
(1991) 04 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 326 of 1986 (R)

Bijoy Kumar Sinha

APPELLANT

Vs

The Sate of Bihar

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Citation : (1991) 04 PAT CK 0006

Final Decision : Dismissed

Judgement

L.P.N. Shahdeo, J.—In this application u/s 482 Code of Criminal Procedure the Petitioner has prayed for quashing the order dated 24.6.85, passed by the C.J.M. Giridih, whereby he has taken cognizance of the offence u/s 363/366 I.P.C. and also for quashing the entire proceeding of the case.

2. The brief facts of the case are that one Ghuja Rabidas had lodged a F.I.R. on 7.5.81 before the Officer Incharge, Dumri police station making allegation that his daughter, aged about 14 years, was taken away by the Petitioner on 23.4.81 at about 8 a.m. and thereafter she is untraceable. It was suspected that the Petitioner had taken away the girl either for selling or for killing. The Petitioner at that time was undergoing training of police S.I. at Hazaribagh Police Training College. The girl was seen in the company of the Petitioner by various persons. On the basis of the aforesaid information, the Police registered a case being Dumri P.S. case No. 57/81, u/s 366/ 363 I.P.C. After investigation, the police submitted final report before the C.J.M. which was accepted by him on 11.10.82.

3. It appears that thereafter one Anand Kujur, an Inspector of Harjjan and Adivasi Cell, Bihar Patna reopened the investigation of the case, under the instruction of the Government and ultimately submitted chargesheet on 15.6.85, before the C.J.M., Giridih, who took cognizance of the offence on 24. 6.85 and that order of taking cognizance is being challenge in this case. It should be noted in this case that on 23.8.85, a petition for discharge was filed, as Final report had already been accepted by the C.J.M., but before that petition could be disposed of, the chargesheet was submitted and cognizance was taken.

4. Learned Counsel for the Petitioner has submitted that the submission of the charge- sheet on the same set of evidence is illegal and in this case, the Inspector of Harijan Cell had not investigated the case and no new material had come for submission of chargesheet. It was submitted that the Inspector of Harijan and Adivasi Cell was not discharging his duties as an Officer Incharge of Dumri P.S. and as such he was not competent to submit the charge-sheet after reinvestigation of the case.

5. On the other hand, learned Counsel appearing on behalf of the State has submitted that the fresh investigation was taken up under the orders of the Government by the D.I.G., Harijan and Adivasi Cell, Bihar Patna, who deputed an Inspector to make further investigation in the matter and after obtaining necessary permission from the Court, he investigated the case afresh and submitted charge- sheet, which was in accordance with the law and as such there is no merit in this application.

6. It appears that in the Final Report which was submitted earlier, it was mentioned that the case can be reopened after the whereabouts of the girl are found. The whereabouts of the girl, has not yet been traced out, but the question is whether once a final form is submitted, reinvestigation of the same case can be done? The answer is in affirmative, which is permissible in law itself. In this case the final form which was submitted and accepted by the C.J.M. was not complete in all sense as a note was made therein that the matter can be reopened for investigation, after the whereabouts of the girl is found. Section 173(8) of the Code of Criminal Procedure lays down that nothing in the section shall be deemed to preclude further investigation in respect of the offence after a report under Sub-section (2) has been forwarded to the Magistrate. Therefore, it is amply clear that investigation is permissible in law.

7. In this case reinvestigation was done by a Police Inspector, who was posted at the relevant time in the Harijan and Adivasi Cell, under the instruction of the Government. The investigation made by the Inspector is recorded at pages 80 to 160 of the case diary. This investigation was done by this Inspector, after obtaining necessary permission from the Court. It appears that the Inspector had applied for getting permission of the investigation from the Court of the C.J.M., who by an order dated 17.4.84, granted necessary permission to reopen the investigation of the case.

8. On perusal of the diary, it appears that no doubt the girl has not been traced out, but the Inspector has reinvestigated the matter from the beginning. He examined the witnesses, inspected the place of occurrence and collected all the details relating to the case, which are recorded in the diary in the aforesaid pages, which go to show; that the whole matter was reinvestigated and thereafter the chargesheet was submitted. Therefore, the submission of the learned Counsel for the Petitioner that the chargesheet has been submitted on the same set of evidence is not borne out from the case diary. The case diary shows that fresh materials were collected and assessed and thereafter the

chargesheet was submitted which is quite permissible in law and as such the reinvestigation done in this case, is in do way contrary to law.

9. It appears that the Government has constituted Harijan and Adivasi Cell in order to give quicker relief to the weaker sections of the society in respect of the cognizable offence alleged to have been committed against them.

10. In this connection Section 2(c) of the Code of Criminal Procedure is relevant to be looked into wherein the word ""Officer Incharge" of a Police station has been defined. It says that "Officer Incharge of a police station" includes, when the officer incharge of the police station is absent from the station-house or unable from lines or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable, or when the State Government so directs, any other police officer so present." Section 2(s) defines Police Station which means any post or place declared generally or specifically by the State Govt. to be a police station, and includes any local area specified by the State Government in this behalf." Section 36 of the Code of Criminal Procedure is also relevant in this connection, which deals with the power of superior officers of police. It says "Police Officers superior in rank to an officer incharge of a police station may exercise the same powers, throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station."

11. Section 3 of the Police Act, 1861 says that Chief Secretary, in exercise of the Executive power can change the investigating machinery of a cognizable offence in the circumstances disclosed by various reports, in public interest for vindication of the truth. In the case of State of Bihar and Another Vs. J.A.C. Saldanha and Others, , it was held that Inspector General, Vigilance can take over investigation of a cognizable offence registered at any police station. The Inspector General, Vigilance can exercise powers of an Officer Incharge of a police station in certain circumstances. It is, therefore, clear that the State Government can change the Investigating Officer and make over the investigation to any police officer, who is superior to the rank of the Officer Incharge of that police station.

12. In this case, the Inspector of Police, who was at the relevant time posted at Harijan and Adivasi Cell, was made over the charge of investigation by the D.I.G., Harijan and Adivasi Cell, Bihar, Patna.

13. Learned Counsel for the State has filed a letter to show that the D.I.G. of Police has been vested with the same powers by the State Government which is exercised by the D.I.G, Criminal Investigation Deptt. (C.I.D.). It is the admitted position that the D.I.G. can take over investigation of any case under the orders of the Government. When in this case, the D.I.G., Harijan Cell is equated in powers with the D.I.G. of C.I.D. who is competent to take over charge of investigation under the orders of the Government.

14. The letter bearing memo No. 155 Dt. 19th Feb., 1991, addressed to the

Government Advocate, indicates that the D.I.G. of Police has taken over the charge of investigation of this case, under Rule 425 of the Police Manual and thereafter he has appointed one Anand Kujur, the present Inspector for investigation of the instant case. The law is well settled that Inspector General of Police or Dy. Inspector General (C.I.D.), under the executive decision and instruction is competent to take over charge of investigation of any case. In this case, therefore, taking over of the charge by the D.I.G. of Police of Harijan and Adivasi Cell, is within the ambit of Law and he has not committed any illegality in taking over the charge of reinvestigation and handing over the same to the Police Inspector of Harijan and Adivasi Cell. In this view of the matter, there does not seem to be any illegality committed in taking over the charge of investigation of the case by the Harijan and Adivasi Cell D.I.G. and handing over the same to the Inspector, who was superior in rank to the Officer Incharge of Dumri P.S., who had investigated the case at first. Therefore, the whole argument advanced on behalf of the learned Counsel for the Petitioner fails.

15. On prima facie reading of the F.I.R. and the materials collected in the case diary during the course of further investigation, it cannot be said that no case whatsoever was made out against the Petitioner. The simple allegation that the girl was kidnapped and was traceless, makes a cognizable offence. In the earlier investigation the final form was submitted, subject to the availability of girl. The Government in its wisdom thought to reinvestigate the matter in the manner discussed above, and the investigation was done in accordance with law which ultimately resulted in submission of the chargesheet against the Petitioner.

16. In View of the discussions made above, it is clear that no irregularity was committed in doing reinvestigation of the case in view of the ruling referred to above, which squarely answers the question posed by the learned Counsel for the Petitioner.

17. In the result, for the reasons stated, I do not find any merit in this application which is accordingly dismissed. Since the matter has consumed a considerable time, let the records of this case be sent down forthwith so that the trial of the case may be expedited and concluded at the earliest, without any delay.