
(1980) 01 CAL CK 0008
In the Calcutta High Court

Jay Krishna Chakraborty and Others	Vs	APPELLANT
The State and Another		RESPONDENT

Date of Decision : 11-01-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 159, 190, 202

Citation : (1980) CriLJ 482

Hon'ble Judges : P.C. Borooah, J;B.N. Maitra, J

Bench : Division Bench

Advocate : Dipti Kana Bose, for the Appellant; Sudipto Maitra, for the Respondent

Final Decision : Dismissed

Judgement

1. The allegation is that the opposite party No. 2, Tarapada Sen Gupta filed a petition of complaint on the 19th March, 1976, before the S.D.J.M., Arambagh. The allegation was that the petitioners held out hope to him that he would get a permit for a bus and they would purchase the same for him. On the faith of that representation, they handed over a sum of Rs. 15,000/- to the petitioners. Further the petitioner took various sums of money from many persons on the assurance of providing them with jobs. On that date, the learned Magistrate perused the petition of complaint, took cognizance and directed the O/C of the Khankul Police Station under S. 156(3) of the Criminal Procedure Code to treat the petition of complaint as F.I.R., to make an investigation and to submit a report by the 10th April, 1976. That order was not complied with. The police did not make any investigation on the plea that they had no jurisdiction because the incident had taken place beyond the jurisdiction of the Khankul Police Station. Then on the 23rd March, 1976, the opposite party filed another petition of complaint before the S.D.J.M. He took cognizance, examined witness and thereafter passed an order of commitment. Hence this revisional application by the petitioners.

2. It has been contended on behalf of the petitioners that the learned Magistrate

made a mistake in taking cognizance on the basis of the alleged "naraji" petition dated 23.3.1976. Cognizance was already taken by him on the first petition of complaint dated 19.3.1976. Moreover, the proviso to S. 202(2) of the Criminal Procedure Code was not compelled with because all the witnesses were not examined. It has, thus, been contended that the learned Magistrate's order is illegal and must be set aside.

3. It has been urged on behalf of the opposite party that though the learned S.D.J.M. purported to take cognizance on the basis of the first petition of complaint dated the 19th March, 1976, an illegal order was passed according to the provisions of S. 156(3) of the Criminal Procedure Code to make an investigation by the police. That petitioner died a natural death and the matter has become time barred. The present order of commitment was passed by the learned Magistrate on the footing of the second petition of complaint dated 23.3.1976. There is distinction between an order of investigation, according to the provisions of S. 156(3) of the Criminal Procedure Code, passed at the pre-cognizance stage, and an order of investigation under S. 202(1) of the Code. The case of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, has been cited. It has been submitted that since the learned Magistrate passed the order of commitment on the basis of the second petition of complaint, the petitioners can have no grievance.

4. The learned Public Prosecutor has stated that he cannot support the second order passed by the learned S.D.J.M.

5. It appears that on 19.3.1976, the first petition of complaint was filed. The learned Magistrate peruse the same, took cognizance and passed an order under S. 156(3) of the Code directing the O/C of the Khanakul Police Station to make an investigation and submit a report.

6. In the case of State of Assam Vs. Abdul Noor and Others, at page 1367. A. N. Ray, J, has stated that a Magistrate can ask for investigation by the Police in accordance with the provisions of S 156(3) of the Criminal Procedure Code before he takes cognizance. The decision, in the case of D. Lakshmi Narayan v. V. Narayana, does not, in fact, support the opposite party's contention. It appears from the pages 1677 and 1678 of the Report that the power to order the police to investigate under S. 156(3) of the Code is different from the power to direct investigation conferred by S. 202(1) of the Code. The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage and the second at the post cognizance stage, when the Magistrate is in season of the case; that is to say, in the case of complaint regarding the commission of a cognizable offence. The power under S. 156(3) of the Code can be invoked by the Magistrate before he takes cognizance of the offence under S. 190(1)(a) of the Code. Mr. Justice Sarkaria has further observed that if the Magistrate once takes cognizance and embarks upon the procedure embodied in Chapter XV of the Code, he is not competent to switch back to the pre-cognizance stage and avail of the provisions of S. 156(3) of the Code. It may be noted further that an

order under S. 156(3) of the Code is in the nature of peremptory reminder or intimation to the police to exercise their plenary powers of investigation under S. 156(1) of the Code.

7. Now, the question arises whether the learned Magistrate was correct in first taking cognizance and thereafter directing the police to make an investigation under S. 156(3) of the Code. In the case of *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, . Mr. Justice Bhargav has stated that it is only in cases where the police decide not to investigate a cognizable case that Magistrate can intervene and he can either order an investigation or go himself to make the same or depute a Magistrate subordinate to him to inquire. Section 159 of the Code indicates that the Magistrate can direct investigation only where the police did not investigate under the proviso to S. 157(1) of the Code and then he can choose the second alternative. Here the Police did not comply when the order passed by the learned Magistrate. Any way the learned Magistrate passed such wrong order under S 156(3) of the Code at the post-cognizance stage of the case.

8. The learned Magistrate did not examine all the witnesses. In the Bench case of *Kamal Krishna v. State* reported in 81 CWN 976, it has been stated that the proviso to sub-s. (2) of S. 202 of the Code must be strictly complied with and all the witnesses examined. This was not done by the learned Magistrate because all the witnesses were not examined. So, on the face of it, the order of commitment cannot be supported.

9. But that is a different matter because the important question is whether the first petition of complaint is alive. There is nothing to indicate that the same is dead. When the first complaint was filed and the Magistrate took cognizance, he had no competence or scope to entertain the second one. The complaint is pending all along. In the case of *Bindeshwari Prasad Singh Vs. Kali Singh*, , Mr. Justice Fazal Ali has stated that the second complaint lies only when there are some new facts or even on the previous facts if a special case is made out. The same observations will appear from the case in *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, . Here, there is no reason to hold that the first complaint became dead or was time barred for it was not dismissed under S. 203 Cr. PC or filed or disposed of. So, obviously, the learned Magistrate went out of his way in illegally entertaining the second petition of complaint on the 23rd March, 1976, when the first one was very much alive.

10. Hence, the submissions made on behalf of the opposite party cannot be sustained. There are some other matters which are not at all relevant for the purpose of this Rule.

11. In view of the aforesaid discussion, we hold that the first petition of complaint dated the 19th March, 1976, was pending. Since the learned Magistrate took cognizance on the basis of that complaint, it was his duty to pursue the same according to law and not to entertain the second petition of complaint. Hence the order passed by him on the 23rd March, 1976, and the

later order of commitment in this regard must be set aside. Since he took cognizance on the basis of the first petition of complaint on the 19th March, 1976, he shall proceed from that stage of the case. He shall not ask the police to submit any report according to the "S. 156(3) of the Code.

12. The Rule is, therefore, made absolute and the impugned order set aside. The learned Magistrate will proceed from the stage in which he took cognizance on the basis of the first complaint dated the 19th March, 1976, in the light of the observations made hereinbefore.