
(1992) 09 OHC CK 0030

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 113 of 1992

Dillip Behera and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 22-09-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 190, 190(1)

Citation : (1992) 74 CLT 913 : (1993) 1 OLR 33

Hon'ble Judges : G.B. Pattnaik, J

Bench : Single Bench

Advocate : B. Ray, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

G.B. Pattnaik, J.—The order of the learned Magistrate dated 17-2-1990 taking cognizance of the offence u/s 436/34, IPC and issuing summons to the accused persons is being challenged in this application invoking the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure.

2. The informant gave a written report on 22-12-1989 at 7 p.m. which was treated as FIR alleging therein that the petitioners came in a Car and threatened him to murder at the point of a knife and thereafter set fire to his stall and then left the place with the Car. On the basis of the said FIR police registered a case and started investigation. On completion of investigation final report was submitted on 15-12-1989. The Magistrate after receiving the final report passed order on 20-1-1990 to issue notice to the informant to file any protest petition. Thereafter the case records were produced on 17-2-1990. Even though no protest petition had been filed by the informant, the Magistrate took cognizance of the offence u/s 436/34, IPC and directed issuance of summons to the accused persons and hence the accused persons have approached this Court.

3. Mr. Bijan Ray, the learned counsel appearing for the petitioners raises three contentions in assailing the order of cognizance and prays for quashing of the same.

(i) When the police submits final form u/s 173, Cr.PC and no protest petition is filed by the informant, the Magistrate has no jurisdiction to take cognizance of the offence suo motu and in this view of the matter, the impugned order of the Magistrate is invalid.

(ii) Assuming the Magistrate has the jurisdiction to take cognizance on the materials, then the Magistrate must be satisfied about the commission of offence prima facie before taking cognizance and the order must indicate about such satisfaction of the Magistrate. The impugned order does not satisfy the aforesaid test;

(iii) The entire materials which were produced before the Magistrate collected in course of investigation by the police did not constitute an offence in question and, therefore, the order of cognizance is bad in law.

3. The learned Public Prosecutor, on the other hand, contends that even if no protest petition is filed and police submits a final form still the Magistrate can disagree with the view of the police and take cognizance if he is satisfied that the offence has been committed u/s 190(1)(c) of the Code of Criminal Procedure. The learned Public Prosecutor further urges that the materials on record did establish the commission of offence and, therefore, no case for quashing the cognizance has been made out.

4. In view of the rival submissions made at the bar the first question that arises for consideration is whether a Magistrate has any jurisdiction to take cognizance of an offence after the police submits the final form indicating that no offence has been committed by any of the accused persons and the informant does not file any application for protest. This question no longer remains res integra. As early as in the year 1968 in the case of *Abhinandan Jha and Others Vs. Dinesh Mishra*, their Lordships of the Supreme Court overruled the views expressed by Bombay High Court and Patna High Court and held that the investigation under the Code of Criminal Procedure takes in several aspects and culminates ultimately with the formation of an opinion by the police as to whether on the materials covered and collected a case is made out to place the accused before the Magistrate for trial and accordingly submits either a charge-sheet or final report depending upon the nature of the opinion so formed. The formation of the said opinion by the police is a final stage in the investigation and that final stage is to be taken only by the police and by no other authority. Therefore where a police submits a final form, the Magistrate has no power to direct the police to submit a charge-sheet. But notwithstanding submission of final form by the police, the Magistrate can order for further investigation u/s 156(3) Cr. P. C. or disagreeing with the opinion of the police can take cognizance u/s 190(1)(c) Cr. PC if the materials on record so justify. This view has been followed by their Lordships of the Supreme Court in the case of *H.S. Bains, Director, Small Savings-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, After analysing the provisions of the Code of Criminal Procedure more particularly provisions of Sections 156 and 190 of the said Code, their

Lordships indicated that on receipt of a police report u/s 173, Cr. P.C. the Magistrate may decide to drop the action as there is no sufficient ground for proceeding further or he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process and this he may do without being bound in any manner by the conclusion arrived at by the police in their report. In view of the aforesaid authoritative pronouncement of the apex Court it is difficult for me to accept the submission of Mr. Ray for the petitioners that the Magistrate had no jurisdiction to take cognizance of the offence after the police submitted the final form. The first contention of Mr. Ray must accordingly be rejected.

5. Coming to the second submission of Mr. Ray, I find ample force in the same. "Taking cognizance of an offence" means taking judicial notice that an offence has been constituted. The word "cognizance" means to become aware of and when the said word is used with reference to a Court or a Judge, it means to take notice of judicially. "Taking notice of an offence in a judicial capacity" means to initiate judicial proceeding against an offender in respect of the offence. This being the position, when police submits final form even though the Magistrate has the power to differ with the opinion formed by the police in course of investigation and takes cognizance of an offence if materials so indicate but the order of the Magistrate must indicate the same. The impugned order, on the other hand, indicates that the Magistrate was not satisfied with the investigation hence he took cognizance of the offence Under Sections 436/34, IPC, If the Magistrate is not satisfied with the investigation he could have directed/ further investigation into the matter in exercise of power u/s 156(3) of the Code. Not being satisfied with the investigation the Magistrate cannot take cognizance of an offence unless the Magistrate forms the opinion of the materials that the materials do constitute an offence which should be taken cognizance of for initiation and continuance of the criminal proceeding. In this view of the matter, the impugned order dated 17-2-1990 is wholly illegal and invalid and also without jurisdiction and, therefore, cannot be sustained. The second submission of Mr. Ray must, therefore, be upheld.

6. Coming to the third submission, it depends upon the materials on record. If a cognizance has been taken by a Magistrate, the High Court can interfere with the said cognizance if it is satisfied that no case is made out even if the entire materials are taken on its face value. In other words, in such circumstances, it has to be held that continuance of the proceeding would be an abuse of the process of Court. No doubt the power of this Court u/s 482, CrPC has to be sparingly exercised but if on examination of the materials, it is established that no offence is made out by any of the accused persons and still the Magistrate has taken cognizance and has directed issuance of process, it is the bounden duty of the Court to quash the said order of cognizance. Applying the aforesaid parameter to the present case and on examining the materials collected by the police in course of investigation as available from the case diary, I entirely agree with the submission Mr. Ray for the petitioners that the materials taken on their face value do not make out commission of an offence by any of the accused

persons and, on the other hand, a false case has been foisted on account of political rivalry. In this view of the matter, I am of the considered opinion that this is a fit case where this Court should invoke its inherent power to quash the cognizance in question. In the circumstances, the impugned order of taking cognizance of the offence is quashed and the Criminal Proceeding itself is quashed. This Criminal Misc. Case is allowed.