Akash Garg Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Aug. 30, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 190, 482
Penal Code, 1860 (IPC) â€" Section 406, 420

Citation: (2011) 11 ADJ 849

Hon'ble Judges: Kant Tripathi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble Shri Kant Tripathi, J.
This is a petition u/s 482 of the Code of Criminal Procedure (in short ""the Code"") for quashing the charge-

sheet filed in Case Crime No. 15 of 210, under Sections 420 and 406 IPC, P.S. Civil Lines, District Moradabad.

2. Heard learned counsel for the petitioner and the learned AGA for the State and perused the record and also the summoning order dated

3.6.2010.

3. The learned counsel for the petitioner submitted that the learned Magistrate has not applied his mind to the facts and circumstances of the case

before taking cognizance of the aforesaid offences and issuing processes to the petitioner.

4. The learned counsel for the petitioner submitted in the aforesaid order, the Magistrate indicated that he has received the charge-sheet under

Sections 420 and 406 IPC against the petitioner. He further indicated that the cognizance was taken and directed the office to register the case and

issue processes to the petitioner. The learned counsel for the petitioner further submitted that the learned Magistrate no where specified in the

summoning order dated 3.6.2010 that he perused the police report (charge-sheet) and the statements of the witnesses and the other materials

while taking the cognizance. The learned Magistrate has also not indicated in the aforesaid order that he was of the view that there was sufficient

ground to proceed with the case. In the absence of these material aspects, it cannot be contended that the learned Magistrate applied his mind to

the facts of the case.

5. The learned counsel for the petitioner relied on paragraphs 14 and 15 of the judgement of the Apex Court in the case of Fakhruddin Ahmad v.

State of Uttaranchal and another, LXIV 2009 ACC 774, which are reproduced as follows:

14. From the afore-noted judicial pronouncements, it is clear that being an expression of indefinite import, it is neither practicable nor desirable to

precisely define as to what is meant by ''taking cognizance''. Whether the Magistrate has or has not taken cognizance of the offence will depend

upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary

action.

15. Nevertheless, it is well-settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have

taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received

from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the

Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the

alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the

offender.

6. It is well-settled that the Magistrate is not bound by the conclusion of the Investigating Officer. He is competent under law to form his own

independent opinion on the basis of the materials collected during the investigation. The Magistrate may or may not agree with the conclusion of the

Investigating Officer. If the Investigating Officer submits charge-sheet, in that eventuality the Magistrate may differ from the charge-sheet and refuse

to take cognizance by holding that no case is made out. In a case where the final report is submitted the Magistrate may on perusal of the materials

placed in support of the final report opine that the conclusion of the Investigating Officer is not correct and the offence is made out.

In that eventuality, the Magistrate may reject the final report and take cognizance of the offence. In appropriate cases, the Magistrate, after

rejecting the final report may direct for further investigation/re-investigation. This preposition has been settled by the Hon''ble Apex Court in catena

of cases and some of the them are as follows:

1. Abhinandan Jha and Others Vs. Dinesh Mishra,

2. State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others,

3. Sanjay Bansal and Another Vs. Jawaharlal Vats and Others,

4. India Carat Pvt. Ltd. Vs. State of Karnataka and Another,

5. H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh),

6. Minu Kumari and Another Vs. The State of Bihar and Others,

7. Popular Muthiah Vs. State represented by Inspector of Police, .

8. Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, .

7. The expression ""taking of cognizance"" of an offence used in Section 190 of the Code has not been defined in the Code but the Apex Court had

occasion to consider this expression in several decisions including the decision in Fakhruddin Ahmad v. State of Uttaranchal and another, LXIV

2009 ACC 774, relied upon by the learned counsel for the petitioner. Some of the relevant decisions depicting the point in controversy are being

referred to herein below:

1. S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others,

2. Hareram Satpathy Vs. Tikaram Agarwala and Others,

3. Jagdish Ram v. State of Rajasthan and another, AIR 2004 SC 1934

8. In the case of Jagdish Ram (supra) the Apex Court held that the taking of cognizance of the offence is an area exclusively within the domain of

the Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient

ground for conviction. At that stage the Magistrate is not required to record reasons.

9. In the case of S.K. Sinha (supra), the Apex Court held that ""cognizance"" has no esoteric of mystic significance in criminal law. It merely means

becomes aware of and when used with reference to a Court or a judge, it connotes to take notice of judicially. It indicates the point when a Court

or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by

someone. Taking cognizance does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected

commission of an offence, therefore, taking of cognizance is sine quo non or conditioned precedent for holding a valid trial. Cognizance is taken of

an offence and not of an offender. Whether the Magistrate has taken cognizance or not depends on the facts and circumstances of each case and

no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance. Therefore, the Apex Court

propounded the principle that as and when the Magistrate takes judicial notice of an offence with a view to proceed with the matter and applies his

mind to" the facts of the case and finds sufficient materials to proceed with the case and directs for issue of process to the accused on the basis of

the police report, is said to have taken cognizance of the offence.

10. In the case of Hareram Satpath v. (supra)the Apex Court held that Magistrate is restricted to find out whether there is a prima facie case or not

for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case.

11. Therefore, it is well-settled that a Magistrate can be said to have taken cognizance of an offence, if he has taken judicial notice of the

accusation and applies his mind to the allegations made in the complaint or in the police report or the information received otherwise and the

material filed therewith. In other words when a Magistrate applies his mind to the facts of the case contained in the police report and materials

collected during the investigation and is satisfied that the allegations constitute an offence and decides to initiate proceedings against the accused, he

can be said to have taken cognizance of the offence.

12. It is also well-settled that at the stage of taking cognizance of an offence, the Magistrate is not required to examine thoroughly the merits and

demerits of the case and to record a final verdict. At that stage he is not required to record even reasons, as expression of reasons in support of

the cognizance may result in causing prejudice to the rights of the parties (complainant or accused) and may also in due course result in prejudicing

the trial. However, the order of the Magistrate must reflect that he has applied his mind to the facts of the case. In other words at the stage of

taking cognizance what is required from the Magistrate is to apply his mind to the facts of the case including the evidence collected during the

investigation and to see whether or not there is sufficient ground (prima facie case) to proceed with the case. The law does not require the

Magistrate to record reasons for taking cognizance of an offence.

13. The present case needs to be examined in the aforesaid settled principles.

14. The cognizance order dated 3.6.2010 has been passed in the following terms:

Aaj yeh aarop patra Apradh Sankhya 15/10 thana Civil Lines, dhara 420/ 406 I.P.C. Rajya prati Akash Garg ke viruddh prapt hua. Prasangyan

liya gaya.

Darj register ho. Dinaank 5.7.10 ko samman jari ho. Vaste dene naklein pesh hon.

Vidhi purn parikshan hetu J.M. ke yahan sthanantrit ki jati hai.

15. A perusal of the aforesaid order reveals that the learned Magistrate has ""nowhere mentioned in the order that he had perused the charge-sheet

and the materials filed in support thereof nor he disclosed the fact that the materials were sufficient to proceed with the case. The Magistrate

specified in the order that he received charge-sheet against the petitioner and took cognizance and further directed registration of the case and

issue of the process to the accused. The manner in which the learned Magistrate has passed the order cannot be said that he had applied his mind

to the facts contained in the police report and the materials filed in support thereof, therefore, the aforesaid order can be described as an order

taking of cognizance"" of the offences disclosed in the charge-sheet against the petitioner, therefore, the order dated 30.6.2011 cannot be upheld.

16. In view of the aforesaid, the petition is allowed.

17. The order dated 3.6.2010 is quashed. The learned Magistrate is directed to reconsider the charge-sheet in the light of the relevant materials

and pass appropriate order afresh in accordance with law.