

(2000) 10 AHC CK 0083

Allahabad High Court

Case No: Criminal M.W.P. No. 5627 of 2000

Shashi Prabha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Oct. 20, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173(8), 190
- Penal Code, 1860 (IPC) - Section 342, 376, 506

Citation: (2000) 3 ACR 2624

Hon'ble Judges: U.S. Tripathi, J; J.C. Gupta, J

Bench: Division Bench

Advocate: Vinod Prasad, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

U.S. Tripathi, J.

The Petitioner has filed this petition for issue of writ, order or direction in the nature of mandamus commanding the Respondents to hand over the investigation of Case Crime No. 142 of 2000, State v. Ved Prakash Crime No. 142 of 2000, under Sections 342, 376 and 506, I.P.C., P.S. Musajhag, District Budaun, in pursuance of F.I.R. lodged by Respondent No. 4 against the husband of the Petitioner to some other independent agency or the C.B.C.I.D. for issue of direction in the nature of mandamus commanding the Respondents not to allow the Respondent No. 3 Station Officer, P.S. Musajhag to investigate into the matter in above Case Crime No. 142 of 2000 and for directing expeditious disposal of the bail application of the husband of the Petitioner.

2. The Petitioner is the wife of Vijay Kumar. It is alleged that in the year 1996, Sushil and Rajan Singh, sons of Ved Prakash, R/o Dattaganj, district Budaun had committed gang rape on the Petitioner regarding which she had lodged a report and a criminal case at Crime No. 56 of 1996 was registered at P.S. Dattaganj under Sections 376

and 506, I.P.C. against said Sushil and Rajan Singh. The police after investigation submitted charge-sheet in the said case and the case was pending. However, the accused of the said case obtained order from this Court staying their arrest and they could not be arrested. The above accused Rajan Singh and Sushil are sons of one Sailesh Pathak a local leader and Ex. M.L.A. The accused of the said case through their father and Station Officer, P.S. Musajhag, who was man of their father, were pressurising the Petitioner and her husband to withdraw the said case of rape and in this connection, they along with Station Officer, P.S. Musajhag came to the house of Petitioner on 18.8.2000. When the Petitioner and her husband refused to withdraw the case, they threatened to falsely implicate the husband of Petitioner in some rape case. They procured one Smt. Noor Jahan, aged about 35 years, wife of Respondent No. 4, a lady of loose character and provided money to Respondent No. 4 and his wife. The Respondent No. 4, accordingly, lodged a false report, on 21.8.2000 against Vijay Kumar, husband of the Petitioner under Sections 342, 376 and 506, I.P.C. alleging that he along with two other persons committed rape on Smt. Noor Jahan on 20.8.2000 at 8.30 p.m. in the way between Musajhag and Badaun, on the basis of which a case at Crime No. 142 of 2000 under Sections 342, 376 and 506, I.P.C. was registered. S.O., Musajhag himself was investigating the said case and since he was under influence of father of accused of case intimated on the report of the Petitioner, he would not investigate the case fairly. The Petitioner moved application to police and other higher authorities for transferring investigation to some other agency or C.B.C.I.D., but to no effect. Therefore, she had no other alternative remedy except to file this writ petition.

3. We have heard Sri Vinod Prasad, learned Counsel appearing for the Petitioner and the learned A.G.A. and have perused the record.

4. The learned Counsel for the Petitioner contended that I.O. of the Case Crime No. 142 of 2000 was in hands and gloves with Rajan Singh and Sushil, who had committed rape on the Petitioner and, therefore, there was no hope of fair investigation and, therefore, the investigation of case be handed over to some other agency. During course of argument, the learned Counsel for the Petitioner conceded that the police after investigation submitted charge-sheet in Case Crime No. 142 of 2000 against the husband of the Petitioner. But he contended that even after submission of charge-sheet, investigation can be ordered as required by Section 173(8), Cr. P.C. In support of his above contention, he placed reliance on case of [Ram Lal Narang Vs. State \(Delhi Administration\)](#). The case of Ram Lal Narang v. State (Delhi Administration), was under old Cr. P.C. It was held in the said case that notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the 1898 Code, the right of the police to further investigation is not exhausted and the police can exercise such right as often as necessary when fresh information comes to light. There was no provision in the Code of Criminal Procedure (1898) which, expressly or by necessary implication barred the right of the police to further investigate after cognizance of the case had

been taken by the Magistrate. Neither Section 173 nor Section 190 lead to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permits repeated investigation on discovery of fresh facts Ram Gopal Neotia Vs. State of West Bengal, and The State Vs. Mehar Singh and Others, overruled.

5. The position after enforcement of New Code of Criminal Procedure changed and specific provisions for further investigation was incorporated in Section 173(8), Cr. P.C., which reads as under:

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed ; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

6. The above decision of Ram Lal (supra) was again considered by the Apex Court in the case of Randhir Singh Rana v. State (Delhi Administration) XXXVI 1998 ACC 487, and it was held that the decision in Ram Lal Narang v. State (Delhi Administration), has laid down that despite a Magistrate taking cognizance of an offence upon a police report, the right of police to further investigate even under the old 1898 Code was not exhaustive and the police could exercise such right often as necessary when fresh information come to light. (This position is now beyond pale of controversy because of Sub-section (8) of Section 173 of the new Code). But then a rider was added stating that after cognizance has been taken, then with a view to maintain independence of the magistracy and the judiciary, interests of the purity of administration of criminal justice and interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

7. The Apex Court after considering various decisions held in para 11 as below:

The aforesaid being the legal position as discernible from the various decisions of this Court and some of the High Courts, we would agree, as presently advised, with Shri Vasdev that within the grey area to which we have referred the Magistrate of his own cannot order for further investigation.

8. In this case, the prayer for further investigation/ re-investigation has been made on behalf of the wife of accused. The Apex Court considered the right of accused for further investigation u/s 173(8), Cr. P.C. in the case of Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, and held that the

decision to investigate or decision on agency which should investigate, does not attract principles of natural justice. The accused cannot have a say if who should investigate the offence he is charged with.

9. Moreover, the State of U. P. has issued Government Order No. 4173/C-VI-3-27 P/94 dated September 15, 1995, enumerating the nature of cases in which the investigation may be ordered to C.B.C.I.D. Another Government order was issued on 11.10.1995 wherein it is provided that the Director General of Police shall also have power to entrust investigation of a criminal case to C.B.C.I.D. He shall give information of any such order passed by him within a week to the State Government. The above Government orders were considered by Division Bench of this Court in Bhopal and Ors. v. State of U. P. and Ors. XXXIV 1997 ACC 371. Having considered the facts and circumstances of the case and the guidelines laid down by the Government order, the crime in question is not such, which may require investigation by C.B.C.I.D. as the grounds alleged by the Petitioner was that the F.I.R. was falsely lodged on the instigation of Station Officer, P.S. Musajhag and the said Station Officer was investigating the case himself. This ground is not covered by the guidelines laid down by the Government in the above order.

10. In view of views of Apex Court and the Government orders referred to above, we are of the view that the Petitioner is not entitled to the relief sought. The petition having no force is, accordingly, dismissed.