

(1966) 03 PAT CK 0007

In the Patna High Court

Case No : Criminal Revision No. 1148 of 1964

Hembrom Daniel

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-03-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 178, 190(1), 200, 202

Citation : AIR 1966 Patna 440 : (1966) CriLJ 1321

Hon'ble Judges : N.L. Untwalia, J;K.K. Dutta, J

Bench : Division Bench

Advocate : J.M. Varma, Nawal Kishore Prasad and Mahendra Prasad Pandey, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. An occurrence is said to have taken place on the 3rd of July 1962 by rash and negligent driving of the petitioner of a motor vehicle bearing No B R T 4057 Information of this occurrence has lodged at the police station. The investigating Officer made investigation and submitted a report u/s 173 of the Code of Criminal Procedure, hereinafter referred to as the "code", which was in favour of the petitioner and as is generally called it was "final report". This report was submitted on 24-9-62. The subdivisional Magistrate passed the following order on this date :

" Final report No. 21 dated 31-8-62 has been received P. R. T. insufficient evidence u/s 379/304A. Call for the case diary and put up on 26-10-62".

After several reminders, the case diary was eventually received by the Sub-divisional Magistrate, and pass the following order on 28-5-1963.

" Case diary has been received along with the supervision note,

"perused the Diary. Let Shri R. S. Ojha held a Judicial enquiry into the matter and to submit his report by 26-6-68 ."

Orders dated 81-6-63 and 14-7-68 indicate that a judicial enquiry was held by Mr. S. S. Ojha by taking evidence in that enquiry. Enquiry report was submitted and on the basis of this, cognizance was taken of the case against the petitioner u/s 279/304A of the Penal Code by the following order of the Sub-divisional Magistrate.

" Perused the judicial enquiry report held by Shri R. S. Ojha, Magistrate 1st Class, Chaibassa. He states in his report that a prima facie case has been made out against the accused u/s 279/304A I. P. C.

Cognizance taken. Issue W/A against the accused person for 27-8-63."

2. The petitioner being aggrieved by the order dated 31-7-63 of the learned Sub-divisional Magistrate moved the Sessions Judge of Singhbhum at Chaibassa to make a reference to this Court for the quashing of the said order. But the learned Sessions Judge refused to make a reference and then the petitioner obtained a rule from this Court against the State to show cause why the order aforesaid be not called up and quashed.

3. In our opinion, the impugned order of the learned Sub-divisional Magistrate is illegal and erroneous and must be set aside. The case has got to be remitted back to him. Under Sub-section (1) of Section 190 of the Code, the learned Sub-divisional Magistrate could take cognizance of an offence

" (a) Upon receiving a complaint of facts which constitute such offence, (b) upon a report in writing of such facts made by any police officer and (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed"

It is obvious that on receipt of the report of the police u/s 173 of the Code he could take cognizance upon that report under Clause (b) If, on perusing the report, the case diary or any other material, he was of the view, that cognizance ought to be taken--a view different from the one expressed by the Investigating Officer in his report submitted u/s 173 of the Code. Or he could call for a charge sheet, as is the well settled view of this Court Admittedly, there was no protest petition filed by anybody--neither by the first informant nor by anybody else. There was therefore, no question of treating any protest petition as a complaint petition u/s 200 of the Code or of examining the complainant on solemn affirmation. That is to say, neither in substance nor in form there was any complaint before the Sub-divisional Magistrate within the meaning of Section 200 or within the meaning of Clause (a) of Sub-section (1) of Section 190 of the Code. In absence of that, ordering a judicial enquiry, which obviously was done by the Sub-divisional Magistrate in purported exercise of his power u/s 202 of the Code, was without jurisdiction and illegal. It follows, therefore, that on the basis of such an enquiry report he had no jurisdiction to take cognizance as the said report was neither a complaint within the meaning of Clause (a) nor a report in writing by a police officer within the meaning of Clause (b) nor could it be treated as an information received from a person other than a police officer

within the meaning of Clause (c). We do not find any force in the argument put forward by the learned Government Advocate that even if there is no provision in the Code warranting such an enquiry, for his own satisfaction the learned Sub-divisional Magistrate could order an enquiry and on the basis of the enquiry report, could take cognizance which should be held to be taking cognizance partly upon a report in writing by the police officer within the meaning of Clause (b) and partly upon an information received from any person other than a police officer within the meaning of Clause (c). In our opinion, there is no justification, either in terms of the statute or on principle for accepting such a contention and granting such power to the Sub-divisional Magistrate, which is not warranted by the Code of Criminal Procedure. There is no doubt, therefore, that the procedure followed by the Sub-divisional Magistrate by directing a judicial enquiry in this case and taking cognizance on the basis of a report submitted as a result of the said enquiry was erroneous and illegal.

4. In the result, the application is allowed, the order dated 31-7-63 passed by the Sub divisional Magistrate taking cognizance of the case and issuing warrant of arrest against the petitioner is set aside. The case is remitted back to the Sub-divisional Magistrate for applying his mind to the police report submitted on 24-9-62, case diary and the materials which may be available in it and then to decide afresh as to whether he could accept the final report and refuse to issue processes against the petitioner or he will call for a charge sheet from the Police Officer or will take cognizance of the case himself under Clause (b) of Subsection (1) of Section 190 of the Code. The case thereafter, if necessary, shall proceed to disposal in accordance with law.