

(2002) 11 AP CK 0020
In the Andhra Pradesh High Court
Case No : Criminal P. No. 1380 of 2002

K. Laxma Reddy and Others

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147, 156(3), 190, 190(1), 200
Negotiable Instruments Act, 1881 (NI) — Section 142
Penal Code, 1860 (IPC) — Section 323, 324, 354, 447

Citation : (2003) 1 ALT(Cri) 309

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : Jithender Rao Veeramalla, for the Appellant; N. Raghavan, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—The Assistant Sub Inspector of Police, Kesara Police Station, Kusaiguda Circle, Ranga Reddy District, on the basis of a complaint lodged by the 2nd respondent herein on 7.10.2001, filed a petty case charge sheet against petitioners 1 and 4 herein for the offence u/s 323 IPC before the Judicial Magistrate of First Class, Medchal, Ranga Reddy District, which was registered as S.T.C. No. 305 of 2001. On 9.10.2001 Petitioners 1 and 2 herein admitted the offence and pleaded guilty for the offence u/s 323 IPC. and they were convicted for the offence u/s 323 IPC and sentenced to pay a fine of Rs.250/- each , in default to suffer simple imprisonment for a period of 15 days each.

2. The 2nd respondent herein has presented another complaint u/s 200 Cr.P.C. read with Section 190(1) Cr.P.C. against petitioners 1 to 6 herein in respect of the same incident that occurred on 6.10.2001, which is the subject matter of S.T.C. No. 305 of 2001. On 22.11.2001 the Judicial First Class Magistrate took cognizance of the offences under Sections 324, 354 and 447 IPC by looking into the contents of the complaint without recording the sworn statement of the

complainant, being the 2nd respondent herein, and registered the complaint as C.C. No. 912 of 2001 and ordered issuance of process by R.P. and T.C.. The petitioners herein, who are accused in the said private complaint, seek quashing of the proceedings in C.C. No. 912 of 2001 on the file of the Judicial First Class Magistrate, Medchal, Ranga Reddy District by invoking the inherent powers u/s 482 Cr.P.C.

3. It is mainly contended by the learned counsel for the petitioners that the procedure contemplated u/s 200 Cr.P.C. has not been followed by the Magistrate and as such issuance of process against petitioners/accused is bad. It is also contended that no sworn statement of the complainant was recorded and hence prima facie there was no material to take cognizance of the offences. It is further contended that at the earlier instance when the police have filed a petty case charge sheet against petitioners 1 and 4 herein, which was registered as S.T.C. No. 305 of 2001, on their pleading guilty, they were convicted and sentenced in respect of the same incident and therefore, the principle of *autre fois* convict apply. The principles of double jeopardy have to be applied. Yet another contention also has been raised that the offence u/s 354 IPC alleged is exclusively triable by the Court of Session and the Magistrate has to record the sworn statement of the complainant and other witnesses on oath before taking cognizance of the offence u/s 354 IPC. The learned counsel has placed reliance on a decision of this Court in *Ramu & others vs. State of A.P.* and another 2002[2] ALD [CRI] 680 and contends that the second complaint in regard to the same incident impleading some more accused complaining some more offences is not maintainable.

4. The learned Public Prosecutor contends that this is not a fit case for invoking inherent powers u/s 482 Cr.P.C. It is also contended that the Magistrate ought to have recorded the sworn statement of the complainant and it is a curable irregularity.

5. The learned counsel for the 2nd respondent has placed reliance on a decision of the Supreme Court in *T.J. Stephen and Others Vs. M/s. Parle Bottling Co. (P) Ltd. and Others*, and contends that the Magistrate is competent to issue process on the basis of the complaint particularly when the allegations of the complaint prima facie show commission of offence and taking cognizance of the offence without recording sworn statement of the complainant is not bad.

6. Adverting to the said contentions, obviously the police have filed a petty case charge sheet against the 1st and 4th petitioners herein, which led to conviction on their plea of guilt before the Judicial First Class Magistrate that took place on 9.10.2001. The de facto complainant presented a private complaint u/s 200 Cr.P.C. read with Section 190(1) Cr.P.C. on 16.11.2001 before the Judicial First Class Magistrate, Medchal. As can be seen from the FIR the incident occurred on 6.10.2001 at 5 P.M. It is alleged in the private complaint presented by the 2nd respondent that the incident occurred on 6.10.2001 alleging outraging her modesty.

7. Before advertng to the respective decisions cited before me, it is necessary to have a look at Section 200 Cr.P.C., which reads as under:

"S.200: Examination of the complainant:-

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the later Magistrate need not re-examine them."

8. It is clearly mentioned in the said provision that whenever a complaint is presented, the complainant and the witnesses present have to be examined on oath by the Magistrate. There are only two exceptions mentioned in clause (a) and (b) in the above Section in which case the sworn statement of the complainant need not be recorded, viz., when the complaint is presented by a public servant acting in discharge of his official duty or when a Court makes the complaint. In the second exception it is stated that if the Magistrate made over a case to any Magistrate for inquiry u/s 192 Cr.P.C. If the Magistrate who made over the case already recorded the sworn statement of the complainant, the later Magistrate need not re-examine the complainant. Except in the cases arising out of clauses (a) and (b) of Section 200, the Court is bound to examine the complainant and record the sworn statement of the complainant and the witnesses. It is clear from the decision of the Supreme Court (2nd supra) that the Magistrate is competent to issue process on the basis of the complaint particularly when the allegations in the complaint prima facie show commission of offence. The Supreme Court was dealing with a case of public servant presenting a complaint viz., the Deputy Chief Controller of Imports and Exports filed a complaint in the Court of Chief Metropolitan Magistrate, Bombay. The principles laid down in the said case cover one of the exceptions provided in Section 200 Cr.P.C. It is clearly stated in the said decision that clause (a) of Section 200 Cr.P.C. is applicable to the facts of that case. Hence the Supreme Court made it clear that they are dealing with a case under clause (a) of Section 200 Cr.P.C., but are not interpreting the entire provisions of Section 200 Cr.P.C. In that view of the matter the Supreme Court has rightly stated whenever a public servant has presented a complaint, sworn statement of the complainant

need not be recorded. This decision does not render much help to the 2nd respondent. Hence I disagree with the contention made on behalf of the 2nd respondent that the Magistrate can take cognizance of the offence without recording sworn statement of the complainant u/s 200 Cr.P.C.

9. It is clearly held by the Division Bench of the Kerala High Court in Harihara Iyer vs. State of Kerala 2000 1 ALT (CRI) 267 [DB] KERALA that the Magistrate has to record sworn statement before taking cognizance of an offence. The said judgment was delivered by the Hon'ble Justice Dr. A.R. Lakshmanam, as he then was. The relevant paras of the said judgment read as under:

"We have already extracted Section 200 of the Code of Criminal Procedure and Section 142 of the Negotiable Instruments Act. We shall now consider the scope and application of the above two provisions. Section 200 of Cr.P.C. deals with examination of complainant. It comes under Chapter XV, which lays down the procedure to deal with complaints made by private persons. This Section provides that if a Magistrate takes cognizance of an offence on complaint, he must (a) examine upon oath the complainant (even though the complaint is in writing) and the witnesses present, if any, and (b) reduce its substance to writing. As examination of the witnesses present is compulsory, the Magistrates would be well advised to enquire if witnesses are present and to note if there is none. In other words under this Section it is incumbent on the Magistrate taking cognizance on a complaint to examine upon oath the complainant and his witnesses present, if any, to satisfy himself as to the veracity of the complainant and as to any points on which he is silent, or on which there may be doubt. The object is to test whether the allegations make out a prima facie case to enable him to issue process. If the Magistrate finds no prima facie reasons to destruct and the facts constitute an offence under the law, it is incumbent to issue process forthwith. If the Magistrate distrusts the complainant altogether or if no offence is made out, it is equally his duty to dismiss the complaint u/s 203. Courts have held that if cognizance is taken by the Magistrate, he is bound first to examine on oath the complainant and his witnesses present, if any, and thereafter he may issue process if he thinks that prima facie an offence has been made out and dismiss the complaint u/s 203 as already noted. The Section obligates the Magistrate to examine upon oath the complainant and the witnesses present, if any. L The object of such examination is to ascertain whether there is a prima facie case and sufficient ground for proceeding. Thus, in our opinion Section having cast an imperative duty to examine the witnesses as well, he ought to enquire if there are witnesses to be examined.

We, therefore, hold that the enquiry envisaged u/s 200 is for ascertaining the truth or falsehood of the complaint and also for ascertaining whether there is any evidence in support of the complaint so as to justify the issue of process. Therefore, it is incumbent on the Magistrate taking cognizance on a complaint to examine upon oath the complainant and his witnesses present, if any, to satisfy himself as to the veracity of the complaint. The object is to test whether the

allegations make out a prima facie case to enable him to issue process. We are, therefore, unable to countenance the argument advanced by Mr. Sahasranaman on the scope and application of Section 200 Cr.P.C. Likewise, the argument advanced by Mr. Sahasranaman with regard to Section 142 of the Negotiable Instruments Act has no basis as it is undisputed that the taking of cognizance of offence under the said Section has to precede the taking of sworn statement of the complainant and that cognizance should precede the recording of the sworn statement."

10. It is clearly observed in the above said decision that when a complaint is filed, the Magistrate has to record the sworn statement of the complainant, and the object of such examination is to test whether the complaint makes out a prima facie case so as to enable the Magistrate to issue process. The procedure that has to be followed when a complaint is presented has been adumbrated in the said decision.

11. In *Gopal Das Sindhi vs. State of Assam* AIR 1961 SC 986 it is held at paras 6, 7 and 8 as under:

"6) THE real question for determination is whether the Additional District Magistrate took cognizance on 3/08/1957, of the offences mentioned in the complaint filed before him. The transfer of a case contemplated under S. 192 is only of cases in which cognizance of an offence has been taken. If the Additional District Magistrate had not taken cognizance of any offence on 3/08/1957, when the complaint was presented to him, his sending the complaint to Mr. Thomas for disposal would not be a transfer of a case under S. 192. We have already quoted the order passed by the Additional District Magistrate on 3/08/1957, on the complaint presented to him. That order, on the face of it, does not show that the Additional District Magistrate had taken cognizance of any offence stated in the complaint. He sent the complaint to Mr. Thomas by way of an administrative action, presumably because Mr. Thomas was the Magistrate before whom ordinarily complaints should be filed.

(7) WHEN the complaint was received by Mr. Thomas on 3/08/1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under S. 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156(3) states "Any Magistrate empowered u/s 190 may order such investigation as above-mentioned." Mr. Thomas was certainly a Magistrate empowered to take cognizance under S. 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Ss. 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Ch. XVI of the Code. It is clear, however, that Ch. XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because S. 200 states that a

Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of S. 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word "may" in section 190 to mean "must." The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under S. 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other band, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Ch. XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance." It is unnecessary to refer to the cases cited. The following observations of Mr. Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee,

"WHAT is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of -this Chapter-proceeding under S. 200 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent S. of this Chapter, but for taking action of some other kind, e.g., ordering investigation u/s 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence"

were approved by this court in R.R. Chari Vs. The State of Uttar Pradesh, . It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various S. of Ch. XVI but for taking action of some other kind, e.g., ordering investigation under S. 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr. Justice Das Gupta above referred to were also approved by this court in the case of Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal, . It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr. Thomas applied his mind to the complaint

filed on 3/08/1957, with a view to taking cognizance of an offence. The Additional District Magistrate passed on the complaint to Mr. Thomas to deal with it. Mr. Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police under S. 156(3) of the Code. The action of Mr. Thomas comes within the observations of Mr. Justice Das Gupta. In these circumstances, we do not think that the first contention on behalf of the appellants has any substance.

(8) REGARDING the second contention, it is true that after the amendment of the Criminal Procedure Code an offence under S. 448 is triable as a summons case and Mr. Goswami adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion that this irregularity does not vitiate the proceedings and is curable by the provisions of S. 537, as no prejudice to the accused has been established in the case."

12. The entire legal propositions that emerge from the above decisions have been clearly laid down in a decision of the Supreme Court in Tula Ram and Others Vs. Kishore Singh, of the said judgment reads as follows:

" IN these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High court has discussed the points involved threadbare and has also cited a number of decisions and we entirely agree with the view taken by the High court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge:

1 That a Magistrate can order investigation under S. 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under S. 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Ch. 14 he is not entitled in law to order any investigation under S. 156(3) though in cases not falling within the proviso to S. 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by S. 202 of the Code.

2 Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(A) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of S. 200 and record the evidence of the complainant or his witnesses.

(B) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(C) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3 In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4 Where a Magistrate orders investigation by the police before taking cognizance under S. 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under S. 190 as described above.

13. In the light of the principles laid down by the Supreme Court and the provisions of Section 200 Cr.P.C. now I proceed to deal with this case.

14. The Magistrate has not recorded the sworn statement of the complainant before taking cognizance. The order passed by the Magistrate is against the express provisions of Section 200 Cr.P.C. and also against the settled legal principles of the Supreme Court in the various decisions cited supra and the decision of the Kerala High Court (3 supra). The de facto complainant is entitled to give his own version. When she is examined by the police, she is bound to state the entire story before the police. It is not open to the complainant to give a portion of it before the police suppressing the other portion and subsequently launch a private complaint. This attitude of the de facto complainant cannot be appreciated. When the de facto complainant gave all the names of the accused and the entire story before the police, there was no necessity for presenting a complaint u/s 200 Cr.P.C. In that view of the matter, the private complaint shall not be encouraged when the de facto complainant fails to disclose the true information at the time of giving first FIR and at the time of investigation, lest it amounts to an after thought and it may lead to inclusion of the persons after due deliberations and consultations with others with a view to take vengeance against some more persons. The possibility of entering embellishment cannot be ruled out if such course is permitted. When the procedure contemplated u/s 200 Cr.P.C. is not followed, the Magistrate has no business or right to take cognizance of the offence on mere presentation of a complaint before him. Such course is not permissible and it is never heard of. This is a fit case where the matter has to be sent to the Registry to issue direction and to obtain necessary orders to give or impart necessary training to the Magistrate as to what duty he has to perform when a complaint is presented. Hence I also draw the attention of the Registry to place the matter before the concerned Committee for imparting training to this Magistrate who has deliberately violated the express provisions of Section 200 Cr.P.C. and exhibited his ignorance on criminal law. Viewed the matter through this angle, I hold that the order passed by the Magistrate lead to manifest error in taking cognizance without recording the sworn statement. It is rightly pointed by the learned counsel for the petitioners that the proceedings are to be quashed since it has lead to carries miscarriage of justice since there is no prima facie material to take cognizance of the offence. In that view of the matter, the

proceedings are liable to be quashed and I accordingly quash the proceedings. I direct the Registry to place the matter before the concerned Committee to obtain necessary orders for imparting training to this Magistrate who has violated the express provisions of Section 200 Cr.P.C. I also direct the Registry to consider about issuing instructions to all the Magistrates so that they will not make a mockery of Section 200 Cr.P.C. by taking cognizance of the offences u/s 200 Cr.P.C. without recording sworn statements in future.

15. The Crl. Petition is accordingly allowed quashing the proceedings in C.C. No. 912 of 2001 on the file of the Judicial First Class Magistrate, Medchal, Ranga Reddy District.