

(2004) 02 CAL CK 0046
In the Calcutta High Court
Case No : C.R.R. No. 2186 of 2000

Jatan Lal Parekh and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 05-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154(2), 156(3), 157, 159, 173
Penal Code, 1860 (IPC) — Section 120B, 127, 307, 34, 395

Citation : (2004) 1 CALLT 554

Hon'ble Judges : Pradip Kumar Biswas, J

Bench : Single Bench

Advocate : Dilip Kumar Dutt, Milon Mukherjee and Abhijit Adhya, for the Appellant; Ramprasad Bhattacharjee and Krishanu Banik for the De facto and Kasem Ali Ahmed and Sudipto Moitra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Biswas, J.—This is to consider an application u/s 482 of the Code of Criminal Procedure filed at the instance of one Jatan Lal Parekh and two others as petitioners seeking for quashing of the proceeding being Golabari P.S. Case No. 10 dated 8.1.96 under Sections 427/395/397/448/34/120B of the Indian Penal Code (G.R. 97/96) pending before the learned Sub-Divisional Judicial Magistrate, Howrah Sadar and/or setting aside the order dated 09.06.2000 passed by the learned Sub-Divisional Judicial Magistrate, Howrah Sadar in the aforesaid case.

2. The short facts leading to the filing of this application are as under:

One complaint u/s 156(3) of the Code of Criminal Procedure was lodged by Gangadhar Sarkar as de facto complainant, before the learned Chief Judicial Magistrate, Howrah on 04.01.96 alleging, inter alia, that the complainant, namely Gangadhar Sarkar, is a monthly tenant in respect of the area of 300 sq. ft. in respect of the premises No. 35, Dr. Abani Dutta Road, Howrah and he is running a factory in the said tenanted portion under the name and style of "Jai Guru Motor Repairing Works" for the last 35 years.

3. It was further alleged in the aforesaid complaint that the son of the de facto complainant namely Mintu Sarkar on 12.01.95, when he was sleeping in the same tenanted premises at about 12 in the midnight, heard some noises and found some persons had climbed upon the roof of the factory and those persons were engaged in throwing down the tiles of the factory.

4. Mintu, son of the de facto complainant after coming out of the aforesaid tenanted premises found the accused persons along with some 50/60 men armed with various weapons like lathis, sword, revolver, iron etc. surrounded the workshop and they were engaged in breaking its iron windows and gates when Mintu Sarkar protested against such illegal activities and at that he was threatened with dire consequences and was ultimately locked in a room in the neighbouring building.

4. It was further alleged that the accused persons thereafter broke down the entire workshop and also took all the materials in a truck and left the place at 3 a.m.

5. It was further alleged that one Krishnapada Koley informed the Golabari P.S. during the time of occurrence of the incident, but no steps whatsoever was taken by the police authorities and on 13.01.95, Mintu Sarkar, son of the de facto complainant lodged one written complaint with Golabari P.S., but the police authorities failed to take any positive action.

6. Subsequently, the Chief Judicial Magistrate, Howrah, upon receiving the complaint was pleased to direct the Officer-in-Charge of the Golabari P.S. to initiate investigation in respect of the offences disclosed in the complaint and on the basis thereafter Golabari P.S. Case No. 10 dated 08.01.96 was registered for investigation.

7. It has been alleged by the petitioner that they are completely innocent and they are in no way connected with the commission of the offence, as alleged police in the aforesaid case after completion of investigation submitted a final report indicating therein that no case could be made out against the accused persons and that there was a mistake of facts.

8. After submission of the aforesaid final report in connection with this case, the de facto complainant of this case submitted a "naraji" petition and the learned Magistrate after hearing the parties directed fresh investigation by the police authorities.

9. In terms of the aforesaid order, fresh investigation was undertaken by the police authorities and after completion of the investigation, the police authorities submitted report in final form vide charge-sheet No. 160/2000 dated 2.6.2000 under Sections 448/ 395/397/427/34/120B of the Indian Penal Code.

10. The learned Chief Judicial Magistrate, Howrah after receiving the charge-sheet was pleased to pass an order dated 09.06.2000 to take cognizance and directed the appearance of the present petitioners on 10.08.2000.

11. It has now been alleged by the petitioners that although the incident in question took place on 12.01.95, but the complaint was filed before the learned Court below on 04.01.96, nearly after one year and the de facto complainant having failed to give any cogent reason for such delayed action, the impugned proceeding can in no way be proceeded with and the same is liable to be set aside.

12. It has further been contended that the direction for fresh investigation in connection with submission of final report is in utter violation of the provisions of the statute and in any event, the learned Magistrate could not direct fresh investigation.

13. That being the position, being aggrieved by and dissatisfied with the continuation of the impugned proceeding and specially being aggrieved by the order dated 9.6.2000 passed by the learned SDJM, Howrah, the petitioners have come up before this Court praying for the reliefs as aforesaid on the grounds taken above.

14. The learned advocate appearing for the petitioners has submitted that according to the de facto complainant on 13.01.1995, his son lodged a written information with Golabari P.S. regarding the incident of 12/ 13.01.95 at midnight. In such a situation, if there was certain cognizable offences disclosed in the aforesaid information, then certainly under the provisions of Section 154 of the Code of Criminal Procedure, the same must have been entered into the book kept in the Police Station u/s 154(2) of Code of Criminal Procedure and copies of such information should have been given to the informant forthwith and after recording the same in the Police Station, the police was under obligation to investigate the case u/s 156 of the Code of Criminal Procedure.

15. Section 157 of the Code of Criminal Procedure prescribes the provisions which is designed to keep the Magistrate informed of the investigation and if necessary to give appropriate direction as enjoined u/s 159 of the Code of Criminal Procedure.

16. Proviso (b) of the aforesaid section prescribes that if it appears to the Officer-in-Charge of a Police Station that there is no sufficient ground for entering on an investigation, he shall not investigate into the case, but in any event, he is under obligation under Sub-section (2) of the aforesaid section to notify the informant that he will not investigate the case or cause it to be investigated.

17. So, at every stage, the informant was to be informed about the progress of the case or otherwise and in any event, if the Officer-in-Charge of the Police Station refuses to record an information which discloses cognizable offences, the aggrieved person may approach the Superior Officer under Sub-section (3) of Section 154 of Code of Criminal Procedure.

18. In the present case, however, it was not alleged that the Officer-in-Charge refused to record the First Information Report or refused to investigate. The only

allegation against the investigation was that it was a tardy one. And in consequence thereof, the de facto complainant filed a petition u/s 156(3) of Code of Criminal Procedure before the learned Magistrate, which was eventually sent to the Police Station with a direction to treat the same as First Information Report and investigate.

19. Pursuant to the aforesaid direction, Golabari P.S. started an investigation, in connection with the First Information Report Case No. 10 dated 08.01.1996 under Sections 427/395/397/448/34/120B of Indian Penal Code.

20. It has further been submitted that in view of the above position, a question will certainly crop up whether there can be two First Information Reports over the self-same incident and whether or not there can be two investigations in respect of the self same offences. In this connection, it has further been contended by them that the 2nd First Information Report, if there be any, cannot be in conformity with the scheme of Code of Criminal Procedure, and it is more so, specially for the reason that if the FIR lodged on 13.01.95 by the son of the de facto complainant, did not disclose the commission of a cognizable offence, then it is quite apparent that the second FIR is an embellishment.

21. Again, if on the basis of the FIR lodged on 13.01.95, the police had already taken up investigation, in such event, again on the same set of facts, second investigation started on the basis of the second FIR is not at all permissible under the law and the learned Magistrate has committed a grave error of law by passing an order of investigation on the basis of the application u/s 156(3) of Code of Criminal Procedure without ascertaining the result of the investigation which had commenced on the basis of the First Information dated 13.01.95.

22. It has, therefore, been submitted that in the matter of recording an order u/s 156(3) of Code of Criminal Procedure, the learned Magistrate did not apply his mind and failed to appreciate the legal position and mechanically passed the order directing the police to investigate.

23. It has further been contended on behalf of the petitioners that after the second investigation, the Investigating Agency submitted a final report as a mistake of fact and the said final report was placed before the learned Magistrate on 10.10.96 wherein it was also mentioned that the complainant had been informed about the result of the investigation, but despite the said fact, the de facto complainant filed a Naraji petition only on 17.06.99 i.e., almost a lapse of three years and thereafter on the basis of the Naraji petition, the learned Magistrate passed order dated 03.01.2000 directing a fresh investigation in this case by an Officer other than the former one which is palpably a wrong order and passed without Jurisdiction.

24. It has further been contended on behalf of the petitioners that on receipt of the application u/s 156(3) of Code of Criminal Procedure by the said complainant three courses were left open to the learned Magistrate which are as follows:

25. Firstly, he was required to ascertain from the Golabari P.S. as to the extent and progress of the investigation conducted by the police on the basis of the alleged FIR dated 13.01.1995.

26. Secondly, if no Investigation was pending in respect of the said FIR only then the learned Magistrate could have ordered for an investigation on the basis of the application u/s 156(3) of the Code of Criminal Procedure and lastly, after submission of the final report by the police the learned Magistrate could have either accepted the final report or taken cognizance of the offence on perusal of the Case Diary or could have directed further investigation in this case. He could have also taken cognizance treating the Narazi petition as complaint and/or could direct an enquiry u/s 202(2) of Code of Criminal Procedure, but here having taken no such steps as aforesaid, the order Impugned suffers from inherent Illegality and as such it should be set aside.

27. It has further been contended that after the aforesaid order of learned Magistrate, the new Investigating Agency submitted charge-sheet against the petitioners and the same was placed before the learned Magistrate on 09.06.2000 when the learned Magistrate has taken cognizance on the basis of the second charge-sheet and it was submitted that the same being not at all permissible, continuance of the proceeding on the basis of that is wholly unwarranted and as such it should be quashed. Accordingly, they have come up with an application praying for the aforesaid relief.

28. This prayer has been opposed by the opposite parties including the State of West Bengal alleging that the present petitioners also came up with the applications seeking for the relief for quashing of the Golabari P.S. Case No. 10 of 1996 dated 08.01.96 and as such this being a second revision, the instant application is not at all maintainable.

29. Furthermore, it has been contended on their behalf that in fact on the basis of the first information allegedly lodged on 13.01.95, the police did not actually investigate into the offence and simply on receipt of the notice, pursuant to the order dated 19.09.1998, the opposite party No. 2 came to learn about the filing of final report by the police and in consequence thereof, only on 17.06.1999, he has come up with the application in the form of "Naraji" petition.

30. It has further been contended by them that although in the instant petition, the petitioners have come up for challenging the order of cognizance, yet, in fact they are actually challenging the order of sending of the application u/s 156(3) of Code of Criminal Procedure and the consequent investigation which they cannot do plainly because those are certainly barred by limitation.

31. Again it has been contended on behalf of the opposite party that the direction for fresh investigation was given in the year 1999. The petitioners here have virtually raised their grievance in respect of terminology/nomenclature of the investigation to be directed by the learned Magistrate, but in fact whatever order was passed that was only for collection of the evidence in connection with

the aforesaid offences involved in the case.

32. From the side of the opposite parties it was further contended that in view of the provisions of Section 465(2) of Code of Criminal Procedure, it has to be seen that in determining whether any error, omission or irregularity in any proceeding under this Code, or any error or omission or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceeding. Here, the charge sheet was submitted on 02.06.2000 against the petitioners and on 09.06.2000 cognizance of the offence was taken by the Court below and in connection with this matter naraji petition was accepted on 03.01.2000 and order for fresh investigation was also directed on that date but the petitioners silently waited for the outcome of the fresh investigation and after submission of the said charge-sheet and finding it against them they have challenged it now and. as such in terms of Section 465(2) of Code of Criminal Procedure also, their claim is barred.

33. Again, relying upon the ratio of the decision reported in 2001 Criminal Law Journal, 1015 in the case of Jatinder Singh and Ors. v. Ranjit Kaur, it has been contended on behalf of the opposite party/ State that under exceptional circumstances, second complaint is maintainable, although normally the second complaint on the same facts cannot be made unless there are very exceptional circumstances and here, relying upon the ratio of the aforesaid decision, it has been contended on behalf of the opposite party/State that since with regard to the complaint filed by the son of the de facto complainant, no effective step was taken by the police to investigate into the offences, the de facto complainant of this case had no other alternative than to come up with the application u/s 156(3) of Code of Criminal Procedure, and the subsequent orders passed by the Court in consequence thereof, cannot at all be said to be an illegal one and passed without jurisdiction.

34. Again placing their reliance on the decision reported in Kashmeri Devi Vs. Delhi Administration and Another, , it has been contended on behalf of the opposite party/State that when in a case police has acted in a partisan manner to shield the real culprit and the investigation of this case has not been done in a proper and objective manner, then to meet the interest of justice, fresh investigation could be made through an independent authority so that truth may be known. So, relying on the ratio of the aforesaid decision, it has been contended on behalf of the opposite party that here in the instant case, it is quite palpable that even on the basis of the information regarding cognizable case through the son of the de facto complainant filed much earlier, police did not take any effective step for investigating into the offence.

35. In such a situation, the de facto complainant had no other alternative than to come up before this Court with an application u/s 156(3) of Code of Criminal Procedure and the subsequent orders passed by the learned Court in connection with the aforesaid application cannot at all be said to be illegal one and

subsequently, taking of cognizance on the basis of such investigation as per order of the Court cannot at all said to be illegal and without jurisdiction and the Court acting on that has not committed any error or illegality and as such there is not reason for interference by this Court.

36. I have given my anxious consideration with regard to the submissions made by the parties and I have also looked into the decisions cited at the bar with meticulous care.

37. Here, on a scrutiny of the matters available, it appears that the petitioners earlier approached this Court praying for quashing of the Golabari P.S. Case No. 10/96 dated 08.01.96 under Sections 127/395/ 397/448/34/120B of the Indian Penal Code and subsequently, the final report having been filed in connection with that case, the aforesaid petition was allowed to be dismissed as not pressed being infructuous.

38. Obviously, with the change in the situation, after the filing of Naraji petition, the petitioners had the right to come up before this Court alleging their grievance with another revisional application sending of the petition u/s 156(3) of Code of Criminal Procedure and consequent order passed therein for investigation cannot plainly be challenged by them in the second revisional application since it is obvious that those will be clearly barred by limitation.

39. But, despite the said fact, the petitioners can surely come before this Court seeking for the intervention of the Court by exercising its power u/s 482 of Code of Criminal Procedure if they can place cogent material before this Court for such interference. But, here as I find that the petitioners have seriously disputed the authority of the Court to order fresh investigation of the case upon allowing the Naraji petition by an officer other than former one and subsequent filing of the charge-sheet against the petitioner whereupon cognizance was taken by this Court by 09.06.2000. True it is that in a situation like this, the Courts certainly pass orders for further investigation but here in this case on a perusal of the impugned order, available from the lower Court record, I find that on consideration of the materials in the case diary, the learned Magistrate has observed that "The totality of the Case Diary, as I find, has been made tailor-made and well-calculated with a view to make room for submission of final report. For reasons best known to the Investigating Officer, he remained a passive onlooker in the matter of probing as to what circumstance led to the demolition of the premises that was in the actual physical possession of Gangadhar Sarkar on the night of 12th January, 1995 for which the de facto. complainant's son Mintu Sarkar had to make an application before the Investigating Officer, Golabari P.S. on 13.06.1995".

40. It, therefore, appears that the learned Magistrate upon consideration of the circumstances available in the Case Diary, passed the aforesaid order and discarded the final report and accepted the Naraji petition in consideration of the pros and cons of the perfunctory investigation and directed further that let there

be fresh investigation of this case by an Officer other than the former one.

41. True it is that in a situation like this, the order for further investigation, should have been the proper order but the purport behind passing the order for "fresh investigation", as it appears, was only for collecting the materials and evidence by way of proper investigation and when patent injustice has been committed in shielding the real culprits and the investigation of this case has not been done in a proper and objective manner, in a situation like this, to meet the ends of justice, an order for "fresh investigation" may also be made through an independent authority so that the truth in the matter may be made known to the Court itself.

42. So, applying the ratio of the decision reported in *Kashmeri Devi Vs. Delhi Administration and Another*, I find that it cannot be said that the order passed by the Magistrate in directing "fresh investigation" is absolutely without jurisdiction and in that sense, it cannot be said to be illegal also.

43. Moreover, in terms of the underlined object and key-note of the provisions of Section 465(2) of the Code of Criminal Procedure, it is quite settled position that the Superior Court will not interfere with the order passed by the Court itself upon perusal of the materials unless there has actually been a failure of justice and the provisions of Section 465 of Code of Criminal Procedure were never intended that persons committing offence should escape punishment on technical grounds which did not affect the substantial justice of the case and the words "in fact" were inserted in the Code itself to emphasize the duty of the Court to go into the merits before interference in consequence of any mis-direction or other error and here in this particular case, the petitioners' party did not raise such plea at the earliest available opportunity.

44. Now that being the position, upon consideration of the totality of the materials available in this case and having due regard to the submissions made by the parties, I am of the clear opinion that this is not a fit case where interference by this Court is at all necessary because whatever order was passed by the Magistrate in connection with the present case was for the purpose of collection of evidence connected with the concerned case upon proper investigation and if interest of justice so demands then the Court can certainly pass such orders.

45. Now, in view of what I have stated above, I hold with certainty that this is not a fit case for interference by this Court at this stage and in consequence thereof, I find that there is no merit in the revisional application and accordingly, the same is rejected on contest.

The interim order, if there be any, stands vacated. The Court below is directed to proceed with the case with utmost expedition and in accordance with law.

Let a copy of this order along with the Lower Court record be sent to the Court below for information and necessary compliance.

Urgent xerox certified copy of this judgment, if applied for, be made available to the parties with utmost expedition.