(1998) 09 AHC CK 0174

Allahabad High Court

Case No: Crl, Miscellaneous Application No. 3599 of 1998

Indra Pal		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: Sept. 11, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 172, 173, 190, 200

Citation: (1999) 1 ACR 172

Hon'ble Judges: S.K. Phaujdar, J

Bench: Single Bench

Advocate: P.K. Saxena, for the Appellant; C.A., for the Respondent

Judgement

S.K. Phaujdar, J.
Through the present application u/s 482, Code of Criminal Procedure, the applicant has desired that further proceedings in Crl. Misc. Case No. 395 of 1997. State v. Indra Pal and two Ors., Under Sections 406, 504 and 506, I.P.C. pending before the Xllth A.C.J.M.. Meerut. be quashed.

2. An F.I.R. in Case Crime No. 10 of 1997 was lodged at P.S. Saruppur, district Meerut, by one Neera against the present applicant and others for having declined to return her marriage gifts, which were in their possession in trust, on behalf of the complainant. The police submitted a final report. The A.P.O. connected with the Court of the Magistrate had, however, opined that prima facie materials were there for taking cognizance. The Court thereafter recorded an order on 27.5.1997, stating that he had looked to the concerned papers and was satisfied that a prima facie case was made out against the accused persons. Accordingly, he declined to accept the final report and take cognizance for offences Under Sections 406, 506 and 504, I.P.C. against the applicants and others and summoned them to appear before the Court.

3. This order of the XIIth A.C.J.M.. Meerut, dated 27.5.1997 was challenged by the present applicant and others before the sessionï¿½s court in Crl. Revision No. 269 of 1997 which was heard by the Vth Addl. Sessions Judge, Meerut, and the revision stood dismissed. Only thereafter the present application has been filed.

4. It was contended on behalf of the applicant that u/s 190, Code of Criminal Procedure, the Magistrate could take cognizance on the basis of a police report of facts which constitute an offence. It was contended that the police report in the shape of a final report did not speak of commission of any offence and, as such, the Magistrate was not empowered to take cognizance. It was contended that u/s 172, Code of Criminal Procedure the diary of the proceedings in investigation could be seen by a trial court but the same could not be used as evidence.

5. This contention of the applicant was sought to be supported by two decisions. The learned Counsel relied upon the judgment of the Allahabad High Court in 1998 ACC 19. An Hon''ble single Judge of this High Court at the Lucknow Bench had before him a case in which accused persons were summoned despite submission of final report. A protest petition was filed in that case and the Magistrate had rejected the final report without assigning any reason. There was no evidence on record in support of the protest petition to entitle the Court to summon the accused. This order was quashed and the Magistrate was directed to record a fresh reasoned order. The learned Counsel further relied on another decision of the Allahabad High Court, again by an Hon''ble single Judge, in 1997 JIC 724. It was also a case where the accused was summoned despite submission of a final report. The Magistrate had opined that he had perused the evidence and the affidavits etc. and the materials on record, but there was no specific mention that the final report was not acceptable nor was there any mention of the materials which warranted rejection of the final report. The summoning order was set aside and the matter was sent back to the C.J.M. for consideration afresh according to law.

6. In the instant case, there had been no protest petition and there was, therefore, no question of proceeding u/s 200 or the subsequent provisions of the Code of Criminal Procedure The final report submitted was an opinion of the police officer based on the materials collected during investigation. It cannot be the law that the Magistrate is bound by the opinion of the police officer. Cognizance means, amongst other things, taking judicial note of a particular matter for proceeding according to law. When a final report is submitted before a Magistrate, he is required not to act mechanically and to accept it but to look to the materials on which the final report was based and then form his opinion whether cognizance should be taken or not. Cognizance is a judicial process and application of mind must be there and if there had been an application of mind, the order of cognizance may not be said to be bad in law.

7. It is true that cognizance is to be taken on a police report which should indicate the facts which constitute such offence and as a corollary should also indicate the facts for which the opinion in the negative was expressed by the police. Reference to Section 172,

Code of Criminal Procedure for consideration of the facts may not be necessary as Section 172 speaks of entries in the case-diary about the time of receipt of information and of initiation of and closure of investigation, the places visited and the statement of the circumstances ascertained during investigation. These facts may not be evidence per se. Section 172 does not include the statements recorded u/s 161, Code of Criminal Procedure Section 173 requires that when the police submitted a report, it should state the names of the person who appeared to be acquainted with the circumstances of the case. Read with Section 207, Code of Criminal Procedure, it is clear that the statements u/s 161 Code of Criminal Procedure should also be forwarded to the Court and copies thereof are to be furnished to an accused on appearance.

8. Back to the point already discussed, it is for the Magistrate not only to rely on the charge-sheet or final report but also to see the facts of the case by going through the statements of the witnesses. The Magistrate''s order of cognizance without such reading will be bad and if at all the Magistrate has considered those statements, he has every right to differ from the opinion of the police officer.

9. Looking to the order in question, it appears that the A.P.O. has pointed out to the Court that there were prima Jacie materials for summoning the accused persons. The Court did not mechanically act upon it. The order sheet indicates that the Court had perused the papers and satisfied itself about the existence of a prima Jacie case. Nothing has been stated in this application, barring the legal points, as discussed above, that the materials were not at all sufficient for cognizance. Accordingly, a fresh probe into that aspect may not be necessary. However, it would be open for the accused persons to raise the question of absence of materials if and when the matter is heard for framing charge.

10. With the above observations, the application is dismissed.