

Santosh Kumar Jaiswal Vs Vivek Jain and others

Court: Madhya Pradesh High Court

Date of Decision: March 6, 2002

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3)
Penal Code, 1860 (IPC) â€” Section 34, 408, 420

Citation: (2003) 2 MPJR 92 : (2003) 2 MPLJ 262

Hon'ble Judges: Narain Singh "Azad", J

Bench: Single Bench

Advocate: K.K. Pandey, Vijay Pandey, for the Appellant; Wakeel Khan, Panel Lawyer for Non-applicant No. 5, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Narain Singh ""Azad"", J.

The petitioner seeks quashment of order dated 16-10-1999 passed by CJM, Katni, wherein he refused to take cognizance of any offence against

non-applicants No. 1 to 4, on consideration of police report, on petitioner's complaint for offences punishable under sections 408, 420, 467 and

468/34 Indian Penal Code, on the ground that the dispute appears to be of civil nature, and the order dated 11-7-2001 passed by first ASJ, Katni

in Criminal Revision No. 3/2000 wherein the petitioner's challenge to the order dated 16-10-1999, passed by CJM, Katni, stood disallowed and

rejected.

This petitioner filed a complaint against non-applicant No. 1 to 4 for offences punishable under sections 408, 420, 467 and 468/34 and 120-B of

the Indian Penal Code, in the Court of CJM, Katni, the copy of which is marked as Annexure A/1. On receipt of this complaint, the learned CJM,

Katni sent the same to T.I., Katni for investigation u/s 156(3) of the Criminal Procedure Code. The photocopy of this order is marked as A/3. On

23-8-1999, the learned CJM received the Investigation report from T.I., Katni, which is marked as A/2. It is found informed by T.I., Katni, in this

report dated 22-8-1999 that the non-applicants are found to have committed offences punishable under sections 420, 467 and 468/34, Indian

Penal Code. T.I., Katni annexed to this report various documents which were secured by him during the course of investigation and the statements

of nine witnesses. On consideration of this report, the learned CJM sought explanation from T.I., Katni on five points which he detailed in his order

dated 21-9-1999. T.I., Katni submitted his explanation dated 27-9-1999, which is marked as Annexure P/4. Thereafter, on consideration of

arguments advanced on behalf of the petitioner, and the police report, the learned CJM, Katni dismissed the petitioner's complaint by well

reasoned order dated 16-10-1999.

It is argued on behalf of the petitioner that the learned CJM did not examine even the complaint before discarding the police report and passing the

order of dismissal of complaint and thus, committed patent illegality which is liable to be cured in exercise of inherent powers by this Court. It is

also submitted by the learned counsel for the petitioner that the revisional Court also erred in not allowing petitioner's challenge in Criminal

Revision No. 3/2000 and hence, the order dated 11-7-2001 passed by first ASJ, Katni is also liable to be set aside.

It is found explained by Hon"ble the Supreme Court in Suresh Chand Jain Vs. State of Madhya Pradesh and Another, , in para 10 of the aforesaid

pronouncement that before taking cognizance of offence, if the Magistrate directs investigation u/s 156(3) Criminal Procedure Code, he is not

required to examine the complainant on oath. It is further found explained in para 9 at page 573 that the investigation referred to in sub-section (1)

of section 202 of the Criminal Procedure Code is only for helping the magistrate to decide whether or not there is sufficient ground for him to

proceed further.

Then, on receipt of the investigation report, the Magistrate is not obliged to accept the same and it is provided in section 203 of the Criminal

Procedure Code that after considering the result of investigation as ordered under sub-section (1) of section 202 of the Criminal Procedure Code,

if the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint and in every such case, he shall

briefly record the reasons for so doing. The scheme of enquiry provided under Chapter XV of the Criminal Procedure Code does not contain any

such provision, requiring the Magistrate to record the statement of complainant or his witnesses before dismissal of complaint u/s 203 of Criminal

Procedure Code in case on considering the result of the investigation, he forms an opinion that there is no sufficient ground for proceeding.

Secondly, in sub-section (1) of section 202 of Criminal Procedure Code, the Magistrate is required to choose either of the two courses for

collecting the evidence i.e. an enquiry by himself or an investigation by police officer. Once he exercises the option, he is required to consider, the

evidence collected under that mode only, as provided in section 203 of the Code of Criminal procedure. For convenience, sub-section (1) of

section 202 of Criminal Procedure Code and section 203 of Criminal Procedure Code are being reproduced which run as under:-

202(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him

u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to

be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for

proceeding:

Provided that no such direction for investigation shall be made:-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s

200.

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s

202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall

briefly record his reasons for so doing.

Thus, the learned CJM, Katni is not found to have committed any patent illegality in dismissing the complaint of the petitioner, on consideration of

police report, for which he ordered u/s 202(1) of Criminal Procedure Code at the initial stage on receipt of the complaint because the Criminal

Procedure Code does not require the Magistrate to utilise both the courses of collecting evidence provided u/s 202(1) of the Criminal Procedure

Code.

Consequently, this petition does not merit which is, accordingly, disallowed and rejected.