

(1994) 03 AHC CK 0102
In the Allahabad High Court
Case No : Criminal Revision No. 1151 of 1991

Jagdish Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2), 173(8), 190, 190(2)

Penal Code, 1860 (IPC) — Section 396

Citation : (1994) 18 ACR 662

Hon'ble Judges : Kundan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kundan Singh, J.—This revision is directed against the order dated 29.8.1991, passed by the IIIrd Additional Munsif Magistrate, Jaunpur, in Case No. 121 of 1990 whereby the application of the accused applicants for staying the inquiry proceedings and not to commit the case to Court of Sessions till the conclusion of re-investigation by C.B. CID, was dismissed and the accused including the applicants were directed to appear on 17.9.1991 for the committal of their case to the Court of Sessions.

2. Apprehending that the impugned order may be treated as an interlocutory order, to be on the safer side the applicants also moved an application for conversion of the petition u/s 482, Code of Criminal Procedure.

3. The parties have exchanged the affidavits.

Heard learned Counsel for the parties and perused the relevant papers on record. It is a case relating to an incident which took place in the night of 13/14.10.1990 in village Shahpur, Police Station Meerganj, District Jaunpur. Several persons were done to death and others sustained injuries and few houses were looted. The applicants were identified by the witnesses in electric light and were named

in the F.I.R. A case u/s 396, I.P.C. was registered against the applicants and others. After completion of the investigation the Investigating Officer submitted charge-sheet in Court against the applicants and others. Since then the case is pending in inquiry before the Magistrate for committal. According to the opposite parties when the applicants found no escape from severe punishment, they exerted influence at the State Government level and succeeded in getting re-investigation by CB, CID ordered from the State Government. One application on behalf of the CB, CID was moved on 2.7.1991 seeking formal permission to reinvestigate the case and for handing over the Case Diary and other papers to them. The copies of required papers were given to CB, CID accordingly. Thereafter an application on behalf of the applicants was moved before the Magistrate with the prayer to stay inquiry proceedings and not to commit the case to the Court of Sessions till the conclusion of the re-investigation by CB, CID. The Magistrate rejected the application of the applicants by the impugned order and directed the accused to be present in Court on the next date for committal of the case to the Court of Session. There is no material on record to show what was the grounds for the direction of reinvestigation of the case by the State Government. The issue that centres round the main controversy is whether it was obligatory for the Magistrate to stay the judicial proceedings (Inquiry proceedings) once he had taken cognizance of the offence till the conclusion of re-investigation which has been ordered on later stage either by the State Government or by the Court itself.

4. The learned Counsel for the applicants contended that once the re-investigation is ordered, it is obligatory for the Magistrate to stay proceeding pending in inquiry till the conclusion of re-investigation otherwise the applicants will have to suffer loss of money, time and harassment and the whole proceedings will be set at naught in case the Investigating Officer on re-investigation comes to the conclusion that no case to proceed against the applicants is made out and he relied upon the following reported decisions:

1. Hari Shanker Dayal Pandey v. State of U.P. 1987 ACJ 76.
2. Suresh and Ors. v. State of U.P. 1984 LLJ 105.
3. Ram Lal Narang Vs. State (Delhi Administration), .
4. Daya Shanker Singh v. State of U.P. ACR 301.
5. Hari Singh v. State of U.P. 1993 UP CrR 417.
6. Smt. Prem Lata Sawhney and Ors. v. State of U.P. 1993 UP CR 21.
7. Gyan Swarup Gupta v. State of U.P. 1993 UP CrR 427.
8. Zulfqar Beg v. State of U.P. 1990 ACR 611.

5. In the case Suresh and Ors. v. State of U.P., this Court passed a casual remark against an order for police remand and observed that it will be open to the investigating officer to inform the Court where the matter is pending and obtain

its permission to investigate the matter further in order to bring additional evidence on record and the Court can in the meanwhile stay the proceedings as usual till that part of the investigation is also completed.

6. This Court directed in that case to stay the proceedings only in order to bring the additional evidence on record, if it is obtained at the instance of the accused in police custody for the completion of that part of the investigation and till then the lower Court was directed to stay the proceedings. The ratio of that decision is not applicable to the facts and circumstances of the present case.

7. So far as the case of *Ram Lal Narang v. State (Delhi Admn.)* is concerned, it does not lay down any rule for the inquiry Magistrate to stay or not to stay the proceedings during the pendency of re-investigation. It is observed that there is no provision in the Code of Criminal Procedure which expressly or by necessary implication barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence when fresh information comes to light the police can exercise such right. Where the police desired to make a further investigation, the police could express their regard and respect for the Court for seeking its formal permission to make further investigation and submit supplementary report u/s 173(8), Code of Criminal Procedure. what action a Magistrate has to take in accordance with the provisions of the Code of Criminal Procedure in such situation is a matter best left to the discretion of the Magistrate. The final word with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. Thus this case is also not attracted to the facts and circumstances of the present case.

8. The learned Counsel for the applicants relied on the case *Daya Shanker Singh v. State of U.P.* only to the extent that in Cr. Misc. Petition No. 14214 of 1987, decided on 24.12.1987, referred therein the reported decision the proceedings pending before the Sessions Judge were directed to remain stayed till the conclusion of the CB, CID but that decision has not been approved in the case of *Daya Shankar Singh v. State*, by this Court and the contention in the case of *Daya Shankar Singh (supra)* that in every case of the investigation the Court is bound to stay further judicial proceedings in that Court was not accepted. Thus this case is also not attracted to the facts of the present case.

9. So far as the cases *Smt. Prem Lata Sawhney v. State of U.P.*, *Gyan Swarup Gupta v. State of U.P.*, *Zulfiqar Beg v. State of U.P.*, and *Hari Singh v. State* are concerned, this Court under Article 226 of the Constitution in the Writ Petition for quashing of the F.I.R., the re-investigation by CB, CID was directed by this Court, and it was directed to be concluded within four months, while in the case of *Gyan Swarup Gupta v. State of U.P.*, in the bail application CB, CID was directed to conclude its re-investigation within a period of four months and in the case *Zulfiqar Beg v. State of U.P.*, in a case u/s 482, Code of Criminal Procedure, the

investigation was transferred by the Court from one sector to other with a direction to complete the investigation within three months. In the case of Hari Singh v. State of U.P. this Court directed the CID itself to submit report within four months and till that period the proceedings were directed to be adjourned in a case u/s 482, Code of Criminal Procedure.

10. Thus these cases also not attracted to the facts and circumstances of the present case and are of no helpful to the applicants.

11. No doubt in the case Hari Shanker Dayal Pandey v. State of U.P. 1987 ACJ 76, this Court directed stay of the further proceedings in the case the trial has not already been concluded till the submission of further report by the Inspector CB, CID but this case has not been followed by this Court in the subsequent decisions. Since the principle of law laid down in that case has been diluted by subsequent decision, the ratio of decision of this case does not help the applicants.

12. The learned Counsel for the opposite party contended that the Magistrate concerned was fully justified in rejecting the application of the applicants to stay judicial proceedings till the conclusion of re-investigation by the CB, CID and in support of his submission he relied on the case Balwant Singh v. State of U.P. 1988 ACC 68. It is observed in that case that if a police report u/s 173(2), Code of Criminal Procedure, is submitted showing that the accused have committed offence then that report is called as charge sheet and the Magistrate takes cognizance u/s 190(2), Code of Criminal Procedure. In case the police report is submitted u/s 173(2) discloses that the material is not sufficient to make out a case against the accused persons that report is called as final report. The Magistrate may accepts or reject the final report in case he is not agreed with it, he may direct the police for re-investigation or he may after perusing the case Diary finds that the offence is made out, he can take cognizance of the offence. It is well settled rule of law pronounced by the High Courts that police can reinvestigate after the cognizance has already been taken and the police may submit any supplementary report u/s 173(8), Code of Criminal Procedure. In case the Inspector in the re-investigation comes to the conclusion that the accused is innocent and the material collected was sufficient to withdraw the case u/s 321, Code of Criminal Procedure, the prosecution may move an application for withdrawal of the case which was pending against the accused. If the Magistrate satisfied on the material collected that the accused is liable to be acquitted or discharged the Magistrate even having taken the cognizance of the offence will be liable to dispose of the matter in accordance with law and there is no rule of law or the provision in the Code of Criminal Procedure to stay the proceedings till the conclusion of the re-investigation and it is held that the Magistrate did not commit any error in committing the case to the Court of Session and it was not obligatory for the Magistrate to stay the proceedings pending before him till the conclusion of the re-investigation.

13. From the above decisions, it is clear that there is no hard and fast rule or

proposition that during the pendency of re-investigation the judicial proceedings, should be or should not be stayed till the conclusion of the re-investigation. It is a matter which has been left to the discretion of the Court concerned, which is to be exercised by him taking into consideration the fact and circumstances of that particular case. In case on a particular point the re-investigation is directed by the Court it would be desirable for that Court to stay the proceedings for a short time (specified period) till the conclusion of that re-investigation, though the Court is not bound to stay the proceedings till the conclusion of re-investigation by any rule of law or by any provision of Code of Criminal Procedure. So far as re-investigation directed by the State Government is concerned, it is not at all obligatory for the Magistrate to stay the proceedings till the conclusion of the re-investigation, directed by the State Government. Inspector may submit the supplementary police report u/s 173(8), Code of Criminal Procedure, concluding that no offence is made out on the basis of the material collected during the investigation and that report can be filed prior to the pronouncement of the judgment in the case. The prosecution has also given right to move an application for withdrawal of the prosecution u/s 321 Code of Criminal Procedure. The satisfaction of the Court is the final authority to pass a suitable order even on the supplementary report filed u/s 173(8), Code of Criminal Procedure, disclosing that no offence is made out or application for withdrawal of the prosecution is moved by the prosecuting agency.

14. So far as the facts and circumstances of the present case are concerned, the re-investigation is to be conducted by CB, CID. The CB, CID took relevant papers of the present case for re-investigation on July 2, 1991 and till the date of the argument i.e. 17.2.94, the re-investigation has not been concluded. In the present facts and circumstances it is not desirable at all to stay the judicial proceedings pending before the Magistrate till the conclusion of re-investigation by the CB, CID and the Magistrate was perfectly justified in rejecting the application for stay the proceedings and was also justified in directing the accused persons to appear on a particular date for committal to the Court of Sessions for trial.

The application is devoid of force and is liable to be dismissed.

Accordingly the revision petition fails and is hereby dismissed.

The Magistrate is directed to proceed with the case forthwith in accordance with law.