

(1987) 07 AHC CK 0039
In the Allahabad High Court
Case No : Criminal Revision No. 418 of 1986

Chandra Mohan and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 190, 200
Penal Code, 1860 (IPC) — Section 419, 420, 465, 471

Citation : (1988) 1 AWC 82

Hon'ble Judges : R.A. Misra, J

Bench : Single Bench

Advocate : S.P. Shukla, for the Appellant; Brijesh Kumar Shukla, for the Respondent

Final Decision : Partly Allowed

Judgement

R.A. Misra, J.—Accused Chandra Mohan and Madan Mohan who are real brothers, being sons of Late Sri Sant Prasad Tandon, have preferred this revision with the prayer that the order dated 14-10-1986 passed by the learned Magistrate, Ram Sanahi Ghat, Barabanki in Criminal Case No. 411 of 1986. taking cognizance and summoning the accused-revisionist on a complaint filed by Surya Narain Tandon, Opposite party No. 2 u/s 419/420/465/471 Indian Penal Code be quashed.

2. Complaint Annexure No. 1 to this revision was filed in the Magistrate's court on 1-7-85 and 2-7-85 was fixed for recording the statement u/s 200 Code of Criminal Procedure. On that date the complainant's statement u/s 200 Code of Criminal Procedure was recorded and the case was adjourned to 16-8-85 with the directions that a copy of the complaint be sent to the S.H.O. concerned for investigation u/s 156(3) Code of Criminal Procedure. Thereafter, learned Magistrate continued to adjourn the case till 14th October, 1986 requiring the S.H.O. concerned to complete the investigation and submit his report but when no report was submitted for about a year, then the learned Magistrate took cognizance and summoned the accused-revisionists by order dated 14-10-86

against which the accused have felt aggrieved and preferred this revision.

3. I have gone through the complaint-Annexure-1 and statements of the witnesses recorded under Sections 200 and 202 Code of Criminal Procedure . The complainant's allegation is that there is a temple known as Bara Thakurdwara Temple in the main market of Nawabganj Nagar Palika near Ghantaghar. The temple owns some immovable property such as residential houses, Khoya Mandi and Mai Godam and it was managed on the basis of a Trust created by Sri Sant Prasad Tandon. Sri Sant Prasad Tandon expired in the year 1979. It is further alleged that since the death of Sri Sant Prasad Tandon performance of Pooja Path etc. in the temple has ceased and the accused-revisionists are dishonestly cheating by personation by realising the rent and mis-appropriating other property of the Trust, dishonestly claiming themselves to be successors of Sri Sant Prasad Tandon, though on a suit by respectable residents of the area, the District Judge has reconstituted the Trust and now the complainant Sri Surya Narain Tandon is President of the Trust and lawful authority to manage the trust.

4. The complainant's allegation is that the accused has misappropriated the property and have dishonestly taken Rs. 1600/- from one Sri Ganga Ram Verma to settle him on the roof of the temple of Sri Hanumanji. The facts disclosed in the complaint have been corroborated in the statements under Sections 200 and 202 Code of Criminal Procedure so on merits the learned Magistrate was well within the jurisdiction to proceed against the revisionist and summon them vide order dated 14-10-1986, and on merits I see no illegality or irregularity, in the order passed by the Court below so as to interfere with it in revision.

5. Learned Counsel for the revisionists has drawn my attention towards the order dated 2-7-85 whereby the learned Magistrate has forwarded a copy of the complaint to the S.H.O. concerned for investigating the case and he has done so in exercise of his powers u/s 156(3) of the Code of Criminal Procedure. Section 156 of the Code empowers a police officer to investigate any cognizable case and Sub-clause (3) thereof empowers the Magistrate who has powers to take cognizance, u/s 190 Code of Criminal Procedure to order for such an investigation. Learned Counsel for both the parties agree that in the instant case learned Magistrate was well within his jurisdiction in sending a copy of the complaint to the S.H.O. concerned with the directions to investigate it in exercise of his power u/s 156(3) Code of Criminal Procedure so this point does not require any detailed discussion.

6. Though the learned Magistrate adjourned the case after recording statement u/s 200 Code of Criminal Procedure on 2-7-85 and issued directions to the S.H.O. concerned for investigation yet strictly speaking he did not pass any consequential order u/s 210 Code of Criminal Procedure for staying the proceedings but continued to adjourn the case for a period of about one year awaiting the result of the investigation but when no report was submitted in the court after about one year then he took cognizance and summoned the accused vide order dated 14-10-86.

7. In the instant case it was in the knowledge of the court below that the matter before him is being investigated by his own order by a Police Officer. So it was mandatory for him to have stayed the proceedings of the complaint case and called upon the police officer to submit his report expeditiously. The learned Magistrate on the other hand continued to call upon the police officer to submit his report for about a year without staying the case but continued to adjourn it for about a year for that very purpose. I have gone through the proceedings of the court below and the order sheet which leaves no room for doubt that the Magistrates were all along anxious to get a report from the investigating officer and even directed that letters be issued to the Superintendent of Police for expeditious submission of the report but as observed above, all these efforts failed and ultimately, the Magistrate proceeded with the matter and summoned the accused. The key question which arises for determination is whether the order passed by the court below on 14-10-86 summoning the accused without the report of the Investigating Officer having been filed, is illegal and irregular so as to be quashed.

8. Sub-clause (1) of Section 210 mandates the Magistrate to stay the proceedings of any enquiry or trial if it appears to him that an investigation by the Police is in progress in relation to the offence which is the subject matter of inquiry or trial which is being held by him. Sub-clause (2) then says that if a report is made by the Investigation Officer u/s 173 Code of Criminal Procedure and on such report cognizance by Magistrate is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall enquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. Sub-clause (3) then lays down that if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the enquiry or trial which was stayed by him in accordance with the provisions of the code.

9. Section 210 of the Code provides for the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. This is a preventive measure. It is to avoid as far as possible taking cognizance of the same offence again and to avoid separate trial for the same offence. The provision in Sub-section (2) for trial together of the two cases if cognizance happens to be taken twice on private complaint and police report, is only to avoid anomalies arising from taking cognizance of the same offence more than once. Sub-clause (3) makes it abundantly clear that the Magistrate is not bound to refuse to take cognizance in the complaint case if the investigating officer submits final report and if according to his opinion no case is made out against the accused. The Magistrate is fully empowered to proceed with the complaint case according to law in exercise of his jurisdiction and discretion even where in the same subject matter the police officer submits a final report and opines from the evidence collected by him that no offence is made out against the accused. So the object of Section 210 Code of Criminal Procedure is not to enable the Magistrate to take assistance from the police report for arriving at the

conclusions of the police officer whether he should proceed with the complaint case and summon the accused .and take cognizance on the basis of the material produced by the complainant in the complaint case. Both the cases are to be decided on their own merits at the initial stage, to wit at the stage of taking cognizance. The only object of Section 210 is that where the Magistrate takes cognizance in a complaint case as well as in the police case then both the cases shall not proceed separately but the complaint case would be merged in the police case and it would proceed as a police case.

10. It is indeed surprising that inspite of various reminders and letters issued to Superintendent of Police, the S.H.O. concerned did not submit his report in the instant case. The learned Counsel for the opposite party has placed reliance on Padmalochan Sahu Vs. Lokanath Sethi and Others, wherein it has been held by Hon"ble Orissa High Court (Single Judge) that the provision for staying the proceedings in a complaint case u/s 210 Code of Criminal Procedure is not to stay the complaint case indefinitely till the investigation of the police case is finalised, more so when the concerned Police Officer does not act expeditiously in the matter and does not submit his report u/s 210 Code of Criminal Procedure to the court at an early date. With due respect I am unable to subscribe wholly with the view expressed by the learned Judge. I fully agree with the view that the learned Magistrate should not stay the complaint case for indefinite period but in my view the mandate of Section 210 Code of Criminal Procedure should not be ignored where the police Officer fails to submit his report within reasonable period. Sub-section (3) of Section 156 provides a check by the Magistrate on the duties to be performed by the police under Chapter XII of the Code of Criminal Procedure. The Magistrate can always issue directions to the police and see that his directions are complied with promptly within a reasonable period. The police by its act of omission or commission shall not be permitted to nullify the mandatory provision of the Code. A Magistrate should exercise full control over the police officers and the Code fully empowers him for the same.

11. In the instant case the Magistrate has sent copy of the complaint to the S.H.O. for investigation u/s 156(3) Code of Criminal Procedure without staying the proceedings u/s 210 Code of Criminal Procedure and informing the S.H.O. that the complaint case has been stayed and will remain stayed till 4iis report is received. The Magistrate was required to pass a Judicial Order staying the proceedings u/s 210 Code of Criminal Procedure and informing the S.H.O. that the complaint case is still pending on account of the investigation which has been entrusted to him. No such orders have been passed and communicated to the S.H.O. so he appears to have been dealing the matter" in ordinary course and was submitting his report through the Circle Officer. When the S.H.O. was not required to submit the report in this case through Circle Officer who was investigating the matter with the directions of the Magistrate u/s 156(3) and was required to submit his report directly to the Magistrate. The Magistrate could further deal the matter on administrative side by raising this point in the meeting of the Monitoring Cell which have been constituted in each district and are

presided over by the District Judge of the division, District Magistrate and the Senior Superintendent of Police are its members. Chief Judicial Magistrate is its Secretary. The Monitoring Cells have been constituted for expediting such matters where delay is being caused in criminal proceedings in any court on account of any act of omission or commission by police officers or by any other agency involved in the process. So, in my view, instead of ignoring the statutory provisions of Section 210 Code of Criminal Procedure on account of the delay which the Investigating Officer is causing and to proceed with the complaint case without waiting for his report the Magistrate shall exercise effective control and press into action his judicial and administrative powers to enforce compliance and see that the report is submitted within a reasonable period. In the instant case, the Magistrate dealing with the matter has failed to do so.

12. In the instant case there is a letter dated 25-1-86 of the Investigating Officer informing the Court that he has completed investigation and submitted the report through the Circle Officer. No order has been passed on this application by the court below and it so appears that the Court below has not taken any notice of this letter. If the investigation by the Police Officer was already closed on 15-1-86 and no investigation was in progress thereafter, then the Magistrate could have proceeded with the complaint case u/s 210(3) of the Code of Criminal Procedure. The learned Counsel for the opposite party, however, says that the Circle Officer has sent back the matter to the Investigation. If that be so, the investigation still remains in progress inspite of the fact that once the investigation was closed. To sum up the subject matter of the complaint appears to be still under investigation by virtue of the order passed by learned Magistrate on 2-1-85 and no report has been submitted by the Police Officer to the court so far. Meanwhile, on account of the inordinate delay which was being caused by the Police Officers in submitting the report, the learned Magistrate has proceeded with the complaint case and taken cognizance and summoned the accused. As I have observed in the earlier part of the judgment, there is sufficient material on the record in the complaint case to proceed with the matter to take cognizance and summon the accused. Learned Magistrate could do so even if he had received a final report by the Police saying that in his opinion no offence is made out but in case the Police Officer had filed a charge-sheet and the Magistrate had taken cognizance on the police report, then it would have been mandatory for him under Sub-section (2) of Section 210 Code of Criminal Procedure to proceed with the complaint case also as a police case. So it would not be proper to permit the proceeding of complaint case to proceed till the report of the Police Officer is received in the matter and this can be done without quashing the order dated 14-10-1986 passed by the Court below by directing the police officer to submit his report in the matter positively within 45 days of the receipt of a copy of this order of this Court. The order dated 14-10-1986 passed by the Magistrate is not illegal but it suffers from a minor irregularity in proceeding with the complaint, without receiving police report and deciding whether cognizance should be taken or not on police report and this irregularity is curable by directing the police

officer to submit his report within 45 days and ask the Magistrate to , stay the proceedings for two months.

13. The revision shall, therefore, be partly allowed and the court below should be directed not to proceed with the complaint case in compliance to his order dated 14-10-86 for two months from the date of receipt of this order but in the meantime, if he receives report of the Police Officer he may proceed according to the provisions of Section 210 Code of Criminal Procedure as discussed earlier.

14. I see no substance in the least in the contention raised on behalf of the learned Counsel for the revisionist that as the court below has not passed specific order of stay u/s 210 Code of Criminal Procedure after directing investigation in the same matter and has taken cognizance in the matter without receiving report of the Police Officer so the order dated 14-10-86 is without jurisdiction and illegal.

15. The revision is partly allowed. Order dated 14-10-86 passed by the Court below summoning the accused is not set aside but further proceedings in the complaint case shall remain stayed for a period of 2 months from the date on which a copy of this order is served upon the Magistrate concerned. S.H.O. who is investigating the case is hereby directed to submit his report in the matter to the court concerned directly and positively within 45 days of the receipt of a copy of this order. In default, proceedings for contempt shall be initiated against him.

16. Learned Counsel for the opposite party No. 2 undertakes to serve copy of the order of this Court upon the S.H.O. concerned and the court concerned within two weeks from the date of this order.

17. Let a copy of this order be issued to the learned Counsel for the Opposite party No. 2 on payment of usual charges positively within a week.