

(1965) 08 BOM CK 0002

In the Bombay High Court

Case No : Criminal Revn Appln No. 189 of 1965

Kirshna Gundu Potjate and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-08-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173

Citation : AIR 1966 Bom 145 : (1965) 67 BOMLR 822 : (1966) CriLJ 650 :
(1966) ILR (Bom) 411

Hon'ble Judges : Chainani, C.J

Bench : Single Bench

Advocate : H.D. Gole, for the Appellant; M.A. Rane, Asst. Govt. Pleader, for the Respondent

Judgement

(1) The petitioners are two police constables who were formerly attached to the Jaisingpur Outpost. On 7-9-1962, one Bhupal Anna Chougule was murdered. Two persons were persecuted in connection with that offense, but they were acquitted. The allegation against the petitioners was that they had taken some illegal gratification of and had tried to shield the culprits and that that they had thereby committed offenses under Ss. 193, 201, 204 and 217, Indian Penal Code. They were arrested and released on bail. These offenses were investigated by the police but after the acquittal of the accused who were tried on the charge of murder, the police come to the conclusion that it would be difficult to obtain a conviction of against petitioners. They therefore sent a report of judicial magistrate concerned under S. 173, criminal procedure code and asked for a non - cognizable summary in respect of the offenses alleged the petitioners. The learned Magistrate, however, granted "A" Summary. Being aggrieved by the order, the petitioners filed a revisions application of the sessions court at Kolhapur. That was rejected. Thereafter they have filed the present revision application of in this courts.

(2) It appears that before the learned Magistrate passed order on the report mad

to the him under S .173, the petitioners had made in an application to him and requested that they should be heard before orders were passed. In State and Others Vs. Murlidhar Govardhan and Others, it has been held that the an orders passed by a Magistrate on a report under S. 173 Criminal procedure code, requesting that summary "A", "B" or "C" be issued in the its very nature a judicial order and not an administrative order. Mr Gole, the learned advocate for the petitioners has therefore contended that the Magistrate was bound to hear the petitioners before deciding a to which summary he should grant. He has urged that a judicial order necessarily contemplates that there must be application of mind and that there can be proper application of mind only after the parties have been heard. There is no provision in the code providing for classification of offenses or for the issue of the summaries by the Magistrate to whom a report is made under S. 173 of the Code. The classification is made and the summaries are granted under paragraph 219 in volume III of the police manual. Clauses 3 of this paragraph stated that the request should be made to the magistrate to classify the case and to issue and appropriate summary of his order, and the clauses further provides of that "A" Summary is to be issued when the complaint it true but undetected [where is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to the justify his being sent up to the Magistrate for the trial] that "B" Summary is to be issued when the complaint is maliciously false. While "C" summary is to be issued when the police do not purpose to send to for charge - sheet against the accused or when the it not proposed to prose to direct a prosecution but if the decides not to do so, then the is therefore issued only when it is only magistrate grating one or the other summary doesn't therefore, causes any prejudice to the accused. So far as he is concerned the proceedings under the code, commenced by the police them comes to an end. Consequently it is not necessary to hear that accused for deciding which summary should be granted. There is also no provisions either in the code or I net police manual, which the provided that the accused should be heard before the Magistrate decided as to which summary he should grant. I am therefore, unable to accept Mr. Gole's arguments that the Magistrate was under an obligations to hear the petitioners before the decided to grant "A" summary.

(3) it has however, been urged by Mr. Gole that the consequences of the grant of "A" Summary may be that departments proceedings may be instituted against the petitioners. Such proceedings could have been instituted against the petitioners even if the petitioners had been prosecuted and acquitted or it the Magistrate had issued "C" summary. The order made by the Magistrate granting by the police during the course of the police an accused person of the in any department proceedings which may be held against the him, because necessarily be based on the evidence led in the of the Magistrate granting "A" Summary made without hearing the petitioners in any departmental inquiry of which may be decided to be held against them.

(4) Mr. Gole has drawn my attention to certain observations made by the

additional sessions judge in the murder trial in the regard to the allegations about acceptances or bribe by the petitioners. In para 12 of the judgment it has been observed that the whole story of true and appeared to improbable and untrue and appeared to have been restored to explain the delay which had been caused by the police patal in making the report. Mr. Gole by the sessions court, the learned Magistrate was not justified in granting "A" Summary Apart from the fact that it is not quite clear whether these observations of the sessions court were brought to the notice to the Magistrate before to the he granted "A" Summary the observations of the sessions court were made in the light to the evidences gathered by the police during the course of the investigation of the offenses alleged to have been committed by the petitioners. Consequently I cannot say that the order of the Magistrate is wrong he has arrived is different from opinion expressed by the sessions court in the other case.

(5) I therefore see no sufficient reason to interfere in this case. Rule discharged.

(6) Revision dismissed.