
(2003) 03 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 111 of 2000

Kuldeep Chand and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 471

Citation : (2003) 2 ShimLC 76

Hon'ble Judges : Kuldeep Chand Sood, J

Bench : Single Bench

Advocate : G.D. Verma, instructed by Romesh Verma, for the Appellant; J.S. Guleria, Law Officer for Respondents 1 and 3 and K.D. Sood, Aneesh Garg and Sandeep Agnihotri, for the Respondent

Final Decision : Allowed

Judgement

Kuldeep Chand Sood, J.—This petition arises out of the orders of the learned Judicial Magistrate 1st Class (II), Rohru, Distt. Shimla, dated 5.8.2000.

2. In order to appreciate the controversy, few facts may be noticed:

It appears, that the complainant Dinesh Kumar filed a complaint before the learned Judicial Magistrate, Rohru, on 24.12.1992 against six persons for offences punishable under Sections 467, 471, 420 read with Section 120B of the Indian Penal Code. Learned Magistrate forwarded the complaint to the Station House Officer for investigation u/s 156(3) of the Code of Criminal Procedure. The Station House Officer, after investigation of the case, submitted the final report dated 14.9.1993, for cancellation of the case, as no case was made out against the accused in investigation.

3. Notice of the cancellation report was given to complainant Dinesh Kumar. On notice the complainant objected to the cancellation of the case. The learned Magistrate took cognizance of the offences and asked the complainant to produce

his evidence. Statement of the complainant was recorded on 15.9.1998. Further time was sought by the complainant to produce the remaining evidence which was granted and the case was directed to be listed on 24.11.1998. In the meanwhile, a revision petition was filed before the learned Sessions Judge, learned Sessions Judge by his order dated 11.10.1999 observed that the complainant should have been asked, by the learned Magistrate to give list of witnesses he proposed to examine and those witnesses should have been examined on State expenses as it was a State case. For this reason, order of the learned Magistrate giving time to the complainant to produce the remaining evidence was set aside. The matter was sent back to the learned trial Magistrate with a direction to dispose of the case in accordance with law, in the light of the observations made by the learned Sessions Judge.

4. When this matter came up before the learned trial Magistrate on 5.8.2000, he observed that from the perusal of the statement of the complainant, his witnesses and documents placed on file, there were sufficient grounds to get the case (FIR) reinvestigated from some Investigating Officer. He accordingly directed that Station House Officer, Police Station, Rohru, 9hall get the case reinvestigated from an Investigating Officer not below the rank of ASI.

5. Aggrieved with this order of the learned trial Magistrate, the Petitioners who were arrayed as accused, are in this petition.

6. Mr. G.D. Verma, learned Senior Counsel instructed by Mr. Romesh Verma, Advocate, submits that the Magistrate had no jurisdiction to ask for the re-investigation of the case. He further brings to my notice that the Magistrate had asked for reinvestigation of the case by an officer not below the rank of ASI whereas this case was earlier investigated by Deputy Superintendent of Police, as is apparent from the record.

7. As pointed out, by Mr. Verma, learned Senior Counsel, even the complainant had not asked for reinvestigation of the case. It was the Magistrate who of his own directed re-investigation, for the reasons which are not disclosed in his order.

8. It is now well settled, that when on a complaint, a Magistrate directs investigation by the police under Sub-section (3) of Section 156 of the Code of Criminal Procedure and the police reports that no case was made out, the Magistrate can take cognizance and issue process to the accused. Reference, if required may be made to H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), However, the Magistrate has no jurisdiction, after submission of the final report, to ask for reinvestigation of the case by the police. As pointed out by the Supreme Court in Randhir Singh Rana Vs. The State Being the Delhi Administration, , Once a final report is submitted by the Investigating Officer,, it is not given to the Magistrate of his own, to order for further investigation.

9. This apart, it is well established that the police cannot register a second case on the same facts.

10. The Magistrate, in the present case, had no jurisdiction to direct the Station House Officer, Rohru, to get the case re-investigated when the case had already been investigated and final report had been submitted to the court.

11. It is noticed that the Magistrate had already taken cognizance, in spite of the cancellation report submitted by the police, of the complaint made by the complainant after the receipt of the cancellation report. In these circumstances, only course left open to the Magistrate was either to discharge the accused or proceed with the case, in accordance with law, as a private complaint.

12. In result, the petition is allowed. The impugned orders of the learned trial Magistrate dated 5.8.2000 are set aside. The learned Magistrate shall proceed with the case, in accordance with law, in the light of the observations made hereinabove.

13. The parties are directed to appear before the learned trial Court on 5.5.2003.

14. The records of the case be sent back immediately to the concerned court, so as to reach the trial Court on or before the date fixed.