

(2019) 03 MP CK 0154

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 12217 Of 2019

Nilesh Pandey

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41, 173(1), 482
Indian Penal Code, 1860 — Section 34, 307

Citation : (2019) 03 MP CK 0154

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Ajay Shankar Dandotiya, P. Pandey

Final Decision : Disposed Off

Judgement

This application under Section 482 of Cr.P.C. has been filed seeking a direction to the respondents no.2 and 3 for arresting the accused and for filing the charge sheet in Crime No.753/2017 registered at Police Station Bahodapur, District Gwalior for offence punishable under Sections 307/34 of IPC.

It is submitted by the counsel for the applicant that a complaint was made by the applicant. On the basis of the aforesaid complaint, the police registered the FIR under the aforesaid Sections, but it has not concluded the investigation so far.

So far as the prayer made by the applicant for issuing a direction to the police to arrest the accused persons and to file the charge sheet is concerned, the same cannot be granted.

The Supreme Court in the case of D. Venkatasubramaniam v. M.K. Mohan Krishnamachari reported in (2009) 10 SCC 488 has held as under :-

"19. The High Court, within a period of one month from the date of filing of the petition, finally disposed of the same observing that, "it is obligatory on the part of the respondent police to conduct investigation in accordance with law,

including recording of statements from witnesses, arrest, seizure of property, perusal of various documents and filing of chargesheet. It is also needless to state that if any account is available with the accused persons, or any amount is in their possession and any account is maintained in a nationalised bank, it is obligatory on the part of the respondent police to take all necessary steps to safeguard the interest of the aggrieved persons in this case".

The Court accordingly directed the police to expedite and complete the investigation within six months from the date of receipt of a copy of the order. The said order of the High Court is impugned in these appeals.

* * * *

25. It is the statutory obligation and duty of the police to investigate into the crime and the courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. In *M.C. Abraham v. State of Maharashtra* (2003) 2 SCC 649 this Court observed: (SCC pp. 657-58, para 14)

"14. ... Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection."

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31. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seizure of property and filing of charge sheet. It is difficult to discern as to how such directions resulting in far reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 of the Code. The High Court interfered with the investigation of crime which is within the exclusive

domain of the police by virtually directing the police to investigate the case from a particular angle and take certain steps which the police depending upon the evidence collected and host of other circumstances may or may not have attempted to take any such steps in its discretion.

32. It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 of the Code conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself.

33. Yet another aspect of the matter, the appellants have not been impleaded as party respondents in the criminal petition in which the whole of the allegations are levelled against them. The High Court never thought it fit to put the appellants on notice before issuing appropriate directions to the police to arrest, seize the property and file charge sheet. This Court in *Dinine Retreat Centre V. State of Kerala & Ors.* (2008) 3 SCC 542 observed: (SCC p.565, para 51)

"51.....We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such (2008) 3 SCC 542 order results in drastic consequences of affecting one's own reputation."

(emphasis is of ours)

34. The High Court in the present case, without realizing the consequences, issued directions in a casual and mechanical manner without hearing the appellants. The impugned order is a nullity and liable to be set aside only on that score.

36 .The power under Section 482 of the Code can be exercised by the High Court either suo motu or on an application (i) to secure the ends of justice; (ii) the High Court may make such orders as may be necessary to give effect to any order under the Code; (iii) to prevent abuse of the process of any Court. There is no other ground on which the High Court may exercise its inherent power.

37. In the present case, the High Court did not record any reasons whatsoever why and for what reasons, the matter required its interference. The High Court is not expected to make any casual observations without having any regard to the

possible consequences that may ensue from such observations. Observations coming from the higher Courts may have their own effect of influencing the course of events and process of law. For that reason, no uncalled for observations are to be made while disposing of the matters and that too without hearing the persons likely to be affected. The case on hand is itself a classic illustration as to how such observations could result in drastic and consequences of far reaching in nature. We wish to say no more.

42. For the aforesaid reasons, we find it difficult to sustain the impugned judgment of the High Court. Leave granted. The appeals are accordingly allowed and the impugned order is set aside. "

Thus, this Court cannot supervise the investigation and giving a direction to file the charge sheet would certainly amount to supervising the investigation.

Section 173(1) of Cr.P.C. reads as under :

"173. Report of police officer on completion of investigation.- (1) Every investigation under this Chapter shall be completed without unnecessary delay."

Thus, completion of investigation without unnecessary delay is the mandate of the law. The Investigating Officer cannot keep the investigation pending and he has to come to a conclusion that whether any offence is made out or not? It is obligatory on the part of the Investigating Officer to conclude the investigation, as early as possible, and to file the final report (Closure report or charge sheet) without any delay. Thus, this application is disposed of in the light of the mandatory provision of Section 173(1) of Cr.P.C. and the Investigating Officer is directed to conclude the investigation as early as possible and to take necessary steps as required under the law.

In case of any grievance, the applicant is free to make an application to the Superintendent of Police, Gwalior which shall be looked into in accordance with law.

With aforesaid observations, the application is finally disposed of.