

(2004) 05 CHH CK 0002
In the Chhattisgarh High Court
Case No : Misc. Criminal Case No. 366 of 2004

Kamaruddin @ Bhaijan and Others

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 15-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 204, 482
Penal Code, 1860 (IPC) — Section 294, 323, 341

Citation : (2004) 1 CGLJ 309 : (2004) 3 MPHT 72

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Abhishek Sinha and Manoj Paranjpe, for the Appellant; A.K. Tiwari, Panel Lawyer for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

L.C. Bhadoo, J.—The petitioners have preferred this petition u/s 482 of the Cr.PC calling in question the validity, propriety and legality of the order dated 26-6-2001 passed by the learned Chief Judicial Magistrate, Durg, whereby the learned Chief Judicial Magistrate took cognizance u/s 190 of the Cr.PC for commission of offences under Sections 341, 323 read with Section 34 of the IPC and directed the Station House Officer, Police Station, Durg to furnish the copies of charge-sheet and the documents of Crime No. 257/2000.

2. Brief facts giving rise to filing of this petition are that on 1 -4-2000 the non-applicant No. 2 lodged a report with the Police Station, Durg with the allegations that the accused persons, the petitioners herein, in furtherance of the common intention abused him with filthy language and beaten him with fists and slaps. In the report, he mentioned that the owners of Jyoti Opticals and Surana Videos are his tenants since last 5-6 years and by taking the illegal water connection they were running their business. Fifteen days prior to the incident, the Municipal Council, Durg disconnected the water connections of these persons and imposed the penalty of fine. When after making the efforts they could not get the water

connection. Om Prakash Asrani with the intention to harass him sent three notices through his Advocate and today when at about 9:15 a.m. he was going out of his house then Bablu Asrani caught hold of him by his collar, while threatening he said that you have not connected the water connection and started beating with hands and fists. He called Pappu and Bhaijan and thereafter all the three started beating him, on account of that he is suffering from pain near left eye and throat. On receiving this report the police registered the case under Sections 341, 323 and 294 read with Section 34 of the IPC. After investigation, the police submitted the final report saying that there is a dispute between the parties regarding disconnection of the water connection, on account of that dispute the landlord has tried to convert that dispute in a criminal case. Since, there are no chances of success of the case and ingredients of the offence under Sections 341 and 294 of the IPC are not present, therefore, no cognizable offence has been committed, as such, the case is not fit for challan. Therefore, negative report is being submitted for acceptance.

3. On receiving this report, the learned Chief Judicial Magistrate after issuance of the notice to the complainant heard him on his objection and vide impugned order dated 26-6-2001 the learned Chief Judicial Magistrate after perusing the first information report, injury report, the statement of respondent No. 2 recorded u/s 161 of the Cr.PC and the statements of other witnesses namely, Mahesh Thakur, Chandrashekhar, Sharad Soni and Pavan Deshmukh reached the conclusion that prima facie offences under Sections 341 and 323 read with Section 34 of the IPC are made out against the accused persons. Therefore, he took cognizance of those offences u/s 190 of the Cr.PC and directed to issue summons to secure their presence. At the same time a requisition was sent on the same day to the Police Station for furnishing the copies of documents and the final negative report. Aggrieved by this order, the State Government through Public Prosecutor preferred a revision before the Sessions Judge, Durg, which came to be decided by the Sessions Judge vide order dated 17th May, 2003 and the learned Sessions Judge reached the conclusion that the order passed by the Chief Judicial Magistrate is legal and by passing the impugned order learned Chief Judicial Magistrate has not committed any illegality, therefore, he dismissed the revision. Now, this petition has been preferred by the accused persons on 4-2-2004.

4. I have heard Shri Abhishek Sinha with Shri Manoj Paranjpe, learned Counsel for the petitioners and Shri Anand Kumar Tiwari, learned Panel Lawyer for the State. Respondent No. 2 has refused to take the notice and an affidavit to that effect has been filed by the petitioner No. 2.

5. Learned Counsel for the petitioners argued that by the impugned order the learned Chief Judicial Magistrate has directed the Station House Officer, Police Station, Durg to file the charge-sheet for which the learned Chief Judicial Magistrate was not authorized under the law, as he can not ask the police to how to investigate the matter and to file charge-sheet. He relied upon a decision of

the Hon"ble Apex Court in the matter of Abhinandan Jha and Ors. v. Dinesh Mishra, reported in AIR 1968 Supreme Court 117. He further argued that when the notice was issued to respondent No. 2 and he filed the protest petition then the learned Chief Judicial Magistrate ought to have adopted the procedure of a complaint case and not of a police case. On the other hand, learned Panel Lawyer supported the order of the Chief Judicial Magistrate.

6. First of all I will advert to the provisions of Section 482 of the Cr.PC, which envisage the inherent powers of High Court. Section 482 of the Cr.PC envisages that "nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice". Therefore, the powers under this section are plenary powers. In this connection, for exercising power under the above provision no hard and fast rule or strait jacket formula or no rigid test can be applied while exercising the power u/s 482 of the Cr.PC. The High Court is required to scrutinize the facts and circumstances of each case and to decide in the context of its peculiar facts and circumstances and the pre-dominated concern of the Court is to secure the ends of justice and to prevent and abuse of the process of the Court. Therefore, the High Court can exercise the powers only in exceptional and rare cases where the High Court after scrutinizing the papers and looking to the facts and circumstances of the case in order to prevent abuse of the process of any Court or otherwise to secure the justice.

7. Now, coming to the powers vested with the police under Chapter XII of the Cr.PC and the power of the Magistrate under Chapter XIV of the Cr.PC, Section 2(h) of the Cr.PC defines that "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person who is authorized by a Magistrate in this behalf. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet u/s 173. Chapter XII of the Code of Criminal Procedure deals with "information to the Police and their powers to investigate". Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sub-section (1) of Section 156 envisages that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable offence 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. Sub-section (2) of this section provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate. Sub-section (3) of this section provides that any Magistrate empowered u/s 190 may

order such an investigation as mentioned above.

8. Section 157 lays down that if, from information received or otherwise, an officer in charge of a police station has "reason to suspect the commission of an offence" which he is empowered u/s 156 to investigate, he shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. Sections 160 to 163 deal with the power of the police officer making an investigation under Chapter XII to require the attendance of all witnesses, and their examination. Sections 165 and 166 confer power upon a police officer making investigation to search or cause search to be made. Section 169 authorizes a police officer to release a person from custody on his executing a bond, to appear, if and when so required, before a Magistrate in case upon an investigation under Chapter XII 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. Section 170 empowers the officer in charge of a police station to forward the accused under custody to a competent Magistrate or to take security from the accused for his appearance before the Magistrate in case where the offence is bailable, if after investigation it appears that there is sufficient evidence or reasonable ground for doing so. Section 173 and Sub-section (2) thereof lays down that after the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government giving details of the matters enumerated in Clause s (a) to (g) of this Sub-section.

9. Chapter XIV of the Code of Criminal Procedure deals with "Conditions Requisite for Initiation of Proceedings". Section 190 deals with cognizance of offences by Magistrate and it provides that a Magistrate may take cognizance of any offence. The provisions of Chapter XII of the Code show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provision of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A Magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer in charge of the police station.

10. Sub-sections (1) and (2) of Section 173 of the Cr.PC read as under:--

"(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer-in-charge of the police station shall

forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating--

- (a) the names of the parties;
 - (b) the nature of the information;
 - (c) the names of the persons who appear to be acquainted with the circumstances of the case;
 - (d) whether any offence appears to have been committed and, if so, by whom;
 - (e) whether the accused has been arrested;
 - (f) whether he has been released on his bond and, if so, whether with or without sureties;
 - (g) whether he has been forwarded in custody u/s 170.
- (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given."

11. Section 190 under Chapter XIV of the Cr.PC prescribes cognizance of offences by Magistrates which reads as under :--

"(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.
- (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try."

12. Therefore, the purpose of submission of the police report with the details mentioned above is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1) (b), Cr.PC, which is extracted above, provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to

satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it u/s 173(2), Cr.PC. Merely, because the police has submitted a negative report as envisaged u/s 169, Cr.PC it could not affect the jurisdiction to the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report was sufficient to take cognizance or not. The power of the Magistrate to take cognizance can not be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate. I am fortified in my above view by the judgment of the Hon''ble Apex Court in the matter of State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others, , and also in the matter of, wherein it has been held that:--

"At the stage of taking cognizance of the offence, provisions of Section 190, Cr.PC would be applicable. As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate u/s 204, Cr.PC is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge-sheet. The Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police."

13. In the instant case, as mentioned in the earlier part of this order, the police submitted a negative report that there was dispute between the parties regarding disconnection of the water and it was further mentioned that no cognizable offences under Sections 341 and 294 of the IPC are made out, therefore, the charge-sheet can not be filed. The SHO had not stated in the report that the offence u/s 323 of the IPC was not made out. However, after perusal of the report, giving notice to the complainant and hearing him, learned Chief Judicial Magistrate looking to the medical report, FIR and the statements of the witnesses reached the conclusion that prima facie offences under Sections 341 and 323 of the IPC were made out against the petitioners as there was sufficient material before him for taking cognizance of those offences u/s 190(1) (b) of the Cr.PC. Accordingly, he took cognizance of those offences against the petitioners and issued process for securing their presence as envisaged u/s 204 of the Cr.PC.

14. In view of the above, I am of the opinion that the learned Chief Judicial

Magistrate has neither interfered in the area of investigating agency. He has simply exercised the powers vested in him u/s 190(1)(b) of the Cr.PC, as has been held by the Hon'ble Apex Court in the above cited judgments.

15. As far as the arguments of the learned Counsel for the petitioners are concerned that the learned Chief Judicial Magistrate vide impugned order directed the police to file charge-sheet are misconceived. It is true that learned Chief Judicial Magistrate can not direct the police to file charge-sheet in which the police after investigation reached the conclusion that no offence is made out. This view has been taken by the Hon'ble Apex Court in the matter of Abhinandan Jha and others (supra). However, Chief Judicial Magistrate is entitled either to direct the police to further re-investigate the matter as per the provisions of Section 156(3) of the Cr.PC when he is of the opinion that further investigation in the matter is required or the Chief Judicial Magistrate can take cognizance of the offence based on the material on record if he is satisfied that prima facie offence is made out then, of course, he can take cognizance of offence u/s 190(1)(b) of the Cr.PC, which he has done in this case. Therefore, arguments of the learned Counsel for the petitioners are misconceived that learned Chief Judicial Magistrate had directed the police to file charge-sheet.

16. A perusal of the order reveals that after taking cognizance of the offence under Sections 341 and 323 of the IPC against the petitioners, Chief Judicial Magistrate summoned the accused persons and simultaneously, on administrative side he wrote a letter to SHO, Police Station, Durg directing him to furnish the copies of the documents and charge-sheet which he filed before the Court. He had not directed the police to file charge-sheet, but he had asked the police to furnish copies of the documents in order to enable him to provide those copies to the petitioners.

17. Now, coming to the second argument of the learned Counsel for the petitioners that the learned Chief Judicial Magistrate ought to have followed the procedure of a complaint case instead of a police challan case. This argument of the learned Counsel for the petitioners is also misconceived because learned Chief Judicial Magistrate on receiving the final negative report issued notice to the complainant as to why the report should not be accepted upon which the complainant filed the protest petition and after hearing the complainant and perusal of the records, learned Chief Judicial Magistrate took cognizance of offences u/s 190(1)(b) of the Cr.PC, therefore, he has rightly followed the procedure of police challan case. Of course, if dissatisfied with the report of the police, had the complainant filed a complaint stating that the police has not collected the material evidence or recorded the medical evidence, therefore, he wants to adduce his evidence and had the Chief Judicial Magistrate taken the evidence on that complaint and he had not taken cognizance of the offence on the police report, then he ought to have proceeded with the complaint filed by the complainant as a complaint case as envisaged under Sub-section (3) of Section 210 of the Cr.PC, but on filing the protest petition and hearing the

complainant, if the Chief Judicial Magistrate takes cognizance on the police papers submitted by the police u/s 190(1)(b) of the Cr.PC then the procedure for trial of that case is to be followed as the case instituted on a police report as per the provisions of Sub-section (2) of Section 210, Cr.PC, therefore, in this respect also learned Chief Judicial Magistrate has not committed any illegality.

18. In the result, the impugned order does not suffer from illegality, impropriety or incorrectness and the same does not require any interference by this Court. The petitioners have failed to point out the power exercised by the Chief Judicial Magistrate has been exercised illegally or exercised which does not vest with the Chief Judicial magistrate or the order was without jurisdiction or the Chief Judicial Magistrate has exceeded his jurisdiction in exercising the power while passing the impugned order. Therefore, the petitioners have not been able to make out a case for exercising the inherent power by this Court u/s 482 of the Cr.PC. The petition is liable to be dismissed and the same is dismissed.

19. Looking to the facts and circumstances of the case, cost is made easy.