeal was allowed and order of

the High Court was set-aside by the Hon"ble Apex Court.

8. This matter was again considered by the three Judges" Bench of the Hon"ble Apex Court in the case of Mahesh Chand v. B. Janardhan Reddy

and Anr. 2003 (46) ACC 182 (S.C.), in which it is held that there cannot be any doubt or dispute that only because the Magistrate has accepted

the final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition. From the law laid

down by the Hon"ble Apex Court in above mentioned rulings, it is crystal clear that even after acceptance of the final report by the Magistrate, the

complainant can file protest petition and the said petition cannot be dismissed holding that the same is not maintainable. Therefore, in instant case

also, the view of the learned Magistrate that after acceptance of the final report, the protest petition is not maintainable is wholly erroneous. For the

same reasons, the order dated 17.09.2007 passed by the then learned Sessions Judge, Rampur in criminal revision No. 149 of 2007, whereby the

aforsaid view of the learned Magistrate has been affirmed is also wholly illegal. Although, the learned Sessions Judge has made reference of the

case of Mahesh Chand v. B. Janardhan Reddy (supra) in his impugned order dated 17.09.2007, but it is very unfortunate that the learned Sessions

Judge could not understand the principle of law laid down by the Hon"ble Apex Court in this ruling. In para 11 of the judgement of this case, the

Hon"ble Apex Court has very clearly held that only because the Magistrate has accepted the final report, the same by itself would not stand in his

way to take cognizance of the offence on a protest/complaint petition. Therefore, the protest petition filed by the complainant/ applicant after

acceptance of the final report could not be dismissed on the ground that after accepting the final report, the protest petition is not maintainable. The

learned Magistrate could treat the protest petition as complaint and after recording the statement of the complainant u/s 200 Cr.P.C. and taking

evidence u/s 202 Cr.P.C., proper order u/s 203 or 204 Cr.P.C. ought to have been passed, but instead of following this procedure, the learned

Magistrate dismissed the protest petition vide his order dated 19.06.2007 holding that after acceptance of the final report, protest petition is not

legally maintainable. As mentioned herein-above, this view of the learned Magistrate is wholly erroneous.

9. It was also contended by the learned Counsel for the applicant that order dated 06.06.2006, whereby the final report was accepted by the

learned Magistrate is also wholly illegal, because the learned Magistrate did not apply his mind to the facts of the case and final report has been

accepted merely due to absence of the complainant on 06.06.2006. It was submitted by the learned Counsel for the applicant that the order dated

06.06.2006 also should be quashed by this Court in its inherent jurisdiction u/s 482 Cr.P.C. so that the Magistrate may pass reasoned order on

the final report after perusal of the case diary. This contention of the learned Counsel for the applicant has also got force. The order dated

06.06.2006 passed by the Judicial Magistrate/2nd Additional Civil Judge(J.D.), Rampur in criminal misc. case No. 523 of 2007 (State v. Safdar)

shows that the learned Magistrate did not apply his mind to the facts of the case and even the case diary was not perused by him at the time of

passing this order and the final report has been accepted merely on the ground that the complainant is absent and a report u/s 182 Cr.P.C. has

been submitted by the police for taking action against the complainant. The learned Magistrate was required to go through the case diary and the

final report could be accepted only if there was no evidence at all to take cognizance and issuance of process against the accused. It is well settled

principle of law that if there is evidence in the case diary to take cognizance and to summon the accused for trial, then the Magistrate is not bound

to accept the final report, even if the complainant is absent or has not filed any protest petition/objections against the final report. Therefore, the

order dated 06.06.2006 also is liable to be quashed, so that a reasoned order after perusing the case diary may be passed by the learned

Magistrate on the final report.

10. For the reasons mentioned herein-above, both the impugned orders as well as the order dated 06.06.2006 passed by the learned Judicial

Magistrate accepting the final report deserve to be quashed.

11. Consequently, the application u/s 482 Cr.P.C. is allowed. Both the impugned orders dated 19.06.2007 and 17.09.2007 as well as the order

dated 06.06.2006 accepting final report are hereby quashed. The learned Magistrate concerned is directed to pass fresh reasoned order on the

final report in case crime No. C-3/2005 of P.S. Bhot (Rampur) and protest petition keeping in view the observations made in this order.