

(2006) 01 GAU CK 0038
In the Gauhati High Court
Case No : Criminal Revision No. 494 of 2001

Jagat Mohan Tewari and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 169, 170, 173, 173(1)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304(B), 498(A)

Citation : (2006) 2 DMC 133 : (2007) 2 GLR 561 : (2006) 1 GLT 458

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee and Z. Kumar, for the Appellant; A Begum, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. A.K. Bhattacharjee, learned Senior Counsel for the petitioner and Mrs. A. Begum, learned Addl. Public Prosecutor, Assam.

2. This is an application u/s 482 read with Sections 401/398, Cr.P.C. for quashing of the proceeding in GR Case No. 4992/99 and for setting aside the order dated 15.6.2001 passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati in the above case.

3. The facts leading to the present revision in brief are :

Smt. Prabha Shulka, the informant lodged a complaint before the Director General of Police, Assam alleging murder of her daughter Mrs. Meenakshi Tewari by the petitioners/accused persons for alleged non-fulfilment of the demand for dowry. On the basis of the above complaint, CID P. S. Case No. 26/99 under Sections 304(B)/498(A), 1PC read with Section 3/4 of the Dowry Prohibition Act was registered and enquired into by the police. Thereafter, police submitted a report in final form u/s 173, Cr.P.C. whereby charge-sheet was submitted against

the accused-petitioner No. 2 Smt. Radha Tewari under Sections 3/4 of the Dowry Prohibition Act. Police, however, did not find any evidence against the other two accused petitioners namely, Jagat Mohan Tewari and Ajay Shankar Tewari and, hence, they were not sent for trial. The police report was placed before the learned Chief Judicial Magistrate, Kamrup, Guwahati but the learned Chief Judicial Magistrate refused to accept the police report and vide impugned order dated 15.6.2001 provided as follows:

...In the light of above discussion, I am of the opinion that after going through case diary where I found sufficient materials against all accused persons to which I.O. also formed an opinion up to the completion of investigation present accused as well as other accused shown as not sent, cannot be discharged. Materials in record also sufficient to put all accused for trial u/s 304(B) IPC. Accordingly, prayer for discharge of accused persons rejected and charge-sheet is accepted as a whole against all accused persons u/s 498(A)/304(B), I.P.C. read with Sections 3/4 of the Dowry Prohibition Act.

Case is transferred to the Court of Shri V.K. Chandak, Special Judicial Magistrate, Assam. Guwahati for disposal.

4. The case of the accused petitioners is that deceased Meenakshi, wife of accused Ajay Shankar Tewari was not keeping good health and in spite of providing best medical treatment she died under normal circumstances and as per the medical report the death was due to brain tumour. So far as the merits of the allegations are concerned in view of the settled position of law this Court while exercising revisional jurisdiction is not inclined to enter into the same at this stage. The impugned order dated 15.6.2001 has been challenged on the ground that the learned Chief Judicial Magistrate has acted in arbitrary and illegal manner and he has no jurisdiction and power to consider the materials collected during the course of investigation. It has also been stated that no cogent and valid reason has been given by the learned Chief Judicial Magistrate for taking cognizance of the offence and, as such, the matter needs interference as because if the proceeding is allowed to continue it will be sheer abuse of the process of law. It has also been stated that as the police has found no material to submit charge-sheet against the other two accused persons, there was no scope for taking cognizance against them.

5. We have perused the impugned order passed by the learned Chief Judicial Magistrate and we find that the learned Magistrate has placed reliance on a decision of the Apex Court in the case of Abhinandan Jha and Others Vs. Dinesh Mishra, wherein it was held as follows:

(19) The question can also be considered from another point of view. Supposing, the police send a report, viz., a charge-sheet, u/s 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, u/s 169? In our opinion, the Magistrate has no

such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report and take suitable action, according to law, he cannot certainly infringe upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

(20) Therefore, to conclude, there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report u/s 169 of the Code, that there is no case made out for sending up an accused for trial.

6. The ratio available in *Abhinandan Jha (supra)* was further clarified by the Apex Court in the case of *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, wherein in the Apex Court held as follows:

7. In *Abhinandan Jha and Others Vs. Dinesh Mishra*, the question arose whether a Magistrate to whom a report u/s 173(1) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet. It was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect u/s 156(3). If ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police the Court observed that the Magistrate could take cognizance u/s 190(1)(c). We do not have any doubt that the reference to "Section 190(1)(c)" was a mistake for "Section 190(1)(b)". That appear to be obvious to us. But Mr. Kapil Sibal urged that the reference was indeed to Section 190(1)(c) since at that time Section 190(1)(c) included the words "or suspicion" and the Court had apparently taken the view that the Magistrate could take cognizance of the offence not u/s 190(1)(b) as if on a police report but u/s 190(1)(c) as if "on suspicion". We do not agree with this submission. Section 190(1)(c) was never intended to apply to cases where there was a police report u/s 173(1). We find it impossible to say that a Magistrate who takes cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police report merely because the Magistrate and the Police arrived at different conclusions from the

facts.

The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint.

7. In a later case of *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, , the Apex Court settled the position of law by observing:

16. The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

8. Again in the case of *State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others*, , the Apex Court reiterating its earlier decisions, further held that even after the police files an application seeking permission for making further investigation and for submitting a supplementary charge-sheet, the Magistrate has the authority and jurisdiction to take cognizance on the basis of the materials placed before him notwithstanding the prayer of the prosecution.

9. In view of the above, we find that on receipt of the police report u/s 173, Cr.P.C. the Chief Judicial Magistrate, Kamrup, Guwahati had the jurisdiction and discretion to accept or not to accept the police report and if on perusal of the materials available on record the learned Magistrate was satisfied about the sufficiency of the materials, to proceed against the other two accused persons against whom the police did not find any material, it cannot be said that the impugned order suffers from lack of jurisdiction or is otherwise vitiated.

10. The law is also settled that the Court takes cognizance of the offence and not the offender or the acts done (*P.V. Mohammed Barmay Sons v. Director of Enforcement*). In the case of *Anil Saran Vs. State of Bihar and another*, the Apex Court observed:

The word "cognizance" has not been defined in the Code of Criminal Procedure, but it is now settled law that the Court takes cognizance of the offence and not the offender. As soon as the Magistrate applies his judicial mind to the offence stated in the complaint or the police report, etc. cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence.

11. As regards the submission that the learned Chief Judicial Magistrate has not recorded reasons for not accepting the report submitted by police and for taking cognizance of the offence, we find that the learned Chief Judicial Magistrate has quoted extensively from the police report itself to show that even the Investigating Officer at certain stage of the investigation observed that a case under Sections 3/4 of the Dowry Prohibition Act has been established against all the accused persons. However, the Investigating Officer was influenced by the note of the supervisory police officers and did not file charge-sheet against the two other accused persons. Moreover, the following observation of the Apex Court in the case of *State of West Bengal and another Vs. Mohammed Khalid and others*, , will be relevant for the purpose:

78. Coming to taking cognizance, it has been held by the High Court that it is not a reasoned order. We are of the view that the approach of the High Court in this regard is clearly against the decision of this Court in *Stree Atyachar Virodhi Parishad* case in (para 14, P. 721), which is as under:

It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake and elaborate inquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.

12. In the present case, as stated above, the learned Chief Judicial Magistrate has passed a detailed order giving reasons for not accepting the final report and also for taking cognizance and, thereafter, the matter was transferred to the Special Judicial Magistrate for proceeding further in accordance with law. We are of the clear view that no interference at this stage is called for as the impugned order does not suffer from any infirmity or illegality.

13. The matter stands remitted to the Court of the Special Judicial Magistrate, Kamrup, Guwahati who shall proceed in the matter in accordance with law. We, however, would like to add that the observations made by us in the foregoing paragraphs was solely for the purpose of disposal of this revision petition and we should not be understood to have made any observation as regards the merit of the case. The petitioners will be at liberty to raise their pleas and submissions before the Trial Court at the time of consideration of charge and the Trial Court shall consider all such submissions and the materials available on record and pass appropriate orders as regards the charge without being influenced in any

manner by any of the observations made hereinabove.

14. The revision petition is dismissed.