

(2001) 09 CAL CK 0043
In the Calcutta High Court
Case No : C.R.R. No. 272 of 1994

Gourhari Bhakta and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1)(b), 460, 465
Immoral Traffic (Prevention) Act, 1956 — Section 13, 13(1), 2, 2(1), 3

Citation : 107 CWN 138

Hon'ble Judges : Amit Talukdar, J

Bench : Single Bench

Advocate : Sukhdeb Chatterjee, for the Appellant;

Final Decision : Dismissed

Judgement

Amit Talukdar, J.—For quashing of the proceeding being G. R. Case No. No. 700 of 1992 arising out of Shyampore Police Station Case No. 102/92 dated 26.12.92 under Sections 3 and 7 of the Immoral Traffic (Prevention) Act, 1956 this revisional application has been filed and also against the order dated 03.1.94 passed by the learned Sub-Divisional Judicial Magistrate, Uluberia in connection with the said case. The main question involved in this revisional application relates to submission of a charge-sheet filed by the Sub-Inspector of Police attached to the Shyampore Police Station, who was not authorised to do so and the attention of the learned Magistrate having been drawn to the said fact with a prayer for setting aside the order of cognizance taken on the basis of such charge-sheet being turned down by the learned Magistrate whether the said order can be sustained.

2. The learned lawyer appearing in support of the application has referred to the provisions of Section 13 of the Immoral Traffic (Prevention) Act, 1956 (the said Act, for brevity) and showed that the Sub-Inspector of Police was not authorised to submit the charge-sheet and as the same was done by a Sub-Inspector of Police, the cognizance taken on the basis of the same is liable to be set aside.

He has submitted that the learned Magistrate by refusing to accept the prayer made on behalf of the accused persons and calling for a report from the Investigating Officer has, in fact, caused a failure of justice and indirectly refused such prayer.

The learned lawyer appearing for the petitioners had annexed an order of a learned Single Judge of this Court in support of his contention that in a similar situation the proceeding was quashed as the investigation was conducted by a person other than who has been authorised to do so under the said Act.

3. The learned Additional Public Prosecutor appearing with the learned Junior Government advocate for the State refuted the contentions made on behalf of the petitioners and submitted that mere irregularity in an investigation cannot wholesale render the fruits of the same to be infructuous. He has submitted that the petitioner has come-up at a stage which was not the correct stage. He submitted that it would appear from the order the cognizance was taken by the learned court on 30.3.93; but the said order was not challenged. As such, the cognizance stood final and the learned Magistrate had rightly refused to interfere and on the contrary, had called for a report from the Investing Officer with regard to the actual position. Even then, the learned Additional Public Prosecutor submitted the learned Magistrate ought to have out-right refused the same as otherwise, the point canvassed on behalf of the petitioners was not maintainable.

4. Having heard the submissions made on behalf of the petitioners and as well as that of the learned Additional Public Prosecutor appearing with the learned Junior Government Advocate for the State and on perusing the materials on record in the light of the legal position I proceed to probe the efficacy of the petitioners' submissions as to whether it can be at all tenable.

5. The petitioners were booked under the provisions of Sections 3 and 7 of the said Act after a raid was held under the supervision of the Sub-Divisional Police Officer consisting of the Circle Inspector and other Police Officers in Ramkrishna Lodge at Gadiara from different rooms of the said Lodge and having found that the accused persons were engaged in act of prostitution. After completion of the investigation one-Shri Sushil Kumar Bera, Sub-Inspector of Police attached to the Shyampore Police Station submitted the charge-sheet No. 15 dated 15.2.93. On the basis of the same the learned Sub-Division Judicial Magistrate, Uluberia on 30.3.93 took cognizance against the accused persons.

Subsequently, at a later stage on 03.1.94 a point was raised on behalf of the accused that the said Sub-Inspector of Police was not competent to have investigated the case and the charge-sheet submitted on the basis of the investigation conducted by such Officer was invalid and the cognizance taken thereupon was vitiated and was liable to be quashed.

6. Firstly, I find that the revisional application was absolutely premature as the learned Magistrate did not pass any conclusive order but had called for a report. At that stage the accused persons pre-empted the conclusion of the learned

Magistrate and rushed before this court and obtained an order of stay wayback on 4.2.94.

Secondly, I find that the point, which has been canvassed is also not at all tenable in view of the fact that a defect in an investigation cannot entirely discredit the proceeding and will in any manner the power, of the learned Magistrate to take cognizance. Sections 460 and 465, Cr.P.C. takes care of such a position and simply, of the basis of some loopholes in the investigation which at best, can be treated as mere irregularity, cannot amount to throwing away the end product of the same. That apart, I am also of the view that the decision of the Supreme Court in the case of H.N. Rishbud and Inder Singh Vs. The State of Delhi, , and also the decisions of M.C. Sulkunte Vs. State of Mysore, , are quite apposite. The Supreme Court, in the said two decisions had laid down that mere defect or irregularity in an investigation, unless it causes prejudice to the accused, cannot be said to have vitiated the entire proceeding.

7. That apart, another aspect which also needs to be probed in view of the provisions of sub-section 3(1) of Section 13 of the said Act wherein it has been specifically mentioned that:

For the efficient discharge of his functions in relation to offences under the said Act-

(a) the Special Police Officer of an area shall be assisted by such number of subordinate police officers...."

Which, in other words, means to assist the Special Police Officer by conducting the search or by examining witnesses is to participate in investigation which is part of the function; the Police Officer has to discharge in relation to the offences under the said Act.

8. Reference may be made to the provisions of Section 2 Clause (i) of the said Act which must be read in conjunction with Section 13 subsection (1) of the said Act.

If these positions are married with each other then the concept of police duties in Section 2(1) and dealing with offences in Section 13(1) would give a wholesome effect to the entire crux of the issue involved and go to show that apart from the other legal position as discussed hereinabove the Magistrate cannot shut out from looking into such report submitted by an ordinary police officer through the keyhole of Section 190(1)(b), Criminal Procedure Code.

As such, in my humble view, if the statute empowers the ordinary police officer, although, this is a complete misnomer, however, such a police officer who can assist the Special Police Officer necessarily, participates in the investigation and filing of a report in final form is ultimate culmination of the same.

9. The decision annexed in the application in Criminal Revision No. 660 of 1993 (Mohit Box & Ors. vs. The State of West Bengal) handed down by a learned

Single Judge of this Court on May 5, 1993, in my most humble view cannot be good law in view of the discussions held hereinabove and the same will have no binding effect on this court to arrive at the different conclusion as the said judgment would be deemed to be per inquiriam in the light of the discussions held hereinabove. I do not find any merit in the revisional application which has to fail. However, I find that the petitioners who have been arrayed in G. R. Case No. 700 of 1992 in connection with one of the most heinous offences which perforates the moral fabric of the society and has a deleterious effect on the mental health of the community, at large, has successfully evaded the tentacles of law on account of pendency of this application over these years.

The averments in the report in final form submitted by the investigating agency reveals the existence of a voluptuous flesh market and the macabre merchants of the said dark market where the oldest profession of the world is practiced, happens to be the accused persons.

It is now only apposite that the accused persons face the trial and the same has to be concluded with utmost expedition by the learned Magistrate concerned and I direct that the trial of G. R. Case No. 700 of 1992 should proceed with utmost despatch and the learned Magistrate would take every endeavour to conclude the same definitely, within December, 2001 unless of course, due to some impelling circumstance, the schedule has to be carried over in the interest of justice.

The revisional application is accordingly dismissed, having no merit.

No order as to costs.

All interim order stands vacated.

Officer is directed to communicate this order to the learned Sub-Divisional Judicial Magistrate, Uluberia within" 7 days from today in the light of the time schedule fixed in this order.