

(1996) 08 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Appeal No. 359 of 1996

Maresh Kumar Garg

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156

Citation : (1997) 1 AD 20 : (1996) 64 DLT 232 : (1996) 39 DRJ 814

Hon'ble Judges : Kripa Shankar Gupta, J;Arun Kumar, J

Bench : Division Bench

Advocate : N. Pandey, S.K. Agarwal, D.C. Mathur and V.K. Shall, for the Appellant;

Judgement

Arun Kumar, J.

(1) Petitioner Mahesh Kumar Garg addressed a letter dated 8th May, 1996 to the Chief Justice of this Court making an "Appeal for Justice". The said letter was treated as a Criminal Writ by an order passed by a Division Bench of this Court on 7th June, 1996. The petitioner alleged that his sister Geeta was married to Rajneesh Singhal in the year 1986. She died on 5th January, 1996 in a hospital. The grievances of the petitioner is that the death of his sister is a case of murder covered u/s 302 of the Indian Penal Code. However, the local police in connivance with the family of the in-laws of the petitioner's sister has converted the case into one of suicide. On the basis of a statement made by the petitioner, Fir was registered at the Police Station Rajouri Garden, New Delhi on 5th January, 1996 under Sections .498-A and 306 Indian Penal Code. A suicide note purportedly written by the deceased was made the basis of treating it to be a case of suicide. However, after the Fir was registered under Sections 498-A and 306 Indian Penal Code, the husband and the brother-in-law of the deceased were arrested on the same day. The petitioner has challenged the suicide note. According to the petitioner, the Delhi Police is shielding the culprits and is

manipulating the investigation to the advantage of the culprits. The precise grievances of the petitioner are :

(A) In spite of written information of offence of murder given to the police, complaint for offence u/s 302 Indian Penal Code was not recorded; (b) The police right from the beginning started with a case of suicide and made investigations with that end only; (c) The investigation is highly improper, casual and deliberately made in favor of the accused. The charge sheet filed in the court is required to be reviewed in the light of fresh investigations.

(2) He has prayed for re-investigation of the case to be done by the C.B.I, or the Vigilance/Special Crime Branch of the Delhi Police.

(3) In response to the notice issued to the respondents, an affidavit has been filed by Shiv Raj Singh, Assistant Commissioner of Police, West District, Delhi. After giving some facts of the case, it has been pointed out in the affidavit that on completion of investigation, a challan was filed in the court of the Metropolitan Magistrate, Delhi before the expiry of period of ninety days. An important fact to be noted is that though a challan has been filed, the case is still with the Magistrate. No committal order u/s 209 Criminal Procedure Code has been passed by the Magistrate so far.

(4) At the outset, the learned counsel for the State as also the learned counsel for the opposite party, i.e., the husband's side, have argued that this petition is not maintainable because a more efficacious alternative remedy is available to the petitioner. To be precise, the submission of the learned counsel is that the grievances which the petitioner is placing before this Court can very well be brought to the notice of the learned Magistrate and the Magistrate is fully empowered to give to the police whatever directions he may deem appropriate in this behalf. According to them, when a court of competent jurisdiction is fully empowered to deal with the grievances of the petitioner, this Court should not assume jurisdiction and the petitioner should be left to seek his remedy in the appropriate court.

(5) In response to this argument, the learned counsel for the petitioner submitted that after a challan is filed u/s 173 of the Code of Criminal Procedure, the investigating agency as well as the Magistrate become functus officio and neither of them can direct or carry out further investigation in the matter.

(6) We find that there is merit in the argument advanced by the learned counsel appearing for the respondents. In support of their submissions the learned counsel for the respondents have drawn our attention to the relevant provisions contained in the Code of Criminal Procedure particularly Sections 155, 156 and 173 and 190. From a perusal of these provisions, the scheme qua investigation of crime under the Code appears to be that the area Magistrate is the authority "in command" so far as the incidence of crime in the area falling within his jurisdiction is concerned. Section 155 makes it clear that in non-cognizable offences which are reported to the police, the informant has to be referred to the

Magistrate. Sub-section (2) enjoins that no police officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial. Thus in non-cognizable cases area Magistrate is the source from which the police derives its authority to investigate a crime in his area. So far as cognizable offences are concerned, in view of their serious nature and urgency involved, sub-section (1) of Section 156 of the Code allows the in charge of the police station to investigate the same without an order of the Magistrate having jurisdiction over the area. This, however, does not mean that the Magistrate goes out of the picture. The powers of the Magistrate in this behalf are reserved, reiterated in sub-section (3) of Section 156 Code of Criminal Procedure according to which he can order an investigation as mentioned in sub-section (1) of the said Section. To have a check on the investigation by the Magistrate, Section 157(1) provides that report of an information received at a police station which gives rise to suspicion about commission of an offence which the officer in charge of the police station is empowered to investigate u/s 156 of the Code, should be sent to the Magistrate empowered to take cognizance of such an offence.

(7) This much about the power of a Magistrate regarding investigation of a crime within his area. The next question is: after a challan is filed before the Magistrate does he cease to exercise powers under Sections 155 and 156 of the Code? Earlier, there was some difference of opinion between the High Courts on this point. Some High Courts felt that the Magistrate could not order any further investigation after a challan is filed, while some other high courts took the view that it was not so. Before a Division Bench of the Lahore High Court in Mohd. Niwaz u. The Crown 48 Criminal Law Journal 1947 p.774, a question arose "after a challan has been forwarded by the Police to a Court competent to take cognizance, as a result of investigation into a cognizable offence, are the Police empowered to make further investigation either by order of the Court or otherwise?" Relying on a Division Bench judgment of the Madras High Court to the effect that the investigation into a crime is not limited by law and that when one has been completed, another may begin on further information received, it was held that there was no bar to further investigation even after a challan was filed in Court. In fact, it was felt that an order of a Magistrate was not necessary for carrying out further investigation in view of provisions of Section 156(1) of the Code of Criminal Procedure. This was before the amendment of the Code of Criminal Procedure in the year 1973.

(8) The Law Commission in its Forty-First report of September 1969 recognised the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

"A report u/s 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report u/s 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate

concerned. It appears, however, that Courts have some times taken the narrow view that once a final report u/s 173 has been sent, the police cannot touch the case again and cannot reopen the investigation. This view places a hindrance in the way of the investigating agency which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear to Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused ."

(9) On the basis of the said recommendation, in the Criminal Procedure Code 1973 a new provision was added in the shape of sub-section (8) of Section 173 as under:

"NOTHING in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

(10) SUB-SECTION (8) confers specific powers for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and that investigation has to be done by the investigating agency.

(11) Under sub-section (3) of Section 156 of the Code a Magistrate always has the power to order investigation into a crime and this power does not get extinguished with the filing of a challan before him u/s 173(2) of the Code. This power of the Magistrate u/s 156(3) of the Code was highlighted by the Supreme Court in State of Bihar and Another Vs. J.A.C. Saldanha and Others, of the judgment is reproduced below:

"THE power of the Magistrate u/s 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate u/s 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of. the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). "

(12) Reliance was also placed by the learned counsel for the respondents on Aravindakshan and Another v. State of Kerala and Another 1985 Criminal Law Journal 1389 wherein it was observed: "the power of the court to order further investigation even after taking cognizance of the offence is always there and Section 173(8) need not be understood as empowering the police alone and

prohibiting the Magistrate."

(13) From the point of view of proper administration of justice it is necessary that power of the area Magistrate to order further investigation should not be curtailed or circumscribed. Where fresh material may come to light which would have important bearing on the facts investigated, it will not be in the interest of justice to allow it to remain shrouded. In order to bring out the truth, it is of utmost importance that investigation should be allowed to go unhindered. The aim of every investigation has to be to bring out the truth. In *Ram Lal Narang Vs. State (Delhi Administration)*, , it was observed that: "Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the Code, the right of the police to further investigation is not exhausted and the police can exercise such right as often as necessary when fresh information comes to light. There was no provision in the Code of Criminal Procedure (1898) which, expressly or by necessary implication barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority permits repeated investigations on discovery of fresh facts."

(14) In *Ram Lal Narang's* case, the Supreme Court considered the various judgments on the point before arriving at the conclusion in favor of further investigation into a crime even after filing of challan in the Court of the Magistrate by the investigating agency.

(15) The learned counsel for the petitioner has relied on a judgment of the Gujarat High Court in *Patel Lilabhai Ambalal and etc. Vs. Patel Kanubhai Mafatlal and Others*, . In this case, the High Court ordered further investigation at the instance of the complainant. This authority does not deal with the real question posed before us, i.e., "whether the Magistrate has power to order further investigation into a crime after a challan is filed in his court? Therefore, we are unable to get any assistance from this judgment on the point in issue before us.

(16) In view of the above discussion we conclude that a Magistrate has power to order further investigation into an alleged crime even after a challan is filed by the investigating agency in his court as per Section 173(2) Code of Criminal Procedure. In the present case, the Magistrate is still seized of the matter. He has not so far passed any order u/s 209 Criminal Procedure Code . committing the case to the Sessions Court. Surely the Magistrate is empowered to consider and deal with whatever grievances the petitioner may have and which he may like to place before the Magistrate. We are sure that the Magistrate will consider the grievances of the petitioner if placed before him and pass appropriate orders in accordance with law. In view of the efficacious and appropriate alternative remedy available to the petitioner, we decline to exercise jurisdiction under Article 226 of the Constitution of India. Not only the remedy before the Magistrate is efficacious and appropriate, we are of the view that the court of the

Magistrate is the right forum where the grievances of the petitioner can be considered and appropriately dealt with.

(17) For these reasons, this petition is dismissed as not maintainable.