

(1996) 07 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 814 of 1996

Mohd. Faizuddin

APPELLANT

Vs

G. Ramakrishna Reddy and Others

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 154(1), 156(3), 173(2), 190, 200

Penal Code, 1860 (IPC) — Section 420

Citation : (1996) 4 ALT 123

Hon'ble Judges : P.S. Mishra, C.J.; Syed Saadatulla Hussaini, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; M.N. Narasimha Reddy and Government Pleader for Home for Respondent Nos. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Heard.

2. This appeal has arisen from the order in Writ Petition No. 1011 of 1996 directing, inter alia, the Station House Officer, Shamsheergunj Police Station, to transmit all the papers relating to Crime No. 11 of 1994 to the C.B.C.I.D. and the concerned Circle Inspector to investigate the case and take necessary action in accordance with law. It is not disputed that the writ petitioner - respondent No. 1 lodged a complaint with Shamsheergunj Police Station, Hyderabad, that one Mohd. Faizuddin - appellant herein purchased 5376 Sq. Yds. of land and issued as many as 35 cheques amounting to Rs. 17,33,960/-. On the strength of the cheques, he got from the writ petitioner respondent sale deeds executed in the name of his nominees on 23-9-1993 and 24-9-1993. When, however, he (the writ petitioner - respondent) presented the cheques for encashment, they were bounced as there was no amount of money to the credit of the appellant. Writ Petitioner - respondent thus lodged the complaint and the Shamsheergunj police

registered Crime No. 11 of 1994. Mainly alleging laxity on the part of the police and seeking accordingly that the matter be investigated by some other agency, the writ petitioner - respondent has come to the Court.

3. Notice before admission was issued in the writ petition. A counter affidavit has been filed and the Investigating Officer-Inspector of Police, Shamsheergunj Police Station, has stated therein that the original cheques were not shown to him by the complainant, the xerox copies filed by the complainant were sent by him to the Magistrate's Court along with the F.I.R. and that the writ petitioner-respondent did not even produce any evidence or witnesses to prove the elements of cheating necessary to be proved u/s 420 of the Indian Penal Code. Learned single Judge has, however, ordered as follows:

"The stand taken in the counter is not convincing. This Court can safely believe that there was a reason for the petitioner to complain about the laxity and favour shown by the concerned police station to the fifth respondent. I cannot enter into the merits of the case as the matter has to be investigated and more so in a criminal case like this but it should be effective and unbiased. In the circumstances, the Station House Officer, Shamsheergunj Police Station is directed to transmit all the papers relating to Crime No. 11 /94 to the C.B.C.I.D. Department and the concerned Circle Inspector shall investigate into the matter and take necessary action in accordance with law."

4. A person who is subjected to any offence particularly cheating and criminal breach of trust, is entitled to inform the police and the law enjoins the Officer-in-charge of the concerned police station to register the case for investigation. In case the Officer-in-charge of the police station does not act as contemplated u/s 154(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the informant/complainant has the option to send the substance of such information in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, is required either to investigate the case himself or direct an investigation to be made by any police officer subordinate to him. Except in cases which are non-cognizable, the officer-in-charge of the police station has no option and he is required to report of the progress in the investigation and finally to submit the report as contemplated u/s 173(2) of the Code.

5. Apart from the directions which the Magistrate can issue u/s 156(3) of the Code, he, even before cognizance of offence as contemplated u/s 190 of the Code, can receive complaint from the informant/ complainant and such complaint by him may be one as contemplated u/s 200 of the Code or only by way of a protest to the investigation by the police.

6. In *Abhinandan Jha and Others Vs. Dinesh Mishra*, the Supreme Court has stated with reference to the provisions of the old Code of Criminal Procedure, Section 190, that when a final report is received by a Magistrate, he is free to differ with the conclusions of the Police, that he can take cognizance of the

offence as found by him and on the basis of the report and the materials furnished by the police in support of the report, can direct for reinvestigation. The Supreme Court has in the said judgment, observed as follows:

" There is certainly no obligation on the Magistrate to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police to take cognizance u/s 190(1) (c) of the Code. "That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police either wantonly or through bonafide error, fail to submit a report setting out the facts constituting the offence."

7. In *Bhagwant Singh Vs. Commissioner of Police and Another*, the Supreme Court has noticed the law as follows:

"Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under Sub-section 2(i) of Section 173 comes up for consideration by the Magistrate, one of the two different situations may arise. A report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things; (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceedings, or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in the case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceedings or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against the others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant is prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154 and sub-section (2) (ii) of Section 173, it must be

presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issued process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2) (i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant the opportunity of being heard at the time when the report is considered by the Magistrate."

8. Bhagwant Singh's case (supra) also is an authority for the proposition that there is no obligation under the Code of Criminal Procedure or from the principle of natural justice, on the Magistrate to issue notice to the injured person or to a relative of the deceased in a case of murder/ culpable homicide for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has launched the First Information Report and observed, "even if such person is not entitled to notice from the Magistrate he can appear before the Magistrate and make his submission when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. In the words of the Supreme Court:

"The injured person or any relative of the deceased though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though Magistrate is not bound to give notice of the

hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect of the order which may be made by the Magistrate on a consideration of the report."

9. Considering the above and particularly the role Section 210 of the Code has to play, a Division Bench of the Madras High Court in *Padmini Vs. The State of Tamil Nadu and others*, has stated, ""the Magistrate was duty bound to ensure that a copy of the report was served upon the informant." The informant thus has the right of being heard by the Magistrate against any discharge of the accused on the basis of the report of the police and if necessary, to ask for further investigation or even evidence by way of enquiry as contemplated u/s 202 of the Code read with Section 210 thereof.

10. There should be no misapprehension in the mind of any person that unless a complaint in writing is filed in the court, then only a complaint is made. "Complaint" is defined in Section 2(d) of the Code of Criminal Procedure as follows:

"2(d): "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report.

Explanation:- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made be deemed to be the complainant."

11. Thus protesting early in course of the hearing to which, as the informant, the writ petitioner - respondent is entitled to, he can legitimately place his complaint before the Magistrate and the Magistrate, after hearing him, may decide how to proceed in the matter - (1) whether to reject the police opinion and take cognizance on the basis of the materials collected by the police in course of the investigation; (2) whether to order reinvestigation; and (3) whether to proceed on the basis of the complaint of the informant. When there are such secured and protected paths carved out by the Code of Criminal Procedure for any person* complaining about commission of an offence, it seems rather unbecoming of a law abiding person to just throw a petition in the High Court under Article 226 of the Constitution of India and blame the investigation for laxity as the writ petitioner-respondent has done in the instant case. We are informed at the hearing of the appeal that the police has since submitted the report. The writ petitioner-respondent as the informant is entitled to a notice and hearing at the time of taking cognizance or accepting the police report, as the case may be. If some evidence has not been shown in the report of the police which evidence,

according to the writ petitioner-respondent, will go a long way to establish the guilt of the alleged offenders, it shall be open to him to produce the same before the Magistrate. It is a fit case thus, in our opinion, to reject the writ petition at the threshold and leave the writ petitioner-respondent to proceed in accordance with law hoping that he shall have the trust in the system of law and the Magistrate, who shall hear him, shall apply his mind to the allegations made by him.

12. In the result, we do not see any merit in the writ petition and so the impugned order, in our opinion, is fit to be set aside. It is accordingly set aside. The appeal is allowed in terms as above.