
(2020) 01 MAN CK 0010

In the Manipur High Court

Case No : Writ Petition (c) No. 927, 928 Of 2018

M. Henthoi Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155, 156(1), 156(3), 157, 169, 170, 173(1), 173(2), 190(1), 190(1)(B), 190(1)(C), 200, 202, 203, 204

Citation : (2020) 01 MAN CK 0010

Hon'ble Judges : Ramalingam Sudhakar, CJ; Lanungsungkum Jamir, J

Bench : Single Bench

Advocate : Sillori, W.Darakishwor, R.K.Umakanta

Final Decision : Disposed Of

Judgement

Ramalingam Sudhakar, CJ

[1] Heard Ms. L.Sillori, learned counsel for the petitioners. Also heard Mr. R.K.Umakanta, learned Government Advocate for the State respondents and Mr.W.Darakishwor, learned Senior Panel Counsel for the Union respondents.

[2] Both the cases arise out of the common incident which happened somewhere in the year 2003.

[3] The prayers in W.P(C) No.927 of 2018 read as follows:-

"PRAYER

i. to admit this petition for hearing;

ii. after hearing the parties to order a judicial enquiry into the extra-judicial/ killing of M. Roben Singh by the Assam Rifles on 07-07-2003 at Thoubal Kshetri Leikai in a fake encounter case;

iii. to order an investigation against the erring personnel of the Assam Rifles for punishing them under the law;

iv. to award compensation to the Petitioner for the extra-judicial killing of his brother M. Roben Singh;

v. to pass any other further writ/ order/ direction as may deem fit and appropriate in the nature of the case."

[4] The prayer in W.P(C) No.928 of 2018 reads as follows:-

"PRAYER

i. to admit this petition for hearing;

ii. After hearing the parties to order a judicial enquiry into the extra-judicial/ killing of Kh. Rome Singh by the Assam Rifles on 07-07-2003 at Thoubal Kshetri Leikai in a fake encounter case;

iii. to order an investigation against the erring personnel of the Assam Rifles for punishing them under the law;

iv. to award compensation to the petitioner for the extra-judicial killing of her husband Kh. Rome Singh;

v. to pass any other further writ/order/direction as may deem fit and appropriate in the nature of the case."

[5] It was heard by a learned Single Judge and transferred to the Division Bench on the ground that the case relates to custodial killing by the personnel of Assam Rifles and therefore, it should be heard by the Division Bench and after listing before the Division Bench, the case was taken up for hearing.

BRIEF FACTS IN W.P(C) No.927 of 2018

[6] The case of the petitioner, Mr. M.Henthoi Singh, brother of late M.Roben Singh s/o M.Chandramani Singh of Tentha Moirangband Village, P.O. Wangjing, P.S. Khongjom, District- Thoubal, is that on 07.07.2003 at about 1.00 am, a team of Assam Rifles Personnel, numbering about 50, came to the residence of the petitioner and asked for his brother, M.Roben Singh. He came out of the bed and the Assam Rifles personnel picked up late M.Roben Singh and they took him away to an undisclosed place. The petitioner, brother of the late M.Roben Singh, accompanied the Assam Rifles but he was beaten up and left behind. It is alleged that at about 4.30 am, information was received that two bullet ridden dead bodies were lying at Thoubal Kshetri Leikai and one of the bodies was that of his brother, M.Roben Singh. It is pleaded that the local villagers staged a protest against the extra judicial killing of M.Roben Singh and the Government of Manipur sanctioned a sum of Rs.1 lakh to the next kin of late M.Roben Singh, which was paid by the Deputy Commissioner, Thoubal in Annexure-A/1 in W.P(C) No.927 of 2018 dated 14th February, 2005, page 8 and that order reads as follows:-

"Annexure-A/1

GOVERNMENT OF MANIPUR

OFFICE OF THE DEPUTY COMMISSIONER: THOUBAL DISTRICT,
MANIPUR

O R D E R S

Thoubal, the 14th February, 2005

No. 7/46/DC-TBL/EX-G/2003: The Deputy Commissioner, Thoubal accords sanction to an amount not exceeding to Rs. 2,00,000/- (Rupees two lakhs) only for payment of ex-gratia grant to the next of kins for the following deceased persons, who were killed in the unjustified Security Forces Action occurred on 7.7.2003 at Thoubal Kshetri Leikai, Thoubal District at the rate shown against their names as given below:

1

2

3

4

5

Sl. No.

Name of victims with father's name and address

Date of incident

Place of incident

Amount in Rupees

1.

(Late) Moirangthem Roben Singh (19) yrs. S/o M. Chandramani Singh of Tenthe Marongband, Thoubal SubDivn., Thoubal Dist.

7.7.2003

Thoubal Kshetri Leikai, Thoubal Dist

Rs. 1,00,000/-

2.

(Late) Khangembam Rome (21) yrs. S/o Kh. Khamba of Samram Maning Leikai, Thoubal Sub-Division, Thoubal Dist

-do-

-do-

Rs. 1,00,000/-

2. The expenditure is debitable under Grant No. 34-Rehabilitation, Major Head 2235-Social Security & Welfare (NP), Minor 200-Other Relief Measures, Sub-Head 08-Victims of Extremists Action. Detailed 00, Object 31 Grant-in-aid for the year, 2004-2005.

This is issued in compliance with the Govt. of Manipur, Home Department order No. 4/14(6)/2001-H. dated 10.2.2005.

Sd/-

(P. Vaiphei)

Deputy Commissioner, Thoubal Dist."

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[7] A case was registered by the police as FIR No.125(7)2003 Thoubal P.S. U/s 307/34 IPC 25 (I-C) A.Act and 10/13 UAP Act. It is further pleaded that without proper investigation, the FIR case has been returned with a Final Report (FR) to the concerned Court stating that there is no clue in the case. Though the incident happened in 07.7.2003 and a sum of Rs.1 lakh was received by the brother on 02.03.2005, no further steps were taken by the brother or any other close relatives of the deceased. However, the present writ petition has been filed for the above relief after considerable delay.

BRIEF FACTS IN W.P(C) No.928 of 2018

[8] The widow, Smt. Kh. Leirang Devi, aged about 33 years, alleges that on 07.7.2003. her husband, late Khagenbam Rome Singh, who was born and brought up at Samram Village of Thoubal District along with five brothers and three sisters, was taken away from the residence forcibly breaking the door by a team of Assam Rifles personnel, about 50 in number. The family members of the husband were beaten up. The Assam Rifles personnel left the house along with the late husband, Rome and the local people made a search and that on 07.7.2003 at about 4.40 am, two bullet ridden dead bodies were found lying in Thoubal Kshetri Leikai probably due to the gruesome extra judicial killing of the husband of the petitioner. An FIR No.125(7)2003 Thoubal P.S. U/s 307/34 IPC 25 (I-C) A.Act and 10/13 UAP Act was registered by the police and after investigation, the Final Report was submitted on 11.02.2004 to the competent Court stating that it is case of no clue.

[9] The petitioner along with other relatives made an application to the State Government for grant of monitory relief which was granted by the Government of Manipur through the Deputy Commissioner, Thoubal by proceeding dated 14.02.2005, which has been already extracted above. It is to be noticed that in the proceeding of the Deputy Commissioner, Thoubal District, contains certain

remarks against the security forces. It however appears to have been stated without any reference to any enquiry or corroboration by the Assam Rifles .

[10] Be that as it may, after receiving one lakh ex-gratia payment somewhere in 2005, the petitioners in both cases kept quiet for more than 13 years and the widow of late Kh.Rome filed an application on 12.03.2018 to the Deputy Commissioner, Thoubal to provide certified copy of the FR report and the enquiry report. This was promptly replied by the District Magistrate by proceeding dated 2nd April, 2018, Annexure-A/4 in W.P(C) No.927 of 2018 and it reads as follows:-

"Annexure-4

GOVERNMENT OF MANIPUR

OFFICE OF THE DC/DISTRICT MAGISTRATE: THOUBAL,
MANIPUR

No.4/65/DC-TBL/2009/L & O/Pt-V/1864 Thoubal, the 2nd
April,2018

To

Khangembam Leirang Devi

W/o late Rome Singh of Samaram Village

Subject:- Request for issuing Certify Copies of the Post Mortem Report and Enquiry Report of the Dist. Police/ Deputy Commissioner with FIR No. 125(7)2003 Thoubal PS u/s 307/34 IPC, 25(1-C) A. Act & 10/13/UA/P Act of 1, Khangembam Rome Singh & 2 Moirangthem Roben Singh

Sir,

In inviting a reference to your application dated 12th March, 2018, on the above subject and I am to state that the matter was referred to Superintendent of Police, Thoubal and it has been reported that the case relates to an encounter between security Force and armed youth at Thoubal Kshetrileikai along Thoubal-Yairipok road. The case was completed and returned in F.R. No. 22/2004 TBL PS dated 11-2-2004 and all relevant documents are now in the custody of the Hon? ble Court.

Yours faithfully,

Sd/-

(Haobam Rosita)

DC/ District Magistrate, Thoubal

Copy to:

Superintendent of Police, Thoubal District, Manipur This has a reference to his letter No. 3/2/2018/SP-TBL/1346 dated 27-03-2018."

[11] Since the authorities have communicated to the widow that all documents are in the custody of the Court, both the petitioners have filed these writ petitions for the identical relief that is seeking for judicial enquiry alleging extra-judicial killing and investigation against the erring personnel of the Assam Rifles so as to punish as per law and for compensation.

[12] Both the cases were listed on the same day i.e. on 08.10.2018 before two different Benches and in one case, the case was admitted and in one case, notice was issued. Mr.Darakeshwar appears for the Central Government. The State Government is represented by the learned Government Advocate.

[13] In both cases, the Union respondent and the Director, General, Assam Rifles have filed reply affidavit dated 28.01.2019 in W.P(C) No.927 of 2018 and on 05.3.2019 in W.P(C) No.928 of 2018. The State Government, respondent No.4 has filed reply affidavit in both cases on 8.5.2019. In that, the State Government has enclosed the request document of the widow, Khagembam Leirang Devi dated 12.3.2018, the letter of the District Magistrate, Thoubal addressed to the Superintendent of Police, Thoubal District dated 22nd March, 2018, the letter of the Superintendent of Police, Thoubal District addressed to the District Magistrate, Thoubal District dated 27th March, 2018 and the final letter of the District Magistrate, Thoubal District dated 2nd April, 2018 informing the widow that relevant documents of the case are in the custody of the Court and the State Government has nothing more to add except stating that they have given ex-gratia compensation.

[14] On the part of the Union of India, two applications have been moved to delete the first respondent stating that they are not concerned with the conduct of the affairs of the Assam Rifles and therefore, they should be deleted from the array of parties. These applications are not objected to by the learned counsel for the petitioners and having considered the reasons given in the Miscellaneous cases, it appears that the first respondent has no role to play. On the contrary, the Assam Rifles is under the control of the Ministry of Defence due to operational duty and therefore, the Miscellaneous cases are allowed. The first respondent is deleted from the array of parties and the response by the respondent No.2, Director General, Assam Rifles is to the effect that the allegations made in the writ petitions are more in the nature of conjectures and surmises and the version of the Assam Rifles is as follows.

[15] That based on intelligence and specific information issued by 28 Assam Rifles regarding movement of underground between Yairipok and Thoubal on the night of 6.7.2003 and 7.7.2003, the officers of the Assam Rifles found two persons on a cycle approaching towards mobile check post coming from Yairipok. When the two persons were asked to prove their identity, the pillion rider of the cycle drew out a hand gun and open fire on the troops. As a result, they

retaliated and one who was riding on the cycle was shot dead and the other pillion rider jumped out of the cycle and started running towards the open fields and also continued to fire on the troops. This resulted in cross-country chase into the slushy fields and thereafter, alleged under ground persons was surrounded and due to his action of opening fire against the army personnel, he was shot dead. Recovery of one 9mm pistol and three 9mm live ammunition was also recorded. It is alleged by the Assam Rifles that these two persons belongs to Kangleipak Communist Party (KCP) and the shooting happened only because of the unprovoked shooting by the two deceased persons at the mobile vehicle check post on Thoubal-Yairipok road.

[16] The version of the two persons is sought to be disputed in the following manner:-

While it is stated that Moirangthem Roben Singh was picked up from Thoubal Kshetri Leikai at around 1 am and Kh.Rome Singh was picked up from Samaram at around 2.30 am and the two bullet ridden bodies were found at Thoubal Kshetri Leikai at 4.30 am in the morning.

The allegation that they were picked up from two different places by 50 army personnel could not have gone unnoticed and the allegations of Assam Rifles beating up the inmates of the husband and taking away two persons at different times and at different places and killing them at another place, appears to be a concocted story. There is no protest by any people of the village upon discovery of the dead body and there was no legal recourse taken by either of the petitioners from the date of incident i.e. 7th July, 2003 till 12.3.2018 i.e. for about 15 years. The relevant paragraphs No.5.2, 5.3 and para No.9 of the affidavit-in-opposition filed by the respondent in W.P(C) No.928 of 2018 are extracted as follows:-

"5.2. That, with regard to Para No. 3.2 of the Writ Petition, the deponent begs to submit that the allegation made by the Petitioner herein is purely false, as the documentation record of the operation mentions laying of Mobile Vehicle Check Post (MVCP) upon Thoubal-Yairipok road and not a search operation being conducted at the residence of the deceased, as claimed by the Petitioner.

That, the allegation levelled at Para No. 3.2. of the Writ Petition is denied being untrue and devoid of any substance. It is surprising to note that the deceased was picked up from his residence at 02:30 am and two bullet ridden bodies were found in the same locality at 04:30 am in the morning, which implies that for two hours, he was allegedly beaten by the by the Assam Rifles troops and was shot, while he neither raised any alarm nor anyone from his family came to search for the individual within the same locality for the entire period of time. It is also striking to note that, in the region where people normally wake up by 3:00 am in the morning, no one saw the large number of Assam Rifles troops of about 50, as claimed by the petitioner herein, for 3 hours and 30 minutes in the small locality. This backs up the fabricated nature of the claim of the petitioner herein.

5.3. That, with regard to Para No. 3.3. of the writ petition, the deponent begs to submit that the petitioner herein claim that the local people of the village staged a protest upon discovering the dead bodies, which is surprising that no villagers from the time the suspect was taken away till the dead bodies were recovered, made an endeavour to search, resist and protest against the Assam Rifle troops for 3 hours 30 minutes. It is also surprising to note that, no legal recourse was taken by the petitioner from the date of the incident i.e. 7th July 2003 till 12 March 2018 i.e. for 15 years, except for claiming Rs. 1,00,000/- (Rupees One Lakh Only) as an ex-gratia payment on 02.03.2005, which bears a proof about a weak reasoning/claim of the petitioner herein, in raking up a 15 year old case, most likely for claiming easy money in the form of the sought monetary compensation."

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"9. That, with regard to Para No.9 of the Writ Petition, the deponent begs to submit that as already observed by this Hon?ble Court, the Writ Petition (C) No.927 of 2018 may pleased be read together with this current Writ Petition. As both the petitions have been filed against Union of India in connection with the same event of 07.07.2003, with fabricated allegations against the Assam Rifles.

That, Village Thoubal Khsetri Leikai and Samaram are approximately 14 kilometres apart and as per the petitioner of Writ Petition (C) No. 927 of 2018, the suspect was picked up from Thoubal Kshetri Leikai at around 1 am in the morning on 07.07.2003. The Petitioner of Writ Petitioner (C) No.928 of 2018, i.e. petitioner herein claims that the other suspect was picked up from Samram at around 2:30 am in the morning on the same day.

That, both the petitioners in the above referred writ petition claim that 2(two) dead bodies of the deceased persons were found at around 4:30 am in the morning on the same day at Thoubal Kshetri Leikai, which implies that as per the fabricated claims, the Assam Riffles troops first picked up the deceased in reference of Writ Petition (C) No.927 of 2018 at approximately 1 am in the morning, than travelled to Samaram (approximately 30 minutes), picked up the deceased with reference of Writ Petition (C) 928 of 2018 at approximately 2:30 am in the morning, then travelled back again to Thoubal Kshetri Leikai and extra judicially killed them both, which is surprising in noting that no one saw the large strength of Assam Riffles troops (Approximately 50, as claimed) in doing this ? to and from? business for 3:30 hours."

[17] Considering the above factual backgrounds, it is clear that in both cases, there appears to be undue delay on the part of the petitioners in seeking the legal redress but since they are pleading on fundamental right to life, we are not inclined to non-suit the applications of the petitioners. In the facts of the present cases, the version of the petitioners and the denial by respondent No.2 are in the realm of disputed facts. The nature of incident as alleged by the petitioner is

denied by the respondent No.2 in a very clear and categorical term and the final report of police has been filed stating that there is no clue. All these reference were placed before the Court of competent jurisdiction and hence, if the petitioners have any material to support the further proceeding against the armed personnel as alleged by them, then, the law provides a forum before the Criminal Court in terms of the Code of Criminal Procedure, 1973 despite the fact that the final report of the police has been filed stating that there is no clue in the case. The petitioners will be entitled to approach the Court of competent jurisdiction to lay proper material so as to enable the Court to take cognisance of the offence if there is material to justify the same.

[18] It will be useful to refer to a decision of the Hon'ble Supreme Court in the case of *M/s India Carat Pvt. Ltd. vs. State of Karnataka*; AIR 1989 SC 885 where in a case of cheating and criminal breach of trust, despite police report that this case is of civil nature, the Magistrate proceeded to take up the case against the accused on behalf of the complainant. The High Court set aside the proceedings but the Hon'ble Supreme Court reversed it by examining the provisions of Chapter XII, XIV, XV and XVI of the Code of Criminal Procedure with specific reference to Section 200 of the Cr.P.C. In para Nos. 9, 10, 11, 12, 13, 14 and 16 of the aforesaid case, the Hon'ble Supreme Court held as below:-

"[9] Before we examine the contentions of the learned counsel for the appellant and the second respondent, we may briefly refer to some of the provisions in Chapter XII, XIV, XV and XVI of the Code. Section 155 in Chapter XII pertains to information laid to the police regarding non-cognizable cases and Sub-Section (2) lays down that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Section 156(1) confers power on an officer in charge of a police station to investigate any cognizable case without the order of a Magistrate. Section 156(3) authorises a Magistrate, empowered under Section 190 to order the police to make an investigation as provided for in Section 156(1). The other provisions in the Chapter from Section 157 onwards set out the powers of investigation of the police and the procedure to be followed. Section 169 prescribes the procedure to be followed by an officer in charge of a police station if it appears to him upon investigation of a case that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 prescribes the procedure to be followed by the officer in charge of a police station if it appears to him upon investigation that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 173(1) enjoins a Police Officer to complete the investigation without unnecessary delay. Section 173(2) lays down that as soon as the investigation is completed the officer in charge of a police station should forward to a Magistrate empowered to take cognizance of an offence on a police report, a report in the prescribed form stating the various particulars mentioned in that Sub-Section.

10. Chapter XIV deals with the conditions requisite for initiation of proceedings and as to the powers of cognizance of a Magistrate. For our purpose it is enough if we extract Section 190(1) alone.

"Section 190(1). Cognizance of offences by Magistrates-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."

11. Chapter XV which contains Section 200 to 203 deals with "Complaints to Magistrate". A Magistrate taking cognizance of an offence on complaint is required by Section 200 to examine the complaint and the witnesses present, if any. Section 202 provides that a Magistrate taking cognizance of a case, upon complaint, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Section 203 empowers the Magistrate to dismiss the complaint, if after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding.

12. Chapter XVI deals with "Commencement of Proceedings before Magistrates" and Section 204 empowers a Magistrate to issue summons or a warrant as the case may be, to secure the attendance of the accused if in the opinion of the Magistrate taking cognizance of the offence there is sufficient ground for proceeding.

13. From the provisions referred to above, it may be seen that on receipt of a complaint a Magistrate has several courses open to him. The Magistrate may take cognizance of the offence at once and proceed to record statements of the complainant and the witnesses present under Section 200. After recording those statements, if in the opinion of the Magistrate there is no sufficient ground for proceeding, he may dismiss the complaint under Section 203. On the other hand if in his opinion there is sufficient ground for proceeding he may issue process under Section 204. If, however, the Magistrate thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. Yet

another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down under Section 200 or Section 202, he may order an investigation to be made by the police under Section 156(3). When such an order is made, the police will have to investigate the matter and submit a report under Section 173(2). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(c) and issue process straightaway to the accused. The Magistrate may exercise his powers in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the police report under Section 173(2) will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom. If the Magistrate is satisfied that upon the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence and issue process, the Magistrate may do so without reference to the conclusion drawn by the Investigating Officer because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not. Alternately the Magistrate, on receiving the police report, may without issuing process or dropping the proceeding proceed to act under Section 200 by taking cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statement upon oath of the complainant and the witnesses present and thereafter decide whether the complaint should be dismissed or process should be issued.

14. Since in the present case the Second Additional Chief Metropolitan Magistrate has taken cognizance of offences alleged to have been committed by the second respondent and ordered issue of process without first examining the appellant and his witnesses, the question for consideration would be whether the Magistrate is entitled under the Code to have acted in that manner. The question need not detain us for long because the power of a Magistrate to take cognizance of an offence under Section 190(1)(b) of the Code even when the police report was to the effect that the investigation has not made out any offence against an accused has already been examined and set out by this Court in *Abhinandan Jha & Ors. v. Dinesh Misra*, [1967] 3 SCR 668 and *H.S. Bains v. State*, [1981] 1 SCR 935. In *Abhinandan Jha & Ors. v. Dinesh Misra*, (supra) the question arose whether a Magistrate to whom a report under Section 173(2) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the Police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet but it was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect under Section 156(3) and if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the

offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence, notwithstanding the contrary opinion of the police, the Court observed that the Magistrate could take cognizance under Section 190(1)(c). The reference to Section 190(1)(c) was a mistake for Section 190(1)(b) and this has been pointed out in H.S. Bains (supra).

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16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer ;and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Section 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(b) though it is open to him to act under Section 200 or Section 202 also. The High Court was, there- fore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him."

[19] The Hon'ble Supreme Court has clearly held that the power of the Magistrate to entertain a complaint despite the conclusion arrived at to the contrary by the police after enquiry is authorised by law because Magistrate is not bound to accept the opinion of the police. In the present case also, the law provides the petitioner an opportunity to move the Court of competent jurisdiction despite the fact that the final report has been filed by the police stating that there is no clue in the case. The petitioners are entitled to give fresh and sufficient material to the Court to initiate proceeding as provided under the Code of Criminal Procedure, 1973.

[20] Similar view was taken by the Hon'ble Supreme Court in the case of S.R.Sukumar vs. S.Sunaad Raghuram passed in Cril.Appeal No.844 of 2015 (arising out of S.L.P(CrL.) No.4813 of 2012) decided on 02.07.2015 and the Hon'ble Supreme Court has dealt with the Scope of Section 200 of the Code of Criminal Procedure in the following manner at para Nos. 8, 9, 10 and 11 which are extracted as below:-

"8. Section 200 Code of Criminal Procedure provides for the procedure for

Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 Code of Criminal Procedure "a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any..." clearly suggests that for taking cognizance of an offence on complaint, the Court shall examine the complainant upon oath. The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined that does not mean that the Magistrate has taken cognizance of the offence. Taking cognizance of an offence means the Magistrate must have judicially applied the mind to the contents of the complaint and indicates that Magistrate takes judicial notice of an offence.

9. Mere presentation of the complaint and receipt of the same in the court does not mean that the Magistrate has taken cognizance of the offence. In *Narsingh Das Tapadia v. Goverdhan Das Partani and Anr.* MANU/SC/0555/2000 : AIR 2000 SC 2946, it was held that the mere presentation of a complaint cannot be held to mean that the Magistrate has taken the cognizance. In *Subramanian Swamy v. Manmohan Singh and Anr.* MANU/SC/0067/2012 : (2012) 3 SCC 64, this Court explained the meaning of the word 'cognizance' holding that

"...In legal parlance cognizance is taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially".

10. Section 200 Code of Criminal Procedure contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry Under Section 202 Code of Criminal Procedure or dismiss the complaint Under Section 203 Code of Criminal Procedure Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process Under Section 204 Code of Criminal Procedure Section 202 Code of Criminal Procedure contemplates 'postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated Under Section 203 Code of Criminal

Procedure A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the complaint or by the police report about the commission of an offence.

11. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Code of Criminal Procedure, when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case."

[21] In the present case, there appears to be no impediment for the petitioners to move the competent Court in terms of the provisions of the Code of Criminal Procedure, 1973 more particularly, with the proper evidence because in the present proceedings, the respondent No.2 has disputed all the claims made by the two petitioners on facts. The question of ordering judicial enquiry or for granting compensation at this stage does not arise. We, however, leave it open to the petitioners to take appropriate steps under the provisions of the Code of Criminal Procedure, 1973 and pursue the matter.

[22] With the above observations, both the writ petitions stand disposed of.