
(1971) 11 SHI CK 0003
In the High Court Of Himachal Pradesh

Harsarup Dass

APPELLANT

Vs

S. Padamanabhaiah

RESPONDENT

Date of Decision : 25-11-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 176, 176(1)

Citation : (1972) CriLJ 956

Hon'ble Judges : M.H. Beg, C.J.; Chet Ram Thakur, J

Bench : Division Bench

Judgement

M.H. Beg, C.J.—This is an application under Articles 226/227 of the Constitution for the issue of an appropriate order or direction to the Sub-Divisional Magistrate Nalaeah in the District of Simla, who is conducting a magisterial inquiry into the cause of a woman's death under the orders of the District Magistrate of Simla. The object of that inquiry, as laid down by the District Magistrate is to inquire into questions.

1. Whether there are reasonable apprehensions to believe that this death was a case of murder?

2. Whether the local police acted promptly and properly in tackling this situation?

2. The petitioner in this Court is the husband of one Rukmani Devi who alleges that his wife was of an unsound mind and that she committed suicide on the night between 9th and 10th June, 1971, by jumping into a well at Nalaeah of which a report was made by one Rattan Lal Dandotra to the police station Nalagarh during the same night at 11-15 P. M. It appears that the Police held an inquiry into the cause of death in the course of which it took down statements of various persons including Rattan Lal Dandotra in the presence of respectable inhabitants of the neighbourhood as is required by Section 174 Cr. P.C. for an inquest. No investigation into the commission of an offence had commenced as the police did not consider the evidence sufficient to start an investigation into an alleged offence on the statement of Shri Rattan Lal Dandotra. Subsequently,

however, circumstances seem to have come to light from the post-mortem report and other matters which aroused the suspicions and feelings of the local inhabitants who approached the District Magistrate. It appears that Shri Rattan Lal Dandotra had also made serious allegations against the police for suppressing the real cause of death. He had alleged that his statement at the inquest u/s 174 Criminal P.C. presumably made before the respectable inhabitants of the neighbourhood had been wrongly taken down by the police.

3. It appears that initially the inquiry, which is now taking place before the S. D. M. Nalagarh under the orders of District Magistrate of Simla was treated as what has been described as a purely "executive inquiry" for the purpose of ascertaining whether any executive action was required before any proceedings for an alleged offence including an investigation should take place. Hence, counsel were not allowed to appear at all. At that time the inquiry was being conducted by the S. D. M.. Kandahat Subsequently under orders of the District Magistrate counsel were allowed to appear and cross-examination of witnesses was also permitted in the course of the inquiry which is being held in public by the Sub-Divisional Magistrate of Nalagarh. Therefore Harswarup Dass, the petitioner before us who had been suspected of some foul play in connection with the death of his wife engaged a counsel who has been permitted to cross-examine witnesses.

4. When the petitioner's counsel wanted to put the statement alleged to have been made at the inquest u/s 174 by Rattan Lal Dandotra to this witness at the above mentioned inquiry before the S. D. M. Nalagarh he was not permitted to do so on the grounds stated by the Magistrate concerned in an order (Annexure "C" to the petition), dated 18-7-1971, which the petitioner wants quashed by this Court. This order which may be reproduced runs as follows:

At this stage the learned Counsel for Shri Har Sarup requested that Enquiry Officer that the statement of Shri Rattan Lal Dandotra recorded by the police in the daily diary which has been summoned today and in the inquest report prepared by the police which is with this enquiry may be made available in order to contradict that witness with his previous statements u/s 145 Evidence Act.

Findings: The statements recorded u/s 162 Cr. P.C. by the police according to Section 162 Cr. P.C. can be used for purpose of contradiction only in an enquiry or trial into an offence, According to In Re: Vajrala Koti Reddi and Others, witnesses examined by the court in the interest of justice cannot be said to be witnesses called for prosecution. The Section does not introduce any fiction so that any witness who is not in fact called for prosecution may be deemed to be so. The clear language of the provision is not susceptible of this interpretation. The expression called for the prosecution is express and explicit and there is no warrant for giving it a meaning which in words in the literal or ordinary sense do not convey. Section 145 of Evidence Act is controlled by Section 162 Cr. P.C. and the prohibition contained in Section 162 Cr. P.C. cannot be permitted by law. Consequently the statement of the court witnesses recorded by the police cannot

be used for the prosecution u/s 162 Cr. P.C. to contradict them though they were cited as the prosecution witnesses. In view of the citation AIR 1960 Andhra Pradesh, I find that the statements made to the police during the course of the Investigation under Chapter 14. can be used only for purpose of contradiction during the trial of enquiry into an offence. I accordingly reject the request of the learned Counsel for Har Sarup. At this stage the counsel for Shri Har Sarup put in an application that he wants to so in a revision against the above order and he may be allowed time. This request is acceded to and the enquiry is adjourned for 21-7-1971 and further recording of the evidence shall start at 10.00 A. M. on that date subject to any order passed in the revision.

5. The petitioner Har Sarup then applied to the District and Sessions Judge of Simla to recommend the case to this Court u/s 435 read with Section 438 Cr. P.C. for quashing the above mentioned order. The District and Sessions' Judge held that the Magistrate concerned in making an inquiry under provisions of Section 176 (1) Criminal P.C. was not acting as a "criminal court" at all but was holding what he described as merely an "executive inquiry". The learned Judge therefore held that a reference in such a case on an application u/s 435 Criminal P.C. was not permissible.

6. It also appears that the petitioner had moved this Court u/s 526 Cr. P.C. for a transfer of the inquiry from Nalagarh to a Magistrate outside District Simla. That application was rejected by our learned brother D. B. Lal primarily on the ground that the Magistrate holding an inquiry u/s 176 Cr. P.C. was not acting as a court and no judicial proceeding had begun yet. The order passed by the District Magistrate for the inquiry to be held by the Sub-Divisional Magistrate of Nalagarh was held to be administrative and not judicial. It appears that in the course of arguments before D. B. Lal, J. the petitioner had also referred to Article 227 of the Constitution and Section 561 A Cr. P.C. only in order to buttress his stand that this was a case for transfer. We do not think that the transfer application made under a misconception of the real position could be treated as a previous application under Articles 226/227 of the Constitution which could stand in the way of the petition now before us. No such objection was taken by the Advocate General appearing on behalf of the opposite party Magistrate.

7. There is no doubt that the first part of the order of the District Magistrate for inquiry is covered by Section 176. Sub-section (1) of the Cr. P.C. which lays down as follows:

When any person dies while in the custody of the police. the nearest Magistrate empowered to hold inquests shall. and in any other case mentioned in Section 174, Clauses (a), (b) and (c) of Sub-section (1). any Magistrate so empowered may hold an inquiry into the cause of death. either instead of. or in addition to, the investigation held by the police-officer and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed

according to the circumstances of the case.

8. It is clear that a Magistrate holding such an inquiry is specifically invested with "all the powers in conduct-ins it which he would have in holdine an inquiry into an offence". The provision also goes on to lay down that "the Magistrate holdine such an inauiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed accordine to the circumstances of the case." This means that the provisions of Chapter 25. Cr. P.C. prescribing "the mode of conducting and recording of evidence in inquiries and trials" would be applicable in such magis terial inquiries in so far as it could reasonably be applied. The circumstances of a case could permit departure from the prescribed mode only to the extent which may be warranted by. the special nature of the inauiry. In other respects. the procedure has to conform to the prescribed mode. This means that the provisions of Section 363 Cr. P. C also applyso that the Magistrate holding the inauiry may make remarks respecting the demeanour of a witness who appears before him. It is well established that the sessment of the credibility of witnesses is affected by the demeanour of the witnesses on the witness stand particularly when confronted with inconvenient facts or contradictory statements said to have been made on earlier occasions.

9. Section 1 of the Indian Evidence Act 1872 makes it clear that it applies only to "all judicial proceedings in or before anyourt". The term "Court" is defined by Section 3 as including" all judges and magistrates all persons except arbitrators. lesally authorised to take evidence". The term "judicial proceeding" is also defined in the Criminal Procedure Code in Section 4 Sub-section (1)(n) as "any proceeding in the course of which evidence is or may be leally taken on oath." It also defines in Section 4 Sub-section (1)(k) inquiry to include "every inquiry other than a trial conducted under this code by a Magistrate or Court". It defines the term "investigation" in Section 4 Sub-section (1)(I) as including "taking of proceedings under this code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who authorised by a Magistrate in this behalf".

10. A reference to the above mentioned provisions seems to us to make it clear that quite apart from whether the Magistrate proceeding u/s 176 Sub-section (1) Cr. P.C. could be held to be a "Court" or not conducting a "judicial proceeding". he could not be said to be conducting a mere investigation the purpose of which is only to collect evidence. It is not necessary for us to analyse the procedure for investigation into an offence prescribed by the Cr. P.C. to determine whether such elements of decisions taken there. which are involved in the course of the investigation could be confined to more collection of evidence. It is enough if we indicate that the procedure for investigation is clearly in our opinion. not a judicial or quasio-judicial proceeding so that no accused person has a right to be present or represented by counsel at an investigation by the police. On the the other hand it is equally clear when the commission of an offence by "a person accused" of it is being inquired into the Code of Criminal Procedure provides for a

judicial inquiry at which accused has a right to be represented. This much is quite clear from provisions quoted above.

11. The position of an inquiry such as the one which is being conducted by a Sub-Divisional Magistrate Nalagarh apparently u/s 176 Sub-section (1) Cr. P. C. does not, however seem to us to be so clear in view of the provisions cited above. It may be conceded that a Magistrate conducting such an inquiry is not a "court" for the purposes of jurisdiction of this Court under the Contempt of Courts Act. It could even be held that he is not acting as a court for the purposes of transfer of a case u/s 526 Cr. P.C. But once a suspected person is allowed to appear at the proceeding and to take part in the process of eliciting truth. which is the object of such an inquiry it would be difficult to hold that the person suspected is not interested in the outcome of the inquiry. It can even be said that a "lis" has commenced once there are persons on one side who suspect and on the other the person who engages a counsel to dispel that suspicion although he appears only for the purpose of removing the suspicion.

12. A recent decision of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, shows that the dividing line between what used to be considered purely executive or administrative and what may be viewed as a quasi-judicial proceeding is not so clear and distinct as was at one time supposed.

13. We may also observe here that order given by the District Magistrate of Simla goes beyond ordering an inquiry covered by Section 176 Sub-section (1) Cr. P.C. It is submitted by the learned Advocate General that it is covered by the supervisory control and direction of the District Magistrate over the police in his District given to him by Section 4 of the Police Act. Provisions of Rule 16.38 (1) of the Puniab Police Rules. which are also said to be applicable here, lay down:

Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer or made over to a selected magistrate having 1st class powers.

14. Assuming. therefore that the District Magistrate had acted within his powers and very rightly and properly as was think he did. in ordering such an in-qury not merely into the actual cause of death of the deceased but also into the conduct of the police in relation to the public inquest held by it we think that the inquiry ordered by him became at least quasi-judicial in character once the petitioner was even a right to be represented by a counsel. Even essentially executive or administrative action can acquire certain quasi-judicial attributes as was pointed out by this Court in Km. Manju and Another Vs. State, In the circumstances, the question arises whether the statement said to have been made by Rattan Lal Dandotra before the Police u/s 176 Cr. P.C. should be allowed to be put to that witness.

15. After a close examination of provisions of Section 162 Cr. P.C. we find that although the statements recorded by the Police in the course of investigation u/s 161 Cr. P. C are not allowed to be used "for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statements were made" yet it is very desirable that statements taken at an inquest should be permitted to be used when the very conduct of the police in recording the statements is the subject matter of a Magisterial inquiry which has acquired a quasi-judicial character on the special facts of this case. We do not find anything in Section 162. Cr. P.C. to bar the use of any statements for such a purpose when the statement was neither made in the course of an investigation into an offence nor is sought to be used at an inquiry or trial in respect of any offence investigated. Although Section 174 Cr. P.C. also speaks of an "investigation" which is to be made to draw up a report on the "apparent cause of death" yet the statements recorded there are certainly not investigations into the commission of an offence. Even if the "investigation" made before an inquest report is submitted u/s 174 Cr. P.C. could be said to be an "investigation" mentioned in the first part of Section 162 Sub-section (1) yet we find that the bar is only against the use of statements mentioned in Section 162 Cr. P.C. at an inquiry or trial "in respect of any offence". It is admitted by both sides that no inquiry or trial in respect of any offence has commenced so far.

16. In the view of the special nature of the magisterial inquiry which in our opinion has acquired sufficient characteristics of a quasi-judicial inquiry so as to enable a suspected person to appear and engage a counsel and cross-examine witnesses. We think that the previous alleged statement of Rattan Lal Dandotra should be permitted to be put to the witness in order to enable the Magistrate to elicit the truth more effectively and to carry out the objects of the inquiry ordered.

17. We think that the learned Magistrate was in error in applying the principle laid down In Re: Vajrala Koti Reddi and Others, . to the facts and circumstances of the inauiry before him. Again. P. Rajangam, Sub-Inspector of Police and Others Vs. State of Madras and Others, which has also been cited before us would not be fully applicable to the case before us because the object of the petitioner in that case was to obtain a quashing of the whole proceeding. Moreover, with great respect, it is difficult for us to agree with all that was laid down by the Madras High Court in that case. Piara Singh Vs. The State and Another, was a case where the question under consideration was whether a Magistrate holding an inquiry u/s 176 Cr. P.C. could be considered a "Court subordinate to the High Court" for the purpose of Contempt of Courts Act. In Piara Singh Vs. The State and Another, the question under consideration was whether the Magisterial inquiry u/s 176 Cr. P.C. was subject to the powers of this Court a transfer from one court to another. While respectfully concurring with the views expressed in the last mentioned two cases from the Punjab High Court we think that what was decided there would not apply to proceedings which have become quasi-judicial to a large extent in the circumstances indicated above and

which as already pointed out go even beyond a magisterial inquiry u/s 176 (1) Cr. P.C. We think that it is essential in the interests of justice and in order to carry out the purposes of the inquiry ordered to confront the witness by an alleged previous statement. It is for the Magistrate concerned to form his opinion about the extent to which the witness is stating the truth. We may emphasise that one of the matters on which it is necessary for a Magistrate to give his finding is the promptness and propriety of the actions of the police. On the view we have taken above, we must and do hereby quash the order passed by the learned Magistrate. We direct him to proceed in accordance with law as indicated above. In the circumstances of the case, we make no orders as to costs.