
(2003) 02 OHC CK 0045
In the Orissa High Court
Case No : Criminal Revision No. 52 of 2003

Jogendranath Gharei and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 201, 202, 203, 401

Citation : (2003) 95 CLT 342 : (2003) CriLJ 3953 : (2003) 24 OCR 787

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S. Ray, S. Dey, A. Mohanty and S.P. Das, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The legality or otherwise of the direction issued by the Judicial Magistrate, First Class, Jaleswar in ICC No. 116 of 2000 directing the local police to conduct an investigation without himself conducting an inquiry u/s 202 of the Code of Criminal Procedure (for short "Cr.P.C.") and the order of the Chief Judicial Magistrate-cum-Assistant Sessions Judge, Balasore refusing to discharge the petitioners and confirming the order of the Judicial Magistrate is in question in the present Criminal Revision.

2. A complaint was filed by a lady, present opposite party No. 2, alleging that while she was returning home after purchasing medicine for her children, the present petitioners followed her in a Hero Honda Motor-cycle and intercepted her. Petitioner No. 2 who was holding a "Bhujali" threatened her and asked her to stand quietly. It was further alleged that under direction of petitioner No. 2, the other two petitioners forcibly took her to a nearby place and tried to ravish her when she screamed. Hearing her shouts and screams some of the residents of the locality arrived at the spot and saved her from being gang raped. There was elaborate description about the over acts alleged to have been committed by the petitioners in the complaint petition. The said complaint petition was registered

as ICC No. 116 of 2000 under Sections 376/511/354/506/34, IPC in the court of the J.M.F.C., Jaleswar and the learned Magistrate in exercise of his power u/s 156 Cr.P.C. sent the complaint petition straight to Bhograi Police Station for conducting an investigation.

3. According to the learned counsel for the petitioners, the said action of the Learned Magistrate was erroneous and contrary to law, inasmuch as the offences alleged to have been committed being triable exclusively by a Court of Session, it was incumbent upon the learned Magistrate to conduct an inquiry himself u/s 202 Cr.P.C. and examine the complainant and the witnesses, and only thereafter if he was prima facie satisfied, other action would have followed.

4. Learned counsel for the petitioners further submitted that the father of petitioner No. 3 had filed a Complaint Case against Joginath Muduli and others in the court of the same J.M.F.C., Jaleswar, being ICC No. 110 of 2000. Petitioner No. 1 was one of the witnesses in the said case. Being enraged by such action, the present case (ICC No. 116 of 2000) was falsely foisted by setting up the present opposite party No. 2 and the allegations made in the complaint petition were blatantly false. He further submitted that if an inquiry u/s 202 Cr.P.C. would have been conducted as was mandatorily required, all the offences being triable by a court of session, the truth would have come out.

In support of his contention, learned counsel for the petitioners relied upon the decisions reported in (1992) 5 OCR 438 (Sukanti Suna v. Sashibhusan Mahakur and Anr.) and (2001) 21 OCR 45 (State of Haryana v. L. D. Kataria).

5. Learned counsel for the State at the other hand submitted that in consonance with the provisions of Cr.P.C., a Magistrate has the power and authority to direct the local police to conduct investigation on receipt of a complaint petition, without conducting inquiry himself u/s 202 Cr.P.C. and that in the present case the learned Magistrate has rightly exercised his power stipulated u/s 155 Cr.P.C. and there is no error apparent on the face of the order.

6. Admittedly the learned Magistrate directed the local police to conduct an investigation and the local police after conducting the investigation and being satisfied that there was a prima facie case, registered that complaint petition as G. R. Case No. 165 of 2000 and submitted the report before the Magistrate. The learned Magistrate, on perusal of the complaint petition and other relevant materials on record and being satisfied that there was a prima facie case against the accused petitioners, by order dated 21.5.2001 took cognizance under Sections 376/511/354/506/34, IPC. The accused petitioners thereafter filed an application before the Assistant Sessions Judge with a prayer to discharge them. By order dated 4.12.2002 the learned Assistant Sessions Judge rejected the said prayer, which order is impugned in this Criminal Revision.

7. Information to police and their powers to investigate are dealt with in Sections 154 to 156 in Chapter XII of the Cr.P.C.

Section 156(1) casts an onerous duty on any officer in charge of a police station to investigate any cognizable case without the order of a Magistrate; whereas u/s 156(3), any Magistrate empowered u/s 190 may order such an investigation as mentioned in Section 156(1). For the sake of brevity, the said Section is quoted below :

"156. Police Officer's power to investigate cognizable cases : (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) *** ** (3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned."

8. The provisions stipulated u/s 157 onwards deal with the powers and procedure for investigation.

Section 169 prescribes that if upon an investigation it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, to appear as and when required before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Section 170, at the other hand, prescribes that if upon investigation it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground of suspicion to justify forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of an offence on a police report and to try the accused or commit him for trial. If the offence is bailable, the officer shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

Section 173(1) requires a police officer to complete the investigation without unnecessary delay.

Section 173(2) prescribes that as soon as the investigation is completed, the officer in charge of a police station shall forward to a Magistrate empowered to take cognizance of the offence on a report of the police in the form prescribed by the State Government stating the various particulars mentioned in that Sub-section.

9. Chapter XIV deals with the conditions requisite for initiation of a proceeding.

For the sake of brevity and better understanding, Section 190(1) is extracted hereinbelow :

"190. Cognizance of offences by Magistrates : (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence :

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

10. Sections 200 to 203 appearing in Chapter XV of the Cr.P.C. deal with "Complaints to Magistrates". A Magistrate taking cognizance of an offence on complaint is required by Section 200 to examine upon oath the complainant and the witnesses present, if any.

Section 202 provides that a Magistrate taking cognizance of a case upon complaint made, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding

Section 203 empowers a Magistrate to dismiss a complaint, if after considering the statements on oath, if any, of the complainant and of the witnesses, and the result of inquiry or investigation, if any, u/s 202 the Magistrate is of the opinion that there is no sufficient ground for proceeding.

11. Chapter XVI of the Cr.P.C. deals with commencement of proceedings before Magistrates and Section 204 enables a Magistrate to issue summons or a warrant, as the case may be, to secure the attendance of the accused, if in the opinion of the Magistrate taking cognizance of the offence, there is sufficient ground for proceeding.

12. The provisions of the Cr.P.C. which are referred to in the preceding paragraphs would clearly reveal that on receipt of a complaint, a Magistrate has several courses open to him.

(1) He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present u/s 200 and thereafter if in his opinion there is no sufficient ground for proceeding, he may dismiss the complaint u/s 203. If in his opinion there is sufficient ground for proceeding, he may issue process u/s 204, but then if he thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person, as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process, if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding.

(2) On the other hand, in the first instance, on receipt of a complaint, a

Magistrate may instead of taking cognizance of the offence, order an investigation u/s 156(3). The police will then investigate and submit a report u/s 173(2). On receiving the police report, the Magistrate may take cognizance of the offence u/s 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by police in their report as to whether an offence has been made out or not. The police report u/s 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The magistrate is not bound by the conclusions drawn by police and he may decide to issue process even if the police recommends that there is no sufficient ground for proceeding further.

13. In a given case, a Magistrate after receiving the police report may, without issuing process or dropping the proceeding, decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements on oath of the complainant and the witnesses present u/s 200, Cr.P.C. and thereafter decide whether to dismiss the complaint or issue process.

14. A cumulative reading of the provisions of the Cr.P.C. makes it clear that 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 the three things, viz :

(1) He may decide that there is no sufficient ground for proceeding further and drop the case;

(2) He may take cognizance of an 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; or

(3) He may take cognizance of an offence u/s 190(1)(b) on the basis of the original complaint and proceed to examine upon oath 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.

15. The view expressed by me also gets fortified by a decision of the Supreme Court in the case of H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh),

16. The decisions relied upon by Mr. Ray (supra) are of no help to the petitioners as the same deal with the procedure to be adopted by a Magistrate if he decides to hold an inquiry u/s 202, Cr.P.C.

17. In view of the discussions made above and the position of law reiterated, I am unable to agree with the submission advanced by Mr. Ray that the Magistrate acted in excess of his jurisdiction by directing the local police to investigate into

the allegation on receipt of the complaint petition without adhering to the provisions of Section 202 Cr.P.C. and examining the complainant and the witnesses present. It is once again reiterated that the Magistrate u/s 156(3) of the Code has the authority to cause an investigation through police on receipt of the complaint petition. Therefore, I find no illegality and irregularity in the order of the learned Magistrate and also in the order of the learned Assistant Sessions Judge affirming the order of the learned Magistrate calling for any Interference by this Court and, accordingly, dismiss the Criminal Revision.

I, however, restrain myself from expressing any opinion regarding merit of the case, lest it may prejudice the trial.