
(1957) 06 MP CK 0002

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Ref. No. 97 of 1956

State

APPELLANT

Vs

Dhool Singh

RESPONDENT

Date of Decision: June 13, 1957

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 190, 438
- Penal Code, 1860 (IPC) - Section 323, 325

Citation: (1957) JLJ 945

Hon'ble Judges: Samvatsar, J

Bench: Single Bench

Advocate: Bhambani, Government for State, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Samvatsar, J.

Facts giving rise to this reference are that on 16-3-1956 one Raghunathsingh filed a complaint in the Court of First Class Magistrate, Mahidpur against the two opponents Dhoolsingh and Bhuwansingh u/s 325 I.P.C. The learned Magistrate took cognizance of the offence and issued process for securing attendance of the accused. On 26-6-1956 the police also filed a Challan on the same facts against the same accused persons for offences under Sections 325 and 323, I.P.C. The learned Magistrate refused to take cognizance of the offence on the basis of the police-report as he was of opinion that cognizance of the offence had already been taken and it was not open to him to take cognizance of the same offence again. By his order dated 24-7-1956 he ordered the police-report to be kept with the complaint.

2. The police preferred a revision-application against the aforesaid order of the Magistrate. The learned Additional Sessions Judge, Ujjain, who heard the revision-application has made a reference to this Court u/s 438, Cr, P.C., with a

recommendation that the said order of the learned Magistrate be quashed as being against the provisions of law.

3. The only point that arises for consideration in this case is, whether the learned Magistrate was justified in refusing to take cognizance of the offence on the basis of the police-report on the ground stated by him in the order dated 24-7-1956.

4. The matter is governed by the provisions of Section 190 of the Criminal Procedure Code. This section empowers a Magistrate to take cognizance of any offence (a) on receiving the complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police-officer; and (c) upon information received from any person other than a police-officer or upon his own knowledge or suspicion that such offence has been committed. These three clauses of Section 190 under which cognizance can be taken of an offence by a Magistrate are alternative and not mutually exclusive. That being so when a Magistrate has a complaint and a police Challan about some offence on the same allegation of facts, he can take cognizance of both. See *State v. Pancham*, 1956 MBLJ 1501. This is also the view taken by a full bench of the Patna High Court in *Bharat Kishore v. Judistir*, AIR 1929 Pat 471 and by a division bench in [Mukania and Another Vs. Achalia and Others](#),

5. The order of the learned Magistrate refusing to take cognizance of the offence on the basis of the police-report cannot be supported and in my opinion there can be no doubt that the learned Magistrate was not right in refusing to take cognizance of the police Challan merely because he had already taken cognizance of the offence on the basis of the complaint.

6. The further question viz, whether in the circumstances of the case the complaint and the Challan should be amalgamated, does not present much difficulty and it will be open to the Magistrate to adopt that course.

7. The next point to be considered is the procedure to be followed during the enquiry and trial of this case. It was urged on behalf of the prosecution that since this case is instituted on a police-report, the procedure prescribed in Section 251-A should be followed by the Magistrate. The learned Magistrate had however taken cognizance of the private complaint and had followed the procedure prescribed in Section 252, Cr. P.C. which admittedly is more liberal and confers on the accused a greater right to cross-examine the prosecution witnesses. Even if cognizance of the police-report is taken, the procedure which has been followed by the learned Magistrate need not be changed as in the particular case no prejudice is likely to be caused to the prosecution thereby.

8. I accept the reference, set aside the order of the learned Magistrate and direct him to take cognizance of the police Challan and to proceed to dispose of the case according to law in the light of observations made in the judgment.