

(1978) 04 KAR CK 0049
In the Karnataka High Court
Case No : Crl. RP. 379 of 1977

Basappa Mahadevappa Ganiger

APPELLANT

Vs

Balasaheb Shivarudrappa Kumar Desai and Others

RESPONDENT

Date of Decision : 17-04-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 410

Citation : (1978) 2 KarLJ 287

Hon'ble Judges : Nesargi, J

Judgement

1. In this petition the order dated 6-8-1977 passed by the Addl. Chief Judicial Magistrate, Dharwar, in PC No. 9 of 1977 and the order dated 22-6-1977 in the said case are challenged.

2. The relevant facts are that the petitioner filed a complaint against respondents 1 to 4 alleging that they had committed offences under Secs. 406, 417, 418, 468 and 447(A) read with Sec. 34 of IPC before the Chief Judicial Magistrate, Dharwar, on 31-3-1977. The Chief Judicial Magistrate directed investigation and report of the police under Sec. 156(3) Cr. PC. On 18-4-1977 the Chief Judicial Magistrate made over the case to the Addl. Chief Judicial Magistrate by recording in the order sheet as follows:

"Complainant: By Shri M.S.B. for Police report. Returned the complaint to the Dharwar Town Police for investigation and report by 9/5. This case may be called before the Additional C.J.M."

Thereafter the case was being called before the Addl. Chief Judicial Magistrate. Till 23-7-1977 the Addl. Chief Judicial Magistrate was awaiting the report of the police, as per the order passed by the Chief Judicial Magistrate on 31-3-77. On 23-7-77 the Addl Chief Judicial Magistrate issued a reminder to the concerned police calling upon them to report within 2 weeks. He received the report on 1-8-77. Thereafter he found that the police had submitted the report to the Pril Chief Judicial Magistrate on 22-6-77 and the Chief Judicial Magistrate had accepted the report submitted by the police on that very day. Therefore, on

6-8-1977 he recorded in the order sheet as follows:

"Complainant by Shri M.S.B. Advocate. Investigation report received on 1-8-1977. Final report submitted by the P.S.I. is already accepted by the Principal Civil Judge and C.J.M. on 22-6-1977. Hence the complaint stands dismissed."

It is under the aforementioned facts and circumstances that the petitioner has challenged both the orders, viz., the order of the Additional Chief Judicial Magistrate dt. 6-8-1977 and the order of the Chief Judicial Magistrate dated 22-6-1977.

3. Sri R.V. Jayaprakash, learned advocate appearing on behalf of the petitioner, urged that the Chief Judicial Magistrate had no jurisdiction and power to deal with the case when he had made over the case to the Additional Chief Judicial Magistrate and as such, the order dated 22-6-1977 is not a valid order sustainable in law. He also argued that the order dated 22-6-1977 passed by the Chief Judicial Magistrate is not sustainable as he does not appear to have applied his mind to the facts and circumstances of the case before him while accepting the summary prayed for by the police in their final report.

4. Sri K.H.N. Kuranga, learned advocate appearing on behalf of the State, contended that whether the Chief Judicial Magistrate had or not the power to make over the case to the Addl. Chief Judicial Magistrate depends on the instructions of the Sessions Judge to both of them in regard to the distribution of cares and as such it cannot be straightaway said that there being necessary material available, the Chief Judicial Magistrate had no power to make over the case to the Additional Chief Judicial Magistrate and as such, the order passed by the Chief Judicial Magistrat that the case be called before the Additional Chief Judicial Magistrate, is a valid order. He further argued that the Chief Judicial Magistrate has withdrawn the case from the Additional Chief Judicial Magistrate in exercise of his power under Sec. 410 of the Code of Criminal Procedure and as such, he had jurisdiction and power to pass the impugned order. Lastly he argued that there is no provision in the Criminal procedure Code requiring the Magistrate to record reasons for accepting "B" report and therefore, it cannot be said that the Chief Judicial Magistrate had not "applied his mind before passing the order dated 22-6-1977.

5. Sri Kothavale, learned Advocate appearing on behalf of respondents 1 and 2, argued that the Chief Judicial Magistrate might have committed an irregularity in making over the case to the Additional Chief Judicial Magistrate, but that irregularity by itself does not vitiate the proceedings and therefore, the Chief Judicial Magistrate had not lost jurisdiction and power to deal with the case and as such, he was entitled to pass the Order dated 22-6-1977. He further adopted the arguments of the learned advocate appearing On behalf of the State in regard to the order passed by the Chief Judicial Magistrate on merits.

6. Sri J.S. Gunjal, learned advocate appearing on behalf of respondents 3 and 4

adopted the arguments advanced by Sri Kuranga, learned advocate appearing on behalf of the State.

7. The material on record does not make out whether the Sessions Judge had given any instructions in regard to making over the case from the Chief Judicial Magistrate to the Addl. Chief Judicial Magistrate by mutual agreement. This is a matter between the Chief Judicial Magistrate and the Additional CJM. The Additional CJM is not a Magistrate, subordinate to the Chief Judicial Magistrate. There is no provision, in regard to making over a case, in the Criminal Procedure Code, as the Additional Chief Judicial Magistrate is not subordinate to the Chief Judicial Magistrate. Therefore, the distribution of work between them has to be arranged in accordance with the directions of the Sessions Judge or the High Court.

8. In the light of the view that is expressed in the preceding paragraph, the Chief Judicial Magistrate cannot withdraw the case made over by him to the Addl. Chief Judicial Magistrate by exercising his power under Sec. 410(2) CrIPC. This part of the reasoning put forth by the learned Counsel for the State cannot be accepted. That power can be exercised by the Chief Judicial Magistrate only when a case is made over by him on his own to a Magistrate subordinate to him. This is not one of such cases. Therefore, it cannot be said that on 22-6-1977 the Chief Judicial Magistrate withdrew the case from the file of the Addl. Chief Judicial Magistrate.

9. In view of the fact that the Chief Judicial Magistrate had divested himself of the power to deal with the case after making it over to the Addl. Chief Judicial Magistrate, it was highly improper on the part of the Chief Judicial Magistrate, to exercise his powers and pass the order dated 22-6-1977 accepting the "B" Summary report submitted by the police. Moreover, if, in fact, he had made over the case to the Addl. Chief Judicial Magistrate in accordance with the instructions of either the Sessions Judge or of this Court, he could not have secured the power to deal with this case by any legal procedure. In that view also he had no power to pass the order dated 22-6-1977. Hence that order cannot stand. When that is so, the order dated 6-8-1977 passed by the Addl. Chief Judicial Magistrate on the basis of the order dated 22-6-1977 passed by the Chief Judicial Magistrate cannot also stand.

10. Even if, the order dated 22-6-1977 passed by the Chief Judicial Magistrate, is scrutinised on merits, I am clearly of opinion that the said order has been passed by the Chief Judicial Magistrate without applying his mind to the facts and circumstances that were before him in the form of a complaint filed by the petitioner and the report along with the case diary submitted by the police after investigation. The Magistrate has got to apply his mind to the facts before him while examining a case under Sec. 190 of the Code of Criminal Procedure. I am constrained to observe that the Chief Judicial Magistrate does not appear to have applied his mind to the facts and material that were before him in this case, particularly in view of the simple reason that he did not even know about the

order dated 18-4 1977 by which he had made over the case to the Addl. Chief Judicial Magistrate. Therefore, this reasoning of Sri Jayaprakash, learned Advocate appearing for the petitioner, has to be upheld. In any view of the matter, the orders challenged in this revision petition cannot be sustained in law.

11. In the result, this petition is allowed and the order dated 22-6-1977 passed by the Chief Judicial Magistrate and the order dated 6-8-1977 passed by the Addl Chief Judicial Magistrate Dharwar in PC. No. 9 of 1977 are set aside.

The Addl. Chief Judicial Magistrate is directed to dispose of the case according to law bearing in mind the observations made in the body of the order concerning merits of the case and the order passed by the Chief Judicial Magistrate on 22-6-1977