

(1975) 08 PAT CK 0016

In the Patna High Court

Case No : Criminal Miscellaneous No. 75 of 1974 (R)

Awtar Singh and Natho Singh @ Amarjit Singh

APPELLANT

Vs

Charan Kaur and The State of Bihar

RESPONDENT

Date of Decision : 08-08-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 484(2)
Penal Code, 1860 (IPC) — Section 324, 354

Citation : (1976) 9 PLJR 194

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

Bench : Single Bench

Advocate : A.K. Banerji and S.K. Dutta, for the Appellant; H.K. Thakur and R.C. Sharma for the State, for the Respondent

Judgement

S.K. Choudhuri, J.—This application is directed against the order dated the 3rd October of 1974 by which the learned Subdivisional Magistrate, Jamshedpur has taken cognizance of the offences under Sections 354, 324, 307 and 452 of the Indian Penal Code and transferred the case for disposal to Shri L. Jha, Judicial Magistrate, Jamshedpur. Shortly stated the relevant facts are these. A complaint was filed on 6.3.1974 by opposite party no. 1 against the, petitioners alleging that the petitioners abused, insulted and threatened the complainant on 5.3.1974 and thereafter on 6.3.1974 they came in the portion of the house occupied by her and she was assaulted by the petitioners, in consequence of which she got injury on her forearm. It was also stated in the complaint that a proceeding u/s 107 Cr. P.C. was also going on against the petitioners. The Subdivisional Magistrate after examining opposite party no. 1 that is the complainant sent it for Judicial enquiry to Sri Ram Vijoy Singh, Magistrate First Class, who duly submitted his report which was put up on 3rd of October, 1974. The Sub-divisional Magistrate on the same day took cognizance of the offences aforesaid and transferred the case for disposal to Shri L. Jha, Judicial Magistrate.

2. Mr. A.K. Banerji, Learned Counsel appearing on behalf of the petitioners

contended that the new Act having come into force on the 1st of April, 1974, the Subdivisional Magistrate, Jamshedpur had no jurisdiction to take cognizance of the offences and transfer the case for disposal to Shri L. Jha, Judicial Magistrate. He further contended that as Section 484 (2) of the Code of Criminal Procedure, 1973 (here-in-after to be called the "New Code") being not applicable to present case the impugned order is illegal and without jurisdiction. On the other hand Mr. Hari Kishore Thakur, learned standing counsel No. III submitted that in the present case the Sub-divisional Magistrate has merely taken cognizance of the offences but he has not issued processes to the accused persons therefore in law the impugned order cannot be said to be illegal. According to him by the very same order the case has been sent for disposal to the Judicial Magistrate who would issue processes in the case and therefore no interference is necessary.

3. In order to appreciate the arguments of the Learned Counsel for the parties it is necessary to quote the relevant portion of Section 484 (2) Cr. P.C. which runs thus :

(a) If, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held, or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) as in force immediately before such commencement (hereinafter referred to as the old Code) as if this Code had not come into force

Thus on plain reading of this section it is manifest that only appeal, application, trial, inquiry or investigation pending on the date of commencement of the new Code shall be disposed of in accordance with Code of Criminal Procedure 1898 (here-in-after to be referred to as the "old Code"). In the present case the impugned order has been passed on the 10th October, 1974 when the new Code had already come into force. On the date when the complaint was examined by the learned Subdivisional Magistrate that is on 6.3.1974 and the matter was sent for Judicial inquiry the learned Subdivisional Magistrate was well within his jurisdiction to do so and therefore the inquiry report that was submitted after coming into force of the new Act was certainly quite valid and proper upon which action could be taken. The question however is as to whether on the 3rd of October, 1974 when the new Act has already come into force, the learned Sub-divisional Magistrate was within his jurisdiction to pass an order taking cognizance of the offence mentioned above and transfer the case for disposal to the Judicial Magistrate. On this date no trial or inquiry was pending. Therefore Section 484 (2) of the new Code had no application to the facts of the present case. It has been pointed out in the case of (1) Mahanth Harihar Das and others V. the State (1975 B.B.C.J. 364) that the word "Magistrate" used in Section 204 of the new Code is "Judicial Magistrate" and the said Section has to be read along with Section 3 (1)(1) of the new Code. In the reported case the inquiry report was dated the 4th of February, 1974 and it was placed before the Judicial

Magistrate on the 3rd of June, 1974, that is after coming into force of the new Code. The Judicial Magistrate passed an order taking cognizance and summoning the accused persons. In that case it was contended that in view of Section 484(2) of the new Code the Judicial Magistrate had no power to take cognizance and issue processes against the accused. Their Lordships rejected the argument and held:

The effect of Section 3(1) (a) (1) and Sub-Section (1) of Section 204 is that the power to issue process has been vested in the Judicial Magistrates and only they can exercise the said power. The result is that Judicial Magistrate have to exercise this power even in cases in which the initial cognizance had been taken by the Executive Sub-divisional Magistrate under the old Code. The Judicial Magistrate will, therefore, be deemed to be successors in office of those executive Sub-divisional Magistrate by operation of the new Code. Once the Judicial Magistrates are held to be successors-in-office of the executive Sub-divisional Magistrates who had exercised the powers u/s 190 (1) (a) of the old Code, then it cannot be urged that the impugned order, having been passed by a Judicial Magistrate, is illegal and without jurisdiction in view of the Full Bench decision of this Court referred to above.

Another case has come to my notice namely the case of (2) S.M. Nazim Baboo and ors V. The State (1975 B.B.C.J. 359=1975 P.L.J.R. 478). In this case cognizance was taken by the Sub-divisional Magistrate on 13th November, 1971 on the basis of a police report and the case was transferred to Mr. Agrawal, Munsif. On the same day Mr. Agrawal issued non-bailable warrant of arrest against the accused persons. This order was challenged on the ground that u/s 204 of the old Code only the Magistrate taking cognizance of the offence could issue summons or warrant of arrest as the case may be to the accused. Their Lordships accepted the said submission but while accepting the same they found that the new Code had already come in force. Therefore their Lordships after considering Section 484 (2) of the new Code after quashing the impugned order of that case directed that the final form submitted u/s 173 of the old Code be placed before the Chief Judicial Magistrate or any other Judicial Magistrate who was empowered in accordance with the provision of the new Code.

4. The principles laid down in the aforesaid cases in my opinion, have full application to the present case. Applying the aforesaid principles, in my opinion, the report that was submitted after coming into force of the new Act ought to have been placed with the record before the Judicial Magistrate who was competent to take cognizance and issue summons. The same not having been done and the learned Subdivisional Magistrate having ceased to have power from 1st of April, 1974 could not have passed the impugned order and as such the said order must be held to be without jurisdiction. I accordingly set aside the impugned order dated the 3rd of October, 1974 passed by the learned Sub-divisional Magistrate, Jamshedpur and direct that the inquiry report that has been submitted along with records of the case be now placed before the Judicial

Magistrate Jamshedpur who is competent to entertain the complaint. The said Judicial Magistrate after applying his mind will pass necessary order in accordance with law.