
(1976) 05 SC CK 0007

In the Supreme Court Of India

Case No : Criminal Appeal No. 219 of 1975

Devarapalli Lakshminarayana Reddy and Others

APPELLANT

Vs

V. Narayana Reddy and Others

RESPONDENT

Date of Decision : 04-05-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 156(3), 173, 190
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 342

Citation : AIR 1976 SC 1672 : (1976) CriLJ 1361 : (1976) 3 SCC 252 : (1976) SCC(Cri) 380 : (1976) SCR 524 Supp

Hon'ble Judges : R. S. Sarkaria, J; P. N. Shingal, J; Jaswant Singh, J

Bench : Full Bench

Advocate : P. Basi Reddy and A.V.V. Nair, for the Appellant; M.R.K. Chaudhary, P. Ram Reddy, P. Parameshawara Rao and B. Kanta Rao, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sarkaria, J.—Whether in view of Clause (a) of the first Proviso to Section 202(1) of the CrPC, 1973, a Magistrate who receives a complaint, disclosing an offence exclusively triable by the Court of Session, is debarred from sending the same to the police for investigation u/s 156(3) of the Code, is the short question that falls to be determined in this appeal by special leave. The question arises in these circumstances:

2. Respondent 1 herein made a complaint on July 26, 1975 before the Judicial Magistrate, First Class, Dharamavaram against the appellants herein alleging that on account of factions existing in village Thippapalii the appellants formed themselves into an unlawful assembly, armed with deadly weapons, such as axes, spears and sticks, on the night of June 20, 1975 and entered the houses of several persons belonging to the opposite party, attacked the inmates and forcibly took away jewels, paddy, ground-nuts and other valuables of the total value of two lakhs of rupees. It was further alleged that the miscreants thereafter went to the fields and removed parts of machinery worth even Rs.

40.000/-, installed at the wells of their enemies. On these fact it was alleged that the accused had committed offences under Sections 147, 148, 149, 307, 395, 448, 378 and 342 of the Penal Code. The offences under Sections 307 and 395 are exclusively triable by the Court of Session. The Magistrate on receiving the complaint forwarded it to the Police for investigation with this endorsement :

Forwarded u/s 156(3), Cr. Procedure Code to the Inspector of Police, Dharmavaram for investigation and report on or before 5-8-1975.

3. The appellants moved the High Court of Andhra Pradesh by a petition u/s 482 of the CrPC, 1973 (which corresponds to Section 561-A of the old Code) praying that the order passed by the Magistrate be quashed inasmuch as "it was illegal, unjust and gravely prejudicial to the petitioners". The learned Judge of the High Court, who heard the petition, dismissed it by an order dated October 20, 1975.

Hence this appeal.

4. Mr. Basi Reddy, appearing for the appellants contends that the High Court has failed to appreciate the true effect of the changes brought by the Code of 1973. According to the Counsel, under the new "Code. if a complaint discloses an offence triable exclusively by a court of Session, the Magistrate is bound to proceed with that complaint: himself before issuing process to the accused. The point pressed into argument is that clause (a) of the first Proviso to Section 202(1) of the new Code peremptorily prohibits the Magistrate to direct investigation of such a complaint by the Police or any other person. The cases, Gopal Das v. State of Assam (1961) AIR 1961 S.C. 986; Jamuna Singh and Others Vs. Bhadaï Sah, , referred to by the High Court are sought to be distinguished on the ground that they were decided under the old Code, Section 202 of which did not provide for any such ban as has been expressly enacted in the 1st Proviso to Section 202 of the new Code.

5. As against this, Mr. Ram Reddy, whose arguments have been adopted by Mr. Chaudahry, submits that the powers conferred on the Magistrate u/s 156(3) of the Code are independent of his power to send the case for investigation u/s 202 of the Code; that the power u/s 156(3) can be invoked at a stage when the Magistrate has not taken cognizance of the case while Section 202 comes into operation after the Magistrate starts dealing with the complaint in accordance with the Provisions of Chapter XV. It is urged that since in the instant case, the Magistrate had sent the complaint for police investigation without taking such cognizance Section 202 including the bar enacted therein, was not attracted. In the alternative, it is submitted that the ban in the 1st Proviso to Section 202, becomes operative only when the Magistrate after applying his mind to The allegations in the complaint and the other material, including the statement of the complainant and his witnesses, if any, recorded u/s 200, is prima facie satisfied that the offence complained of is triable exclusively by the Court of Session. The point sought to be made out is that a mere allegation in the complaint that the offence committed is one exclusively triable by the Court of

Session, does not oust the jurisdiction of the Magistrate to get the case investigated by the police or other person. The word "appears" according to Counsel, imports a prerequisite or condition precedent, the existence of which must be objectively and judicially established before the prohibition in the 1st Proviso to Section 202 becomes operative. It is added that in the instant case., the existence of this condition precedent was not, and indeed could not be established.

6. It appears to us that this appeal can be disposed of on the first ground canvassed by Mr. Ram Reddy.

7. Before dealing with the contention raised before us, it will be appropriate to notice the relevant provisions of the old and the new Code.

8. Section 156 of the Code of 1973 reads thus :

156(1). Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above mentioned.

9. This provision is substantially the same as Section 156 of the Code of 1898, excepting that in Sub-section (1) for the words "Chapter XV relating to the place of inquiry or trial," the words "Chapter XIII" have been substituted.

10. Sections 200 and 202 of the 1898 Code and the 1973 Code, placed in juxtaposition, read as follows:

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Code	Code
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200 : A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses of the offence and shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. Provided as follows : -- Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -- (a) when the complaint is made in writing, nothing herein contained purporting to	200 : A Magistrate taking of an offence on examine the complaint shall ex-mine upon oath present, if any, upon oath and the substance the complainant and the witnesses of the examination shall be reduced to present, if any,and the substance of writing and shall be signed by the such examination shall be reduced complainant and the witnesses, and 1o writing and shall be signed by also by the Magistrate: the complainant and the witnesses, and also by the Magistrate. Provided as follows : -- Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -- (a) when the complaint is made in (a) if a public servant acting or writing, nothing herein contained purporting to

act in the discharge shall be deemed to require a of his official duties or a Court Magistrate to examine the has made the complaint; or complainant before transferring the case u/s 192; (b) if the Magistrate makes over the case for enquiry or trial to another Magistrate u/s 192; (aa) when the complaint is made Provided further that if the in writing, nothing herein Magistrate makes over the case to contained shall be deemed to another Magistrate u/s 192 require the examination of a after examining the complainant complainant in any case in and the witnesses, the latter which the complaint has been need not re-examine them. made by a Court or by a public servant acting or purporting to act in the discharge of his official duties; (b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and where the complaint is made in writing need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing; (c) when the case has been transferred u/s 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

----- Section
202 Section 202

Postponement of issue of Process :-- Postponement of Issue of process:-- (1) Any Magistrate, on receipt of (1) Any Magistrate, on receipt of a a complaint of an offence of which complaint of an offence which he is he is authorised to take cognizance, or authorised to take cognizance or which has been transferred which has been made over to him u/s 192, may, him u/s 192, may if if he thinks fit, for reasons to be he thinks fit, postpone the issue recorded in writing, postpone the of process against the accused, issue of process for compelling and either inquire into the case the attendance of the person himself or direct an complained against, and either investigation to be made by inquire into the case himself or, a police officer or by such if he is a Magistrate other other person as he thinks fit, than a Magistrate of the third for the purpose of deciding class, direct an inquiry or whether or not there is investigation to be made by any sufficient ground for proceeding: Magistrate subordinate to him, or by a police officer, or by such other person as he thinks the for the purpose of ascertaining the truth or falsehood of the complaint; Provided that, save Provided that no such direction where the complaint has been for investigation shall be made: -- made by a Court, no such direction shall be made (a) where it appears to the unless the complainant has Magistrate that the offence been examined on oath under complained of is triable the provisions of section 200. exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complaint and the witnesses present (if any) have been examined on oath u/s 200. (2) If any inquiry or investigation (2) If any inquiry under under this section is made by a sub-section (1), the Magistrate person not being a Magistrate or may, if he thinks fit, take a Police officer, such person shall evidence of witnesses on oath: exercise all the powers conferred by this Code on

an officer in-charge of a Police-station, except that he shall not have the power to arrest without warrant. (2A) Any Magistrate inquiring into a Case under this section may, if he thinks fit, take evidence complained of is triable exclusively of witnesses on oath. by the Court of Session, he shall call upon the complainants to produce all his witnesses and examine them on oath. (3) This section applies also (3) If an investigation under to the police in the towns sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in-charge of a police station except the power to arrest without warrant. 11. Before proceeding further, we may have a look at Section 190 of the new Code. This section is captioned "Cognizance of offences by Magistrates". This section so far as it is material for our purpose, provides :

Subject to the provisions of this Chapter, any Magistrate of the First Class and any Magistrate of the second class specially empowered in this behalf may take cognizance of any offence --

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) ...

11. It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with "must take cognizance". The word "may" gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation u/s 156(3) will be conducive to justice and save the valuable time of the Magistrate from, being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

12. This raises the incidental question : What is meant by "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190?. This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case

including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding u/s 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police u/s 156(3), he cannot be said to have taken cognizance of any offence.

13. This position of law has been explained in several cases by this Court, the latest being *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*,

14. The position under the Code of 1898 with regard to the powers of a Magistrate having jurisdiction, to send a complaint disclosing a cognizable offence--whether or not triable exclusively by the Court of Session--to the Police for investigation u/s 156(3), remains unchanged under the Code of 1973. The distinction between a police investigation ordered u/s 156(3) and the one directed u/s 202, has also been maintained under the new Code; but a rider has been clamped by the 1st Proviso to Section 202(1) that if it appears to the Magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for investigation.

15. Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation u/s 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power u/s 156(3) can be invoked by the Magistrate before he takes cognizance of the offence u/s 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or chargesheet u/s 173. On the other hand Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered u/s 202 to direct within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground

for proceeding". Thus the object of an investigation u/s 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

16. In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation u/s 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complaint or his witnesses u/s 200, Cr.P.C., which is the first step in the procedure prescribed under that Chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police u/s 156.

17. This being the position, Section 202(1), 1st Proviso was not attracted. Indeed, it is not necessary for the decision of this case to express any final opinion on the ambit and scope of the 1st Proviso to Section 202(1) of the Code, of 1973. Suffice it to say, the stage at which Section 202 could become operative was never reached in this case. We have therefore in keeping with the well-established practice of the Court, decided only that much which was essential for the disposal of this appeal, and no more.

18. For the foregoing reasons, we answer the question posed, in the negative, and dismiss this appeal.