
(1973) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Kishorilal and Others

APPELLANT

Vs

Daya Nand and Another

RESPONDENT

Date of Decision : 03-01-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 154, 156, 157

Citation : (1974) CriLJ 902

Hon'ble Judges : Manmohan Singh Gujral, J

Bench : Single Bench

Judgement

Manmohan Singh Gujral, J.—This petition u/s 561-A, Criminal Procedure Code, is directed against the first information report bearing No. 115 dated 24th March, 1972. recorded in the Police Station City Hissar, and the investigation being carried on in pursuance thereof against Kishori Lal and his four other brothers, who were all proprietors of the firm known as Bishambhar Dayal Duni Chand. The main contention raised in this petition is that even if the allegations made in the first information report are accepted at their face value, no case is made out against the petitioners and if the prosecution is allowed to continue its investigation it will be an abuse of process of law.

2. On behalf of the respondent a preliminary objection is taken that the High Court should not interfere in exercise of inherent powers u/s 561-A, Criminal Procedure Code, till a charge has been preferred, as the police have statutory right under Sections 154 and 156, to investigate a cognizable offence without requiring the sanction of the Court. Support for this argument is sought from the following observations in AIR 1945 18 (Privy Council) :

Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Sections 154 and 156. to

investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court u/s 561-A. The functions of the judiciary and the police are complementary not over-lapping and the combination of individual liberty with a due observance of law and order is only to obtain by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved u/s 491, Criminal P. C., to give directions in the nature of habeas corpus. In the case of a cognizable offence, the Court's functions begin when a charge is preferred before it and not until then and. therefore, the High Court can interfere u/s 561-A only when a charge has been preferred and not before. As the police have under Sections 154 and 156. a statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds;

No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed the police would have no authority to undertake an investigation and if they do so the High Court may interfere u/s 561-A.

The above view was considered in a recent decision of this Court in *Saral Beopar Association Ltd. Jagadhri v. State of Haryana* reported in 1970 CRI LJ 720 (Punj) wherein it was further held that "in conducting the investigation of a case the police has to act within the bounds of its authority conferred by law, and if it outsteps those limits or acts in violation of the provisions relating to investigation of offences, the aggrieved party can be granted adequate relief."

3. The extreme position that the High Court has no power to interfere with the investigation by the police even acting u/s 561-A, was not accepted. The view expressed in AIR 1945 18 (Privy Council) that "if no cognizable offence is disclosed and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation on the information laid before the (police." was examined in detail in 1970 CLJ 720 and the following observations were made:

In this view of the matter, the contention that if a first information report does not disclose an offence, it must be quashed along with the proceedings, if any taken thereon thus restraining the police from investigating the matter, cannot be accepted. These observations, speaking with respect, are in consonance with the provisions of Sections 156 and 157 of the Code, which do not require that before the investigation is taken in hand by the police, there must be a written report containing facts disclosing a cognizable offence. A different view would lead to startling results. Take the case where the police finds a dead body on the road without any obvious mark of injury on it. Nobody knows how the deceased had met his end. The police is informed merely about the presence of the dead body or a police official just comes across it. Can it be contended with any

seriousness that in such a case if a police official starts investigation to find out whether any offence has been committed in respect of the deceased, such investigation can be stopped or should not be allowed to proceed merely because the information on which it commences does not disclose a cognizable offence. It would be only after some investigation is conducted that the police will be in a position to find out whether it is a case of natural death, suicide or culpable homicide or murder. If the contention, that unless the police is able to satisfy the Court that it is in possession of information about the commission of a cognizable offence it cannot proceed to investigate, is accepted it would lead to the conclusion that in a case like the one that has been cited above, the Court must step in and stop the investigation. This, in my opinion, is not warranted by the provisions of Section 561-A, Criminal Procedure Code, nor by any other provision of the Code. The power to stop investigation in such cases if exercised, assuming that such power vests in the Court u/s 561-A, Criminal Procedure Code, far from promoting the ends of justice may itself constitute an abuse of the process of the Court thus defeating the very purposes for which the inherent powers of the Court are to be exercised.

Of course in conducting the investigation of a case the police has to act within the bounds of its authority conferred by law. and if it outsteps those limits or acts in violation of the provisions relating to investigation of offences, the aggrieved party can be granted adequate relief, but even while exercising such powers, the Court has to act with utmost circumspection and, as is well-settled, powers u/s 561-A, Criminal Procedure Code, are meant to be exercised only in exceptional case and most sparingly. In exercising such powers the Court must guard against the risk of interfering with the investigation of offences which, if allowed to proceed would result in bringing the offenders to book." Applying the principle set out above to the facts of the present case I find that no case for the issuance of any order or direction u/s 561-A of the Criminal Procedure Code, is made out. The allegations in the first information report, as these stand, do disclose a cognizable offence, which the police is entitled to investigate, in para. 1 of the first information report, it is mentioned that the petitioners issued a cheque for Rs. 20,000 is the complainant to clear the amount due from them and this cheque is dated 26th June, 1971. When the cheque was presented to his Bank by the complainant, it was sent to the State Bank of India, where the date was changed to 26th June, 1970. The allegation is that the alteration in the date was made by some official of the State Bank of India with the connivance of the accused. This is a matter which requires considerations and it cannot be settled at this stage that the allegations in the first information report do not make out a case against the petitioners. Similarly, there are other allegations in the first information report having regard to which it is not Possible to come to the conclusion that the first information report does not disclose a cognizable offence which would need investigation by the police.

4. For the reasons recorded above. I find no force in this petition and dismiss the same. It would, however, be open to the petitioners to move this Court again

when the challan is filed by the police after due investigation.