

(1975) 07 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 153 of 1970

Mehar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-07-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 156(3), 157
Penal Code, 1860 (IPC) — Section 270, 279, 304A

Citation : (1975) 4 ILR HP 455

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; R.K. Gupta, for the Respondent

Judgement

Chet Ram Thakur, J.—The Petitioner prayed for quashing the orders detailed in Annexures B. G. and H and the proceedings for trial started against the Petitioner before the Respondent No. 5.

2. The Petitioner was working as Head-constable in the Police Force at Simla. On 18th December, 1969, the Petitioner along with Shri R. R. Verma, Superintendent of Police and Sub-Inspector Vishnu Datt were travelling in jeep No. HIM 9101. Shri Vishnu Datt had undertaken the journey from Simla to Chailla for traffic checking. The Petitioner as also Shri R. R. Verma, were in his company. The Petitioner was on the wheels. At a place known as village Hath, 14 k.m. away from The of towards Chailla side when it was 4.45 P.M., the jeep was involved in an accident although the Petitioner was driving the vehicle not rashly or negligently but at a slow speed. As a result of the accident one Lokhu Ram was also working as a labourer on the road sustained certain injuries and he was admitted in the Snowdon Hospital where he expired on the same day. Shri Vishnu Datt, lodged a report at the Police Station Theog on 18-12-1969. Thereupon Shri Devi Singh, S. H. O. Theog proceeded to the spot to investigate the matter and after some preliminary investigation, he registered F. I. R. No. 1034 of 18-12-1969 at 8 P. M. under Sections 279/304A of the Indian Penal

Code. He also submitted a copy of the F. I.R. to Respondent No. 7 who was posted as Magistrate 1st Class, at Theog on 19th December, 1969. While submitting report to Respondent No. 7 mentioned therein i. e. in the report, although the preliminary investigation carried out by him disclosed no negligence of the Petitioner, but since the injured i.e. Lokhu Ram had died, the case was being registered and the further investigation was carried out in accordance with law. The Magistrate on receipt of this report passed an order whereby he decided to hold an enquiry as contemplated u/s 159 of the Code of Criminal Procedure He further ordered that he had decided to hold an enquiry into the cause of death of Shri Lokhu Ram, instead of the enquiry held by Respondent No. 6 as contemplated by Section 176 Code of Criminal Procedure A copy of this order was sent to the S. H. O. Respondent No. 6 as also to the Superintendent of Police, Mahasu, Respondent No. 2. The former received the copy of the order late in the evening of 23-12-1969. It is alleged that the Respondent No. 6 was not aware of the mind of the Respondent No. 4. Consequently in accordance with the provisions of Code of Criminal Procedure he went ahead with the investigation of the case. He after receipt of the orders, sent the communication to Respondent No. 7 who was working as Magistrate first class, Theog, to the effect that he had already completed the investigation of the case, F. I. R. No. 134 dated 18th December, 1969. He sent his report through the Additional Police Prosecutor who gave his opinion on 29th January, 1970, to the effect that the Petitioner was not responsible for the injuries sustained by Lokhu Ram, deceased and he was not guilty of rashness and negligence as the accident was due to the fault of the injured. He recommended that the case against the Petitioner be cancelled. The report of the Respondent No. 6 along with the opinion of the Additional Police Prosecutor was sent to the Police Prosecutor, Mahasu district, who in turn, by his order dated 31-1-1971 agreed with the opinion of the Additional Police Prosecutor, Theog, and the report of Respondent No. 6. The papers were placed before the Respondent No. 2 who agreed with the facts and opinion of his subordinates and forwarded the papers to the Respondent No. 7 who was working as Magistrate, first class, Kasumpti, with the request that the case be ordered for cancellation. It appears that Respondent No. 7, who was working as Magistrate first class, proceeded with the investigation in the light of the order made by him. He held the enquiry at the back of the Petitioner and submitted an enquiry report on 25th May, 1970 to Respondent No. 3, the District Magistrate, Mahasu. In the report it had been observed:

In view of all these and several other discrepancies contained in the case as made out by the investigating officer, which emerge from a comparative appraisal of the police file and the enquiry file, I am not at all inclined to accept the report for cancellation of the case as recommended by the Deputy Superintendent of Police. A Magistrate cannot ask the police to submit a challan against the accused person. Moreover since the enquiry has been conducted by me and I have, inter alia, come to the prima facie conclusion that a case exists against Shri Mehar Singh driver, under Sections 279 I.P.C. and 304A I.P.C., I

suggest that the District Magistrate may kindly consider the desirability of entrusting this case to another competent court for trial of Mehar Singh accused in accordance with law.

After this the Respondent No. 3 entrusted the case to Respondent No. 5, that is, the Sub-Divisional Magistrate Solan for disposal according to law by his order dated 10th August, 1970. Thereafter the Respondent No. 5 took cognizance of the case and issued summons to the Petitioner for facing the trial for the alleged commission of offence under Sections 279/304A of the I.P.C. According to the Petitioner, the orders are illegal, ultra vires, arbitrary and without jurisdiction on the ground that Respondent No. 7 purported to have passed the order detailed in Annexure B acting u/s 159 of the Cr.P.C., which provision was not applicable to the circumstances of the case. Similar provision of Section 176 of the Code of Criminal Procedure could not be invoked by Respondent No. 7. A condition precedent for exercise of the power under the said provisions are detailed in Section 174 of the Code of Criminal Procedure Since the provisions of 174 Code of Criminal Procedure are not attracted in the case, the exercise of the power u/s 176 Code of Criminal Procedure is totally without foundation. The Respondent No. 6 was fully authorized to carry out the investigation u/s 157 Code of Criminal Procedure The Magistrate cannot assume to himself the role of a complainant and that the entire proceedings are without jurisdiction. The District Magistrate had no power to pass the impugned order entrusting the trial of the case to Respondent No. 5. Further the order Annexure G is liable to be struck down for the reasons that the provisions of Punjab Police Rules, 16.38 (i) and 16.38 (ii) have not been complied with. The Respondent No. 5 had no jurisdiction to take cognizance of the offence allegedly committed by the Petitioner on the basis of the order passed by Respondent No. 3. The cognizance of the offence can only be taken under the provision of Section 190 of the Code of Criminal Procedure and in no other way.

3. In reply by the Respondents, it was submitted that there were reasonable grounds to believe that the injuries to Shri Lokhu Ram which resulted in his death were caused by the rash and negligent driving on the part of the Petitioner. The observations made by the Station House Officer in the F. I.R. were premature. The endorsement with recommendation for the cancellation of the case made by Shri Durga Singh, District Inspector of the Police, was received in the office of Respondent No. 4 on 9-2-1970 when the enquiry in pursuance of order Annexure B was in progress. As the Respondent No. 4 disagreed with the investigation report sent by the S.H.O., the former had taken cognizance of the offence under Sections 279 and 304A I.P.C. against the Petitioner for which there was prima facie evidence and as the Respondent No. 4 had conducted enquiries himself, it was desirable on his part not to hold the trial himself and, therefore, he requested the District Magistrate to entrust the case to some other Magistrate for trial. The Respondent No. 4 had initiated the enquiries u/s 159 Code of Criminal Procedure simultaneously holding the enquiry u/s 176 Code of Criminal Procedure . There is no legal bar for the Magistrate in such circumstances to

make enquiries simultaneously with the investigations being conducted by the S.H.O. As far the provision contained in P. P. R. 16.38 (i) 16.38 (ii) they had no application to the facts of the case and cognizance of the offence taken, u/s 279 and 304A by the Respondent No. 4 was quite valid under the law.

4. The first point that arises for consideration is, whether Respondent No. 4, i.e. the Magistrate could hold an investigation u/s 159 Code of Criminal Procedure in the circumstances of the case. This section reads as:

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 manner provided in this Code.

In order to fully understand the import of this section it would be proper to give the scheme of the provisions of Chapter XIV in Part V. This chapter deals with the powers of the police to investigate into the cases mentioned in the various sections under this chapter. Section 154 provides that where information is received as to the commission of cognizable offence, it shall be entered into a book to be kept by such officer in such form as may be prescribed in that behalf. Section 155 talks about the information received as to the commission of a non-cognizable offence and the police officer receiving such information is required to enter that information in a book to be kept. In case of a non-cognizable offence, the police officer is not to investigate the non-cognizable case without the order of a Magistrate having power to try such cases. Section 156 also talks about the investigation into the cognizable case, and, for investigation into such case no sanction of the Magistrate is required. Under Sub-sections (3) where no complaint has been made to a Magistrate but he gets information in respect of any cognizable case, he may under the provisions of Sub-section (3) order the police to investigate it. Section 157 talks about the sending of the report by the police officer of a cognizable offence to a Magistrate empowered to take cognizance of such offence upon a police report and he himself shall proceed in person, or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and for discovery and arrest of the offender. Under Clause (b) of Sub-section (1) of Section 157, if it appears to the officer incharge of the police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. Therefore, from this proviso, it is clear that the officer of the police station is given full discretion whether or not to investigate the case. He can refuse to investigate when he thinks that there is no sufficient prima facie case made out or the report appears to be false or the dispute is of a civil nature. Section 158 talks about the manner in which the reports u/s 157 are to be submitted to a Magistrate and then Section 159, as already mentioned above, provides that on receipt of such a report as mentioned in Sections 157 and 158, the Magistrate may direct an investigation or if he thinks fit at once proceed or depute a Magistrate to hold a preliminary enquiry in the manner provided in the Code. But the perusal of this

section would reveal that it does not empower a Magistrate to restrain the police investigation.

5. In the present case the police officer submitted his final report in the case on 23-12-1969 and the same is marked as Annexure (D), and he had informed the Magistrate first class, Theog, with reference to his order, dated 23rd December, 1969, that the investigation of the case in F. I. R. No. 134 of 1969 dated 18-12-1969, under Sections 270/304A I.P.C. had already been completed and final report had been prepared. This is Annexure (C). Annexure B is the order of the Magistrate, i. e. of Respondent No. 4 passed on the date when the officer of the police station submitted a copy of the F.I.R. after a preliminary investigation. Therefore, the question as already posed for determination is whether the Magistrate in the circumstances of this case could proceed to hold an enquiry under the provisions of Section 159. A similar question came up for consideration in *Abhinandan Jha and Others Vs. Dinesh Mishra*, Formerly there was a conflict of opinion on this point, between the various High Courts in India. The High Courts of Madras, Calcutta, Madhya Pradesh, Assam and Gujarat had taken the view that the Magistrate has no power, whereas the Patna and Bombay High Courts have held a contrary view. Their Lordships of the Supreme Court after giving the scheme of the various provisions under Chapter XIV of the Code of Criminal Procedure observed that the formation of an opinion as to whether or not there is a case to place the accused on trial, has been left to the officer incharge of a police station. Therefore, on the basis of the ratio laid down above the action of the Magistrate in holding a preliminary enquiry was wholly un-warranted. He could have taken cognizance of the case as contemplated u/s 190 Code of Criminal Procedure on a complaint made to him and not on a copy of the report submitted by the police as contemplated under Sections 157 and 158 of the Criminal Procedure Code. No doubt the Magistrate could differ with the opinion formed by the police after having submitted the final report, but he could not proceed to investigate into the case under the provision of Section 159 as observed by their Lordships in this case. In *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, also it had had been 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. In the instant case it is quite evident from Annexures (C) and (D) that the police had submitted a complete report after proper and due investigation as contemplated under the Code and, therefore, in these circumstances it was not open for the Magistrate to have ordered a preliminary enquiry under the provisions of Section 159. He could only direct such enquiry if the police had decided not to investigate the case so as to empower the Magistrate to intervene and hold a preliminary enquiry himself. The learned Counsel for the Respondents has got nothing to say in so far as this part of the case is concerned. Therefore, the action of the Magistrate in taking upon himself to investigate the matter

when the police was investigating and had also filed the final report for cancellation of the case is without jurisdiction.

6. Now I come to the second part of the case. The Magistrate had observed in his order Annexure B that he would also proceed to hold an inquest into the cause of death of Shri Lokhu Ram, as contemplated u/s 176 Code of Criminal Procedure. There can be no denying fact that a Magistrate is empowered to hold an inquest either instead of or in addition to the investigation held by the police officer and if he does so he shall have all the powers in conducting it which he would have in holding into the offence. According to *In Re: Laxminarayan Timmanna Karki*, it has been held that Section 176 proceeds upon the basis that enquiry into a suspicious death should not depend merely upon the opinion the police may form, but that there should be a further check by enabling a local Magistrate to hold an independent enquiry. In the instant case the enquiry as contemplated by the Magistrate was not held instead of the investigation conducted by the police officer but it has been held in addition to the investigation conducted by the police officer. Therefore, in so far as the order for conducting the inquest made by the Magistrate is concerned, the same is not bad. What the learned Counsel for the Petitioner contends is that in order to enable a Magistrate to hold inquest u/s 176, the requirements of Clauses (a), (b) and (c) of Sub-section (1) of Section 174 Code of Criminal Procedure must be satisfied. Section 174 relates to the enquiry to be conducted by the police and to report on suicide. The relevant provisions which may be applicable in the present case are Sub-clauses (b) and (c) of Section 174. Under this section the police officer incharge of the police station is to send intimation of any such information with regard to the case of suicide or of any offence as enumerated under Clauses (b) and (c) to the nearest Magistrate empowered to hold inquest and himself shall proceed to the place where the body of such deceased person is and there in the presence of two or more respectable inhabitants shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument such marks appear to have been inflicted, and thereafter that report shall be forwarded to the District Magistrate or the Sub-Divisional Magistrate. On the basis of this the learned Counsel contends in the present case that the dead body had been cremated and there was nothing to enable the Magistrate to hold an inquest into the cause of death. In other words what he means is that unless the dead body is there no inquest can be held and he relies on *Gul Hassan Shah v. The Crown* 1908 (65) P.L.R. 245. In this case it had been observed that it appears from the record that the offence under investigation when the Petitioner was interrogated by the police, was committed eighteen months before the investigation. The body of the man alleged to have been killed had long since disappeared. Under these circumstances Section 174 of the Code of Criminal Procedure was held to be inapplicable as it is intended to be applied to cases in which an inquest is necessary and the investigation must be treated as having been made under the earlier section of Chapter XIV of the

Code. The object of this section in fact is to ascertain the cause of death and, therefore, the inquest is limited to the extent only, and it is not to enquire into the facts as to who had actually caused the death. Therefore, it is with that intention that the police officer is to proceed to that place where the dead body of such person is and to make investigation and draw a report of the apparent cause of death describing the wounds etc. that may be found on the dead body and the manner or by what weapon or instrument such marks appear to have been inflicted. But in the instant case, it was an inquest by the Magistrate. Therefore, the Magistrate could not in fact carry out the inquest in the manner as laid down u/s 174. When we read Sub-section (2) of Section 176, it would appear that it gives the power to the Magistrate to disinter the dead body of any person who has already been interred to make an examination if he considers it expedient in order to discover the cause of his death. This means that if the Magistrate does not think it necessary to examine the dead-body then the same need not be disinterred and in the instant case the body had already been cremated and, therefore, there was no question of disinterring the same and the Magistrate in my opinion, keeping in view the provision of Sub-section (2) of Section 176 can proceed to make an inquest without the presence of the dead-body. Therefore, in these circumstances, I think this authority will not be of any assistance. The presence of the dead body to enable a Magistrate to hold an inquest u/s 176 is not a sine qua rum.

7. Therefore, in these circumstances, I am of the view that the Magistrate is empowered u/s 176 to conduct an inquest instead of or in addition to the investigation held by the police. He was justified in proceeding to make an inquest into the case and in my opinion, it was not necessary that the dead-body should have been there in order to enable him to proceed with the inquest. It is no doubt true that u/s 174 the police is to proceed to the spot and after examining the dead-body, make observation about the wounds and the manner in which the wounds appears to have been caused and the weapon by which the same had been caused. But it is not necessary that the Magistrate also must examine the dead body before he could proceed with the inquest. It is left to his discretion as would be apparent from Sub-section (2) of Section 176. If he does not think it necessary to disinter then there is nothing to prevent him from proceeding with the inquest. Therefore, the submission made by the learned Counsel for the Petitioner that without the presence of the dead-body the inquest conducted by the Magistrate is not valid, is not correct.

8. Once I come to the conclusion that the inquest conducted by the Magistrate was valid, then it is also correct that he could not personally take cognizance of the case and he had to send the same to the District Magistrate and which he rightly did. The District Magistrate also in his turn has not done any illegal or unwarranted act in entrusting the case for trial to the Sub-Divisional Magistrate, Solan, which was then a part of the then Mahasu district. Therefore, the orders passed by the District Magistrate as also order Annexure B cannot be said to be invalid and they must stand.

9. The result, therefore, is that in so far as the first portion of the order Annexure B, whereby the Magistrate proceeded to conduct investigation under the provision of 159, the same is not valid and is hereby quashed, but in so far as the subsequent order taking upon himself to proceed with the inquest is concerned, the same is quite valid and so is the order of the District Magistrate and the petition in that behalf is accepted. The petition, therefore, is accepted in part. No order as to costs. The case is, therefore, remanded to the Chief Judicial Magistrate, who shall try the case himself or entrust the same for trial to any other competent court.