

(1977) 12 CAL CK 0005
In the Calcutta High Court
Case No : Criminal Rev. No. 557 of 1976

Ashoke Kumar Paul

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-12-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(2), 173, 173(2), 173(2), 190(1)
(a)

Citation : 82 CWN 207

Hon'ble Judges : N.C. Mukherji, J

Bench : Single Bench

Advocate : Promode Ranjan Roy, for the Appellant; Manas Ranjan Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Mukherji, J.—This rule arises on an application u/s 401 read with Section 482 of the Criminal Procedure Code, 1973 and is for quashing the proceeding of C. R. Case No. 1170 of 1975, pending in the court of Shri N. Mukherji, Metropolitan Magistrate 8th court, Calcutta u/s 114 (11) (a) of the Defence or India Rules, 1971 and is against order No. in dated 18.2.76 passed by the learned Magistrate rejecting the petitioner's application that the case be med with due regard to Section 2 (d) of the Code.

The facts of the case may, briefly, be stated as follows :--

On 31.7.75 Shri P. K. Dutta of the Enforcement Branch lodged a first information report by way of complaint with Burrabuzar Police Station alleging mat on that day at about 13.30 hours the petitioner who was said to have been in charge of M/s. B. K. Paul of 161, Old China Bazar Street, Calcutta, had not displayed the Stock and Price Board of 20 gross of exercise books of different number and size. The complainant alleged that the provision of paragraph of the West Bengal Declaration of Stock and Price of Essential Commodities Order, 1971 has been violated and the petitioner is punishable u/s 114 (11) (a) of the Defence of India

Rule, 1971. A police challan purporting to have been prepared u/s 173 of the Code was subsequently submitted before the learned Magistrate. On 6.1.76 at the time of framing of charge the petitioner filed an application challenging the legality of the cognizance taken by the learned court inasmuch as provisions of Section 173 (2) of the Code was not complied with. The cognizance, if could be taken at all, could be taken u/s 190 (1) (a) of the Code. The learned Magistrate rejected the contentions raised by the petitioner. Being aggrieved, the petitioner has come to this court.

2. Mr. Promode Ranjan Roy, learned Advocate appearing on behalf of the petitioner in the first place contends that provisions of Section 173(2) were not complied with and that being so, the Magistrate was wrong in taking cognizance treating the report as a report submitted by a police officer. Mr. Roy refers to Section 2(r) of the Code which defines a police report. It says "that police report means a report forwarded by a police officer to a Magistrate under Sub-Section (2) of Section 173". 173(2) provides that as soon as investigation is completed, the officer-in-charge of the police station shall forward to a Magistrate, empowered to take cognizance of the offence on a police report....." Mr. Roy submits that Section 2(r) has been added in the new Code and it has clearly defined what is meant by a police report in the very definition it has been clearly stated "a police report means a report forwarded by a police officer u/s 173(2)" and such a report can be forwarded to a Magistrate only by the officer-in-charge of a police station. In the present case, admittedly, the investigating officer who forwarded the report to the learned Magistrate was not in charge of a police station and that being so, the report could not have been treated by the learned Magistrate as a police report and as such cognizance ought not to have been taken u/s 190(1) (b) of the Code. In this connection Mr. Roy also draws my attention to Rule 183 of the Defence of India Rules which provides that no court or Tribunal shall take cognizance of any alleged contravention of these Rules or of any order made thereunder, except on a report in writing of the facts constituting such contravention made by a public servant. This report, according to Mr. Roy, is not a report which satisfies the definition of a police report as mentioned in Section 2(r) of the Code. In support of his contention Mr. Roy first refers to a decision reported in S.K. Banerjee Vs. The State, . In this case, it has been held that if an information, even though in writing, reaches to Magistrate who decides to take cognizance of the offence on that written information as also on other materials, the Magistrate does so u/s 190(1) (c) and not u/s 190(1) (a) of the Code which, he is competent to do only upon complaint. I do not know how the proposition laid down in this case helps the petitioner. Mr. Roy next relies on a decision reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, . It has been held that the final step in the investigation, viz., the formation of the information as to whether or not there is a case to place the accused on trial is to be that of the officer-in-charge of the police station. There is no provision permitting delegation thereof, but only a provision entitling superior officer to supervise or participate u/s 551. Mr. Roy next relies on a decision reported in

1977 C.H.N. 379 (Tarab Ali Khan and others -V- The State of West Bengal). On going through the decision I am of the opinion that the decision without helping the petitioner rather goes against him. In this case, their Lordships relied on H.N. Rishbud and Inder Singh Vs. The State of Delhi, and approved 1976 C. H. N. 864 and held that in that case the report was not submitted by the officer-in-charge of a police station and as such it was an irregularity, but the irregularity arose due to the fact that it was not so done by or at the instance of the officer-in-charge of the police station and is cured by section 156 (2) of the Code. It was further held that an irregularity even if be taken to be an illegality is an illegality in an investigation which would not affect the cognizance that was subsequently taken by the Magistrate unless it can be shown that the petitioners have been materially prejudiced thereby.

3. Mr. Manas Ranjan Chakraborty, learned Advocate appearing on behalf of the State relies on a decision reported in Chittaranjan Das Vs. State of West Bengal and Others, . In this case, it has been held that omission to submit report to the learned Magistrate by the officer-in-charge is a mere irregularity. This does not convert a report submitted by a police officer, having power to investigate and after investigation under Chapter XIV into something other than a police report u/s 173 of the Code. Mr. Chakraborty also relies on a case reported in 1976 C.H.N. 864 (Babu Ram Agarwalla & Anr. V. The State). In this case, A. N. Banerjee, after considering several decision held that "the new Code has made no departure with regard to the submission of the final report u/s 173(2) while insisting upon such submission to be made by the officer-in-charge of a police station. It would be wrong to suggest that under the provisions of the new Code it is only the officer-in-charge of a police station who has been authorised to submit a report u/s 173(2) of the Code and not a police officer investigating a cognizable offence under the Code." After considering the relevant sections of the Code and also the decisions referred to above I am of the opinion that there has been no illegality in the matter of taking cognizance by the learned Magistrate and the contention referred to by Mr. Roy is, therefore, over-ruled.

4. In the next place, Mr. Roy submits that the petitioner is not a dealer of paper. He has been described in the report as person in charge of Messers B. K. Paul of 161, Old China Bazar Street, Calcutta. A person in charge of a shop cannot be said to be responsible for violation of the provisions of paragraph 3 of the West Bengal Declaration of Stock and Price of Essential Commodities Order. In support of his contention Mr. Roy relies on 1976 C. H. N. 864 (Babu Ram Agarwalla & Anr. V. The State). In that case it was found on the materials collected against the accuseds that at best they were employees of the shop and it was held that an employee of a shop cannot be said to be a person carrying on business of selling of any essential commodities. In the present case, there is nothing to show that the petitioner is an employee of Ms. B. K. Paul. The petitioner has been described as a person in charge of M/s. B. K. Paul. That being so, it cannot be said that he is a mere employee. This being the position the case relied on by Mr. Roy has no application to the facts of the present case. Both the contentions raised by Mr.

Roy having failed this application fails and the rule is discharged. The learned Magistrate is directed to proceed with the case. Let the records go down early.