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**(1978) 08 KAR CK 0023**  
**In the Karnataka High Court**  
**Case No : CrIRPs. 218 & 217 of 1978**

Kulkarni V.S. and Others

APPELLANT

Vs

Saligoudar S.B. and Another

RESPONDENT

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**Date of Decision :** 29-08-1978

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 159

**Citation :** (1979) 1 KarLJ 122

**Hon'ble Judges :** Nesargi, J

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## Judgement

1. The petitioners had complained before the concerned authority that respondent-1 had committed offence punishable under Secs.409 465 and 477-A of the IPC. The concerned authority made enquiry, reported the matter to the Ramdurg Police and the Ramdurg Police registered a case in Crime No.69 of 1976. The police arrested respondent-1 and produced him before the Judicial Magistrate First Class, Ramdurg on 23-7-1976. Respondent-1 was enlarged on bail. Time to file charge-sheet was granted on various dates as per the request of the Asst. Public Prosecutor. Ultimately on 5-7-1977, the Magistrate passed an order to the effect that he, had disposed of the case under Sec. 159 CrIPC and had discharged Respondent-1 of the offences under Sec.409, 465 and 477-A of the, IPC. This order is challenged by the petitioners in Criminal Revision Petition 218 of 1978.

2. CrIRP.217 of 1978 arises out of the aforementioned proceedings itself. It is against the order d/22-8-77 passed by the Judicial Magistrate First Class, Ramdurg, holding that the charge-sheet filed in the said case was not maintainable in law, as the Court was functus officio in view of the order d/5-7-77 referred to above.

3. As common question of law arises in both these petitions, they are disposed of by a common order.

4. In the order d/5-7-77, the learned Magistrate has stated that in spite of granting time to file charge-sheet till that date, the Police had not filed charge-

sheet and the District Court, Belgaum had sent a letter No.3387/76 in July 1976 to the Superintendent of Police, Belgaum to the effect that instructions should be given to the concerned police to submit charge-sheets within 10 days in regard to the pending FIRs and if not, the concerned Magistrates would dispose of the cases under Sec. 159 CrI PC. It is also narrated that as the Police did not submit charge/sheet in spite of granting time on various occasions, the Magistrate considered the provisions of Sec. 159 CrIPC and found that it was not a fit case where a preliminary enquiry was to be conducted by him and, therefore, it was to be disposed of.

5. Sec. 159 CrIPC reads as follows:

"Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided, in this Code."

6. A plain reading of this section shows that a Magistrate, who receives a report, evidently falling within the provisions of Sec. 157 CrIPC, gets power to direct an investigation, or, if he thinks fit, to hold a preliminary enquiry into the same, or otherwise to dispose of the case in the manner provided by the Code of Criminal Procedure. It does not confer power on a Magistrate to stop the investigation which has been set afoot by the Police merely on the ground that there has been some delay. It is to be noted in this connection that under S. 167(5), a Magistrate has power to stop further investigation in regard to a summons case in which investigation is not concluded within a period of six months from the date on which the concerned accused was arrested. Apart from this power, he has no power to stop an investigation. The Supreme Court has in this behalf laid down in *S.N. Sharma v. Bipen Kumar Tiwari*, AIR. 1970 SC. 786, affirming the decision of the Patna High Court in *Pancham Singh v. State*, AIR. 1967 Pat. 416 which in turn relied on the decisions in *Crown v. Mohamad Sadiq Niaz*, AIR. 1949 Lah. 204 and *King Emperor v. Khawaja Nazar Ahmad*, AIR. 1945 PC. 18 that a Magistrate has no power to stop investigation and direct magisterial enquiry. It is further laid down that if at all there is mala fide exercise of power of investigation by the Police, the remedy available to the concerned parties was to invoke the writ jurisdiction of the High Court. Further on it is held that the power of the Police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed, or depute a Magistrate subordinate to him to proceed, to enquire into the case. Lastly it has been held that the use of the expression "as he thinks fit" in Sec. 159 makes it clear that Sec. 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the Police decide not to investigate the case under the proviso to Sec. 157(1), and it is in those cases that, if he, thinks fit, he can choose the second alternative, of proceeding himself or deputing any Magistrate subordinate to him to proceed to

hold a preliminary enquiry as the circumstances of the case may require.

7. Proviso to Section 157(1) of the Code of Criminal Procedure reads as follows:

"(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in, charge of a police station need not proceed in person, or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case."

8. In view of the aforesaid decision of the Supreme Court it is clear that a Magistral while acting under Sec. 159 of the CrIPC has power to direct investigation in regard to cases which fall within the ambit of the proviso to Sec. 157(1) of the CrIPC and similarly he has power to hold a preliminary enquiry in such cases. He has no power to stop an investigation set afoot by the concerned Police.

9. In view of the above, it necessarily follows, that the Magistrate should not have proceeded to dispose of the case by passing the order d/5-7-77 under the guise of exercising his power under Sec. 159 of the CrIPC. He has not at all applied his mind to the principles underlying Section 159.

10. In the result, the order d/5-7-77 passed by the Judicial Magistrate First Class, Ramdurg in Ramdurg Police Station Crime No.69/1976 is to be set aside. It follows that the order d/22-8-77 passed by the Judicial Magistrate, First Class, Ramdurg in Crime No.69 of 1976 holding that the charge-sheet submitted by the Police is not maintainable, has to be set aside. Hence, the revision petitions are allowed and, the, orders are set aside. The Magistrate is directed to proceed in the matter according to law bearing in mind the observations made in the body of the order above.