
(1973) 11 DEL CK 0020

In the Delhi High Court

Case No : Criminal Revision Appeal No. 240 of 1973

A.N. Lewis and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-11-1973

Acts Referred:

Citation : (1974) ILR Delhi 410

Hon'ble Judges : Prithvi Raj, J

Bench : Single Bench

Advocate : F. Anthony, O.P. Soni, K.C. Dua and R.L. Mehta, for the Appellant;

Judgement

Prithvi Raj, J.

(1) The question for determination in this case is whether an accused person is entitled to the benefit of section 173(4) of the Criminal Procedure Code (hereinafter to be called the Code)and copies of documents referred in section 173(4) arc to be made available to him when cognizance is taken of a complaint filed in pursuance of the provisions of section 190(1)(a) of the Code in a case where prior to the filing of the complaint investigation under Chapter Xiv of the Code was done but where no report was filed u/s 173(1). Relevant facts for settling the question are as under :-

(2) Shri K. Raman, Deputy Chief Controller of Imports and Exports (herein to be called the complainant) filed a complaint against A. N. Lewis and another in the court of Shri Lokeshwar Prasad. Judicial Magistrate lit Class, Tis Hazari. De"hi. on. 26th of February. 1973, [u/s 120-B read with section 5 of the Imports and Exports Control Act and section 420 Indian Penal Code .. sections 420, 468 and 471 Indian Penal Code . Prior to the filing of the complaint, F.I.R. was registered by the C.B.I, authorities and enquiries were made in the matter by the police. The result of the said enquiries was made available to the complement ,who taking advantage of the same filed the present complaint. After the accused person had put in appearance In court, the petitioner through his counsel moved

an application dated 30th March, 1973, requesting that a direction be issued to the complainant to supply to the accused copies of the statements of the witnesses recorded by the police during the course of investigations, and of the other documents relied upon by the complainant. The learned Magistrate relying upon a judgment of M. R. A. Ansari J. in Criminal Revision No. 256 of 1972 in re: Joint Chief Controller of Imports and Exports v. M. L. Gupta and others decided on 5th December, 1972, rejected the application holding that the accused persons were not entitled to the supply of the copies of documents referred to u/s 173(4) of the Code before the Commencement of the trial except the copy of the complaint and the list of witnesses which had already been furnished to them.

(3) Feeling aggrieved by the aforesaid order the petitioner filed the present petition u/s 561-A of the Code read with section 439 and Article 227 of the Constitution which was registered as Criminal M (M) 138 of 1973. The matter came up for hearing on 24th July, 1973 when Shri R. L. Mehta learned counsel for the respondent raised an objection to the maintainability of the petition, on the ground that the powers exercisable by this court u/s 561-A were not attracted in the instant case as no direction was required to be given in the interest of justice. The invoking of the provisions under Article 227 of the Constitution was questioned, alleging that the Jurisdiction of the trial court was not disputed.

(4) Shri Frank Anthoney while traversing the contentions of the learned counsel for the respondents prayed that he be allowed to amend the petition so as to bring it within the provisions of section 439 of the Code. It was submitted that, in fact, the petition was filed u/s 439 of the Code but the junior counsel Shri K. C. Dua under a misapprehension scored out the said provisions of law. In view of this submission Shri Anthoney was allowed to amend the petition. Shri Anthoney having done so, the petition was ordered to be treated as a revision petition u/s 439.

(5) After the arguments were heard in this case and judgment reserved, the petitioner filed an application (Cri. M. 553 of 1973) praying that his counsel earlier could not address arguments in detail and permission to address fresh arguments was sought. The application was allowed and the learned counsel for the parties addressed further arguments in the matter.

(6) The sheet anchor of the argument of Shri Anthoney was that provisions of section 173 of the Code were mandatory. According to subsection (1) in every investigation conducted under the provisions of Chapter XIV of the Code, as soon as the investigation was completed, it was obligatory on the Officer in charge of the police station to forward to a magistrate a report of his investigation in the form prescribed by the State Government, setting-fourth the names of the parties, the nature of the information and the names of the persons, who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties. Further according to sub-

section 4 of Section 173 after forwarding a report the officer in charge of the police-station, it was contended, shall, before the commencement of the inquiry of trial furnished or caused to be furnished to the accused, a copy of the report forwarded under sub-section (1) and of the first information report recorder u/s 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confession, if any, recorded u/s 164 and the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses. It was submitted that admittedly before filing the complaint an enquiry was got conducted through the C.B.I. The report of the enquiry was made available to the complainant. The present complaint was filed by taking full advantage of the result of the said enquiry. The enquiry having been conducted, it was urged, there was no option left with the enquiring officer except to proceed in the manner laid-down u/s 173(1). The investigating officer was bound to forward a report to the magistrate empowered to take cognizance of the offence. Not only that, it was submitted, the investigating officer after forwarding the report was also required to furnish free of costs a copy of the documents mentioned in sub-section (4) of Section 173. In cognizable cases to contend that a report of the investigating officer required to be forwarded to a magistrate empowered to take cognizance of an offence, Shri Anthoney urged, would be a monstrous proposition to expound which would denude section 173 of all its context. In the instant case, it was urged, the investigating officer had flouted the mandatory provisions of law in not forwarding a report of his investigation as contemplated in sub-section (1) of section 173, besides failing to discharge his duty in not furnishing free of costs to the petitioner a copy of the documents referred to in sub-section (4) of section 173. If that be so, a direction from this court was called for compelling the investigating officer to perform his duty, after the investigation had been completed by him, in the manner enjoined by the provisions of section 173.

(7) On the allegations in the complaint the accused was alleged to have committed a cognizable offence u/s 420 Indian Penal Code ., The police was empowered to arrest the petitioner without warrant. It was submitted, Chapter Xiv of the Code laid down the provisions for carrying out investigation in cognizable offence. Reading through the provisions of Chapter Xiv it was contended that information in cognizable cases was required to be recorded in the manner laid down in section 154. Investigation was to be conducted in accordance with the provisions of sections 156 and 157. Section 161 empowered a police officer to examine witnesses and record their statements, while u/s 170 if there was justification for the for warding of the accused to a magistrate the accused shall be produced before a magistrate empowered to take cognizance of the offence. Further u/s 173 the officer in charge of the police-station shall forward to the magistrate empowered to take cognizance of the offence report of his enquiry. After forwarding the report the officer in charge of the police-station shall before the commencement of the inquiry or trial furnish copies of the -

documents envisaged under subsection (1) of Section 173 including copies of the statements recorded u/s 161 of the Code.

(8) It was contended that the C.U.I, had examined 34 witnesses whose statements were recorded u/s 161 of the Criminal Procedure Code. Reading through para 10 of the complaint, it was submitted that there was no manner of doubt that S.P.E. had investigated the complaint and in fact it was the State who was at the back of the present prosecution. Investigation by the S.P.E. was not at the instance of the Imports and Exports Authorities or even the magistrate. The investigation having been conducted by the S.P.E., the procedure envisaged in section 173 was bound to be followed and the report was required to be made the magistrate by the investigating Officer unless if the word "shall" forward in sub-section (1) of section 173 is to be construed as "may" forward. It was vehemently contended that the machinery of the police had been thrown in the scales against the petitioner. The procedure required to be followed entitled the petitioner to the copies of the documents mentioned in sub-section (1) of section 173. The right of the petitioner to claim copies flows from section 173. Not only that, it was submitted, that section 251-A of the Code casts an extra duty on court to ensure the copies of the documents were duly supplied. Denying the copies of the documents, it was strenuously urged, would prejudice the defense of the petitioner. Handicapped in the absence of the documents as the petitioner at present is now could lie anticipate what is in the sleeves of the prosecution so that the petitioner would be deprived of putting his full blown defense to the first prosecution witness. If on the unfolding of the prosecution version on the basis of the documents which the prosecution would produce on the record, the petitioner were to set up a defense in the light of the documents the said defense, it was submitted, would be dubbed as an after thought on the part of the petitioner. In the circumstances, the petitioner had incontrovertible right, Shri Anthoney contended, to know in advance what is the case against him, which he has to meet.

(9) Reliance was placed on In Re: Veerappa Giramani, and State of Bombay v. Seikh Kadar Seikh Amir and others AIR 1960 Bom 476 (I A) wherein it was observed that where the investigation by a police officer was purported to be an investigation under Chapter XIV of the Code, as in the instant case, the provisions of section 173 would apply and the accused would be entitled to the copies of the statements recorded u/s 161 of all the witnesses whom the prosecution wishes to examine. Strong reliance was placed upon Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Vimla Dassi and Others, . In that case proceedings were initiated on complaint, although all of them were preceded by police investigation under Chapter XIV of the Code. After investigation in those cases no reports u/s 173 of the Code were filed. Cognizance was taken on complaint filed by persons authorised by the Central Government u/s 5 of the Imports & Exports (Control) Act. The accused in all those cases applied for copies of documents referred to in section 173 of the code to be furnished to them. In that connection it was observed that an

investigation under Chapter XIV of the Code must lead up to a report u/s 173 of the Code giving rise immediately to a liability in the police officer concerned to furnish copies of certain documents to the accused and giving rise at the same time to a corresponding right in the accused to get such copies. The law would not permit remissness on the part of the police officer in the matter of submitting his report u/s 173(1) of the Code. It was further observed that prosecution could not be permitted to take advantage of the investigation and at the same time to deny to the accused the benefit "of the provisions. Reliance was also placed In Re: Kanhaiyalal Daulatramji, wherein it was observed that it is nowhere mentioned u/s 173 that in case the police recommends the case should not be proceeded with, the police is not liable to give copies mentioned in sub-section I of section 173.

(10) The contention of the petitioner appears to be specious but is untenable. The present complaint had been filed by Shri K. Raman. Deputy Chief Controller of Imports & Exports against the petitioner and another for having committed offences punishable under sections 120-B of the Indian Penal Code read with section 5 of the Imports & Exports (Control) Act (hereinafter to be called the Act) and section 420 Indian Penal Code . and section 420, 468 and 471 Indian Penal Code . The co-accused Shri Thomas Edward was also alleged to have committed an offence punishable u/s 5 of the Imports & Exports (Control) Act 1947. One of the offences which the accused persons are alleged to have committed is punishable u/s 5 of the Act. Section 6 of the Act envisages that no court shall take cognizance of any offence punishable u/s 5 of the Act except upon complaint in writing made by an officer authorised in that behalf by the Central Government by the general or special order and no court inferior to that of Presidency Magistrate or of Magistrate 1st Class shall try any such offence. It would accordingly be seen that section 6 of the Act imposes a complete prohibition on a court to take cognizance of an offence u/s 5 of the Act on a police report. Cognizance by a court can be taken only on a complaint made by an officer duly authorised on that behalf by the Central Government by general or special order.

(11) SUB-SECTION I of section 173 without doubt prescribes that the officer in charge of the police station shall report to a magistrate empowered to take cognizance of the offence "on a police report" in which event alone a report in the form prescribed by the State Government is to be made by the police officer in charge of the police-station but in the instant case as pointed out above a court is debarred from taking cognizance of the offence u/s 5 of the Act, on a police report. If the police was competent to forward a report in respect of its investigation as contemplated by the provisions of Section 173(1) of the Code, the grievance made by the petitioner is misconceived. Besides, on reading through the complaint it is found that the main object of the conspiracy was to commit an offence u/s 5 of the Act while the other offences alleged to have been committed by the accused punishable u/s 120-B Indian Penal Code . and sections 420, 468 and 471 Indian Penal Code . are incidental Acts committed by the

accused to carry out the object of the conspiracy viz. the commission of the offence u/s 5 of the Act. The officer in charge of the police-station is required to comply with the provisions of section 173(1) if the court is empowered to take cognizance of all the offences and not that it is competent to take cognizance of any one of the offences alleged to have been committed by the accused. Offence committed u/s 5 of the Act being Specifically prohibited from being taken cognizance of by a court except on a complaint in writing made by an officer authorised in that behalf by the Central Government by the general or special order, it was not required of the officer in charge of the Police station where the first information report was recorded to forward to a magistrate a report of his investigation. So, there was no obligation to supply copies of the documents mentioned in section 173(1). In this view of the matter, I am in respectful agreement with the view taken by my learned brother M. R. A. Ansari J. in Criminal Revision no. 256 of 1972 (supra), wherein it was held that the accused was not entitled to copies of the statements of witnesses recorded by the police during investigation as the complaint in the case was filed by the Joint Chief Controller of Imports & Exports.

(12) In Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, ; (2), it was observed at pages 966-67 as follows :-

"provisions of section 173 were attracted only in a case investigated by a police officer under Chapter Xiv of the Criminal Procedure Code, followed up by a final report u/s 173, Criminal Procedure Code Before the Criminal Procedure Code was amended by the Act, 26 of 1955, there was no difference in the procedure to be adopted in the cases instituted on police reports and in other cases. Till then in all cases irrespective of the fact whether they were instituted on police reports or on private complaints, the procedure regarding enquires of trail was identical. In both type of cases, were two distinct stages i.e., the enquiry stage and the trial stage.....But Act 26 of 1955 as mentioned earlier made substantial changes in the procedure to be adopted in the matter of enquiry in cases instituted on police reports. That procedure is now set out in section 251(A) Criminal Procedure Code But in a case instituted on a complaint and governed by sections 252 and 259 of the Criminal Procedure Codethe position is as it was before the amendment of the Criminal Procedure Code. Further the requirements of section 173(4) of the Code cannot be applied to cases instituted on private complaint."

(13) It was accordingly held that the copies of the statements recorded from the prosecution witnesses during the enquiry under the Customs Act cannot be made available to the accused before the commencement of the enquiry in a case instituted on complaint. The contention that in not supplying the copies of the statements of witnesses before the enquiry commences the accused would not have a fair trial was negatived.

(14) The submission of the learned counsel for the petitioner stands negatived from the judgment of the Supreme Court in the above noted case. Shri

Anthoney, however, contended that the Rule laid-down A in Assistant Controller of Customs Bombay and another (supra) would not be applicable in the instant case as in that case implication of section 173 was not considered as it was a complaint case. He contended that in the light of his submission based on the mandatory provisions of sections 173 the ratio of the said case was not applicable. It B is not possible to countenance this submission. Their Lordships of the Supreme Court in the above case while examining the procedure to be followed on police report or on private complaint observed that the requirements of sections 173(4) of the Code could not be applied to cases instituted on private complaints. The procedure to be applied in cases instituted on private complaints without doubt is the one as contemplated u/s 252 and the subsequent sections of the Code. If the procedure in the instant case to be followed is that provided u/s 252 and the subsequent sections of the Code, D the petitioner is not entitled to copies of the documents as contemplated by Section 173(1).

(15) For the reasons above, the petition fails and is hereby dismissed.