
(1988) 05 RAJ CK 0059
In the Rajasthan High Court

Jagdish Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 26-05-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 173, 174, 190, 200
Penal Code, 1860 (IPC) — Section 204, 353
Probation of Offenders Act, 1958 — Section 7
Protection of Civil Rights Act, 1955 — Section 7

Citation : (1989) CriLJ 745 : (1988) 2 RLW 282 : (1988) 2 WLN 311

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Judgement

Jasraj Chopra, J.—The petitioner Jagdishram has filed this petition u/s 482, Cr. P.C. against the order of the learned Additional Sessions Judge No. 2, Hanumangarh dated 27-8-1987 whereby he has upheld that order of the learned Additional Chief Judicial Magistrate, Hanumangarh dated 26-6-1986 taking cognizance against the accused-petitioner for the offence u/s 7 of the Protection of Civil Rights Act.

2. The facts necessary to be noticed for the disposal of this petition briefly stated are : that the non-petitioner No. 2 filed a complaint before the learned Additional Chief Judicial Magistrate, Hanumangarh on 15-11-1985 alleging that on 7-11-1985 at about 9.30 a.m. he was posted as Peon in the Aurvedic Hospital at Fategarh. Accused-petitioner Jagdishram, who is District Ayurvedic Officer, Sri Ganganagar came there for inspection. He asked him to bring water and when non-petitioner No. 2 took water in a Jug and a glass, the accused-petitioner refused to take water brought by him because non-petitioner No. 2 Lalaram is a Harijan. It is further alleged that the accused-petitioner gave several abuses to him. This complaint was forwarded to the police for investigation by the learned Additional Chief Judicial Magistrate u/s 156, Cr. P.C. Before the report was submitted by the Police u/s 173, Cr. P.C., the non-petitioner filed a second complaint before the learned Additional Chief Judicial Magistrate for the same

offence and against the same accused on 28-1-1986 pleading therein that the Police has taken no steps and, therefore, he has filed this complaint.

3. It was reported on 1-2-1986 that the earlier complaint was forwarded to the Police and no report has been received. Report was received on 17-2-86, which was a final report but still, the Court proceeded with the case and recorded the statements of the complainant and his witnesses and took cognizance against the accused as aforesaid. Aggrieved against the order of the learned Addl. Chief Judicial Magistrate, Hanumangarh dated 26-6-1986, the accused-petitioner Jagdishram preferred a revision before the learned Addl. Sessions Judge No. 2, Hanumangarh and that revision was dismissed and hence this petition u/s 482, Cr. P.C.

4. It was contended before the learned Addl. Sessions Judge that the learned trial court could not have taken cognizance without obtaining a report from the Police on the complaint which was forwarded for investigation u/s 156, Cr. P.C. and without considering that report, cognizance ought not to have been taken. Rather, it was contended that the second complaint should not have been entertained. The learned Addl. Sessions Judge took the view that it was not at all necessary for the learned trial Court to have considered the report of the Police. When the cognizance is taken by the learned Magistrate under Sections 200 and 202, Cr.P.C, he is only required to see the contents of the complaint and the statements recorded under Sections 200 and 202, Cr. P.C. and he need not look into the report filed by the Police on the complaint which was forwarded to it u/s 156(3), Cr. P.C. The learned Additional Sessions Judge has held that on the basis of the statements recorded under Sections 200 and 202 prima facie offence u/s 7 of the Protection of Civil Rights Act is clearly made out and hence, the learned trial Court committed no error in taking cognizance against the accused-petitioner.

5. I have heard Mr. M. N. Singhvi, the learned Counsel appearing for the accused-petitioner, Mrs. Chandralekha, Public Prosecutor for the State and Mr. H.S.S. Kharaliya, the learned Counsel appearing for the complainant-non petitioner No. 2, I have carefully gone through the record of the case.

6. It was contended by Mr. M. M. Singhvi, the learned Counsel appearing for the accused-petitioner that when a complaint is filed and it is brought to the notice of the Court that a , criminal investigation is also pending, the Court is obliged to stay the proceedings in the complaint case till the report of the Police is received as per Section 210, Cr. P.C. Section 210, Cr. P.C. reads as under:

Section 210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence : (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is progress in relation to the offence which is the subject-matter of the inquiry or trial held by him the Magistrate shall

stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the report as if both the cases were instituted on a police report

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which is stayed by him, in accordance with the provisions of this Code.

Mr. Singhvi has submitted that the provisions of Section 210 are mandatory in nature and the learned lower court could not have proceeded with the enquiry without obtaining a report from the Police. In this respect, he placed reliance on decision of this Court in *Vishnudutt v. State of Raj.* 1982 RCC 416 wherein it has been held that the provisions of Section 210, Cr. P.C. are mandatory in nature. The trial Court cannot proceed with the complaint without receiving a report in respect of the proceedings taken on the FIR filed with the Police. Mr. Singhvi, therefore contended that he ought to have stayed the enquiry at the (sic) on the complaint till the report of the Investigating Officer is received because the provisions of Section 210 are mandatory in nature.

7. In this case, this procedure has been adopted by the learned trial Court. The order sheet dated 1-2-1986 discloses that the report was called for from the Police and it was received on 17-2-1986 and on that very date, the court examined the complainant and asked him to produce his witnesses. Thus, there is nothing wrong in the procedure that has been adopted by the learned trial court so far as obtaining the report u/s 210, Cr. P.C. is concerned.

8. The second contention of Mr. Singhvi is that after the receipt of the report from the police, it is the duty of the Court to consider that report before issuing the process against the accused. He has submitted that obtaining of the report from the Police is not an empty formality. When the report is received, the Court should first consider that report and then it should take cognizance, if the facts of the case permit. Section 210(2) provides that if a report is made by the investigating police officer u/s 173 and on such report, cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. Section 210(3) provides that if the police report does not relate to an accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which, was stayed by him in accordance with the provisions of this Code. It clearly states that once a report is received u/s 173, Cr. P.C. from where it has to be

considered before any cognizance of any offence taken by the learned Magistrate, whether it be for the purpose of taking cognizance, any offence against the accused who is not in the complaint or against an accused who is not named in complaint but whose name is mentioned in the police report. If the Magistrate thinks that no cognizance can be taken on the basis of the police report then the Magistrate after recording that order can proceed with the enquiry which was earlier stayed. Thus, it presupposes that the consideration of the report submitted by the police is essential because that is a material on record and that has to be considered before taking cognizance.

9. This contention of Mr. Singhvi, was seriously opposed by H.S.S. Kharaliya, the learned Counsel appearing for non-petitioner No. 2 and it has also been repelled by the learned revisional court. Mr. Kharaliya has submitted that the accused has no right to be heard before the process is issued against him. Once the cognizance is taken and the enquiry is held under Sections 200 and 202, Cr. P.C., either the Court can refuse to proceed against the accused u/s 203, Cr. P.C. or it can issue process against him u/s 204, Cr. P.C. However before issuing process, the accused has no right to be heard. In this respect, he placed reliance on a decision of their Lordships of the Supreme Court in Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , wherein it has been held:

that the entire scheme of Chap, XVI of the Code of Criminal Procedure shows that an accused person does not come into the picture at all till process is issued does not mean that he is precluded from being produced when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would be clear from this, therefore, that it would not be open to magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interest of justice.

No doubt, one of the objects behind the provision of Section 202 Cr. P.C. is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named there as accused from being called upon to face an obvious, frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused-person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has at that stage necessarily to be determined on the basis of the material placed before him by the complainant. Whatever

defence the accused may have can only be enquired into at the trial. An enquiry u/s 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence, Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.

The ratio of this decision was followed by their Lordships of the Supreme Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, and in that case, it was observed:

The scope of the enquiry u/s 202 is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint- (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

Mr. Singhvi, the learned Counsel appearing for the accused-petitioner has submitted that this is not a case where the accused-petitioner has claimed that he should be heard prior to the taking of cognizance but the contention of the accused-petitioner is that all the material placed before the Court has to be scrutinised to find out whether the complaint is frivolous or not. He has further submitted that it is the bounden duty of the court to have looked into the evidence collected during investigation. He has submitted that their Lordships of the Supreme Court have categorically stated in Chandra Deo's case 1963 Cri LJ 397 (supra) that one of the objects behind the provisions of Section 202 Cr. P.C. is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint and that object can only be fulfilled by scrutinising the material on record that has been placed before the Court. The record of F.R. was submitted before the learned trial court before the process was ordered to be issued against the accused and that was the material which ought to have been considered by the learned trial court before either taking cognizance of the offence or before he thought it fit to issue the process against the accused u/s 204 Cr. P.C. Actually, this was the material which was submitted by the police on the complaint which was forwarded by the Court to the Investigating Agency for enquiry or investigation. Thus, this is almost a report of an enquiry made under the orders of the Court and it may amount to an enquiry made u/s 202 Cr. P.C. I am unable to agree with Mr. Singhvi to this extent that an enquiry conducted u/s 156(3) Cr. P.C. by the Investigating Officer is equivalent to an enquiry made u/s 202 Cr. P.C. under the orders of the Court but definitely it is a material which if it is placed before the Court has to be considered by it either before taking cognizance on the complaint or before it orders to issue process. In this respect, I get support from an authority of their Lordships of the Supreme Court in Vadilal Panchal Vs. Dattatraya Dulaji

Ghadigaonker and Another, wherein it has been observed:

Section 203 makes it clear that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set upon behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In , arriving at this judgment, he is not fettered in any way except by judicial consideration, is not bound to accept what the inquiring Officer " nor is he precluded from accepting a plea based on exception provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not.

This was a case wherein an enquiry was conducted by the Coroner of Bombay u/s 174 Cr. P.C. and in that enquiry, it was found that the accused has fired on the victim in exercise of his right of private defence and he was fully justified in resorting to fire in self-defence of himself and other occupants of the motor car. This report of the Coroner was relied upon by the Investigating Officer who conducted investigation of the case under orders of the Court. Their Lordships felt that this report ought to have been considered as a material before the Court and the Court can take into consideration the plea of defence if it is borne out from investigation that has been made by the police, who has also based his findings on the report of the Coroner of Bombay in addition to the other evidence collected by him. This decision was relied on in a subsequent decision of their Lordships of the Supreme Court in Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, , wherein it has been held:

that the scope of inquiry u/s 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. u/s 203, the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding.

Mr. Singhvi has also placed reliance on a decision of this Court in Suraj Prakash v. Shiv Shanker 1980 CLR 676, wherein a complaint was made to the police and the police after investigation obtained legal opinion and came to the conclusion that the dispute raised by the complainant is of civil nature and no offence u/s 448 Cr.P. C. is made out. The learned Magistrate accepted that legal opinion and dismissed the protest petition filed by the complainant. The Court observed that the Magistrate should have considered the evidence recorded by the Investigating Officer and then came to the conclusion whether the prima facie case warrants the cognizance of the offence, in spite of the final report of the

police. While doing so, the Magistrate should have also taken note of the established law on this point and he cannot be guided by legal opinion which was given to the police as it is the internal matter of the police agency. This Court further observed that in a case where after the investigation, the police submits a final report, it is the duty of the Magistrate concerned to apply his mind independently on the material placed before him and if necessary, the investigation record as a whole in order to decide whether the final report deserves to be accepted or rejected. A Magistrate is competent to take cognizance of the case inspite of the final report but it cannot be done in a perfunctory manner and by superficial approach. Mr. Singhvi, has, therefore, submitted that it is the duty of the court to scrutinise the evidence that has been collected by the Investigating Officer on a complaint lodged by the complainant before the Court which was forwarded to the police u/s 156(3) Cr. P.C.

10. My attention was also drawn to a decision of this Court in *Bhanwarlal v. State of Rajasthan* 1985 CLR 512, wherein Hon''ble K. S. Lodha, J. observed as follows:

Having considered the material on record, I am of the opinion that no interference is called for with the order of the learned Magsitrate at this stage. It is true that the learned Magistrate has not referred to the fact that a final report had been filed by the police but merely on this account, it cannot be concluded that he was oblivious of the fact that the police had filed a final report because this matter has been referred to in the complaint as also in the statement of complainant Ramchandra, u/s 200, Cr. P.C. and the learned Magistrate has referred to his statement. The learned Magistrate has clearly stated that he has gone through the record and has considered the evidence of the complainant. It, therefore, appears that he has applied his mind to the material on record. It is not necessary for a Magsitrate taking cognizance to refer in detail to the material on record, while taking cognizance of an offence against the accused-petitioners.

Mr. Singhvi has submitted that even in this decision, the learned Judge has observed that the material on record has to be looked into and the Magistrate has to apply his mind to the material on record. He cannot overlook the record that is placed before the Court in the shape of a F.R. Mr. Singhvi has further referred to a decision of this Court rendered by Hon''ble Bhatnagar, J. in *Vikram Singh and Ors. v. State* Cr. Revn. Petn. No. 119 of 1986 decided on 1-7-1986. In this case, the police after investigation filed the F.R. before the court under the orders of the Superintendent of Police. However, the D.I.G. directed the Investigating Officer to make further enquiry and to submit the charge-sheet. Accordingly, the chargesheet was submitted and the learned Magistrate took cognizance on that chargesheet without applying his mind to the facts disclosed in the F.R., which was submitted on the basis of the evidence that was collected during investigation by the Investigating Officer. In those circumstances, the learned Judge observed that the learned Magistrate as is evident from the impugned order has nowhere discussed the material on record. He has simply made a reference to the chargesheet filed by the S.H.O, Nane and the opinion of

the D.I.G., which as observed above, speaks that no case u/s 353 I.P.C. is made out. The learned Judge further observed as under : ,

that if the F.R. was before the learned Magistrate it was expected of him to critically examine the final report as well as the contents of the chargesheet and then arrive at the conclusion as to why he attaches more weight to the contents in the chargesheet in comparison to the contents of the final report.

The entire emphasis of the learned Judge was on the fact that the material placed on record for the perusal of the Court has to be considered and then he is to arrive at a particular conclusion why he accepts or rejects the conclusion of the Investigating Officer and why he intends to take cognizance or for that matter, why he proposes to issue the process u/s 204 IPC after holding an enquiry under Sections 200 and 202 Cr. P.C. because the object of Section 203 Cr. P.C. also is that the material placed before the Court should be critically examined not only to arrive at a -conclusion whether any prima facie case as disclosed in the complaint is made out but also to find out that no frivolous prosecution is launched against the accused. Mr. Singhvi has submitted that his is a case where the District Ayurvedic Officer went for the inspection of the Hospital at Tatehgarh and, there, he found the Vaidhya Shri Suresh Chandra and Parichalak Shri Lalaram absent at about 10 a.m. When they were not present upto 10 a.m. in the Hospital, how the occurrence alleged to have taken place at about 9.30 a.m. could have taken place. Thus, Mr. Singhvi has submitted that from the evidence that has been collected by the Investigating Officer, it clearly transpires that the case set up by the complainant is totally frivolous and the process has been issued by the Court without considering the F.R. submitted by the police. He has, therefore, submitted that the non-consideration of the final report submitted by the police at the time of taking cognizance against the accused before issuing process against him amounts to the abuse of the process of the Court and so, the proceedings initiated against the accused should be quashed.

11. Mr. H. S. S. Kharaliya, the learned Counsel for non-petitioner No. 2 has drawn my attention to a decision of this Court rendered by Hon''ble Bhatnagar, J. in Sheopatram v. State 1987 RCC 30, wherein the Court observed that a Court is to see while taking cognizance in a case whether from the material available at that stage, prima facie case against the accused is made out or not. This decision does not support the contention of Mr. Kharaliya because in this case the record of the investigation was before the learned Magistrate before issuing process against the accused and so, it cannot be said that it was not available to the court at that stage. As observed above, Hon''ble Bhatnagar, J. has observed in Vikramsingh's case (supra) that if the F.R. was before the learned Magistrate, it was expected of him to critically examine the F.R. as well as the contents of the chargesheet and then to arrive at the conclusion as to why he attaches more weight to the contents in the chargesheet in comparison to the contents of the F.R. Thus, Sheopatrainis case does not help the case of the complainant.

12. Mr. Kharaliya further drew my attention to the decision of the Karnataka High Court in Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, where complaint made to a Magistrate, the Magistrate directed investigation by the police u/s 156(3) and the police submitted a "B" summary report but the Magistrate took cognizance of the complaint and after examining the complainant and his witnesses ordered process to issue without considering the materials collected by the police during investigation. In those circumstances, it was held:

that the order was not illegal. A reading of Sections 202 and 203 makes it clear that the materials collected by the police during investigation u/s 156(3) are excluded from consideration by the Magistrate when taking cognizance of an offence and issuing process to the accused. Section 156(3) does not provide any indication as to under what circumstances, a Magistrate may consider it fit to refer a complaint for investigation by the police. But, the final report submitted by the police after investigation into the case under such circumstances would be of assistance to a Magistrate in making up his mind as to whether cognizance of the offence should or should not be taken. That is at the stage contemplated by Section 200. Where once a Magistrate decides to take cognizance of the offence, the provisions of Section 200 onwards come into operation and the power to dismiss a complaint after taking cognizance of the offence alleged therein will be available to a Magistrate only by virtue of Section 203.

This authority, of course, supports the contention of Mr. Kharaliya but I am not impressed by the ratio of this decision. It presupposes that the record of the case must be submitted to the Court prior to the filing of the complaint and it is then and then alone that he can consider that record before taking cognizance of the case before holding an enquiry u/s 200 Cr. P.C.

13. Section 210 Cr. P.C. provides that once a complaint is lodged before the Court and it comes to the notice of the Court that police investigation is also pending, the proceedings have to be stayed and the report of the police has to be sent for. I have observed earlier that this is not an empty formality. The Court can proceed with the case and take cognizance of an offence on the basis of that report submitted by the police. It can also reject it but it has to consider it before taking cognizance against the accused or before he orders to issue process against the accused u/s 204 Cr. P.C. Moreover, Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, is against the decisions of the Court and, therefore, it cannot have any binding force so far as this Court is concerned.

14. Mr. H. S. S. Kharaliya, the learned Counsel appearing for non-petitioner No. 2 also invited my attention to a decision of their Lordships of the Supreme Court in H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), wherein it was observed:

A Magistrate who on receipt of a complaint, orders an investigation u/s 156(3) and receives a police report u/s 173(1) may, thereafter, do one of three things; (1) he may decide that there is no sufficient ground for proceeding further and

drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter, he may dismiss the complaint or issue process, as the case may be.

This decision cannot have any application to the facts of the present case. This is not a case where the Magistrate has to decide as to how he has to proceed on the basis of the result of the investigation submitted by the police. Here, the question is that whether a Magistrate who takes cognizance of a case on the basis of the complaint filed by the complainant and holds an enquiry under Sections 200 and 202 Cr. P.C. independently of the result of the investigation that is submitted by the police, can issue process against the accused without taking into consideration and record of the investigation which was produced before the Court in support of the report of the police i.e. whether that record or before the court has to be looked into by the Court before issuing process against the accused or it can afford to completely ignore it. I am of the considered view that that record which has been submitted by the police is a material placed on the record and it is the duty of the Court to consider that record and then to arrive at its own conclusion whether in such a case process should be issued against the accused or not. In this case, the Magistrate has not at all considered that record. The order issuing process against the accused does not disclose that he even looked into that record what to talk of its consideration before it ordered to issue the process against him and, therefore, that has resulted in the abuse of the process of the Court and grave miscarriage of justice. In this view of the matter the order of the learned lower court dt. 26-6-1986 cannot be sustained and so, also the order of the learned revisional court deserves to be set aside. The learned lower court should consider the entire material available on record before deciding whether the process should be issued against the accused-petitioner or not. It is not incumbent on the learned lower court to hear the petitioner but it is the duty of the Court to consider the material available on record to arrive at a conclusion whether in the facts and circumstances of this case, the complaint should be dismissed u/s 203 Cr. P.C. or process should be issued against the accused-petitioner.

15. The result is that this petition is allowed and the order of the learned Addl. Chief Judicial Magistrate, Hanumangarh dt. 26-6-1986 as also the order of the learned Addl. Sessions Judge No. 2, Hanumangarh are set aside. The case is remanded back to the learned trial court to proceed according to law keeping in view the observations made hereinabove.