
(2003) 10 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 47204-M of 2003

Pawan Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Citation : (2004) 1 AICLR 360 : (2004) 1 Cri.CC 200 : (2003) 4 RCR(Criminal) 725

Hon'ble Judges : M.M.Kumar, J

Advocate : Shri Ramesh Chahal, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity the Code) prays for quashing of FIR No. 456 dated 21.8.2002 P.S. City Hisar under Sections 494/323/506/34 IPC. The FIR has been registered on the basis of the complaint filed by one Smt. Kamlesh before the Judicial Magistrate Ist Class, Hissar. The FIR discloses commission of offences by the husband of the complainant Pawan Kumar in connivance with others of entering into second marriage during the subsistence of the earlier marriage between Pawan Kumar and Kamlesh. It has been alleged that Pawan Kumar has married one Poonam, petitioner accused No. 2 and they have committed offence under Sections 494/323/506 IPC read with Section 34 IPC. The Magistrate exercising powers under Section 156(3) of the Code directed the police to investigate the allegations against the petitioner accused. Accordingly, the police has investigated and submitted its report under S. 169 of the Code on 28.9.2002 concluding that the allegations in the complaint were false. However, the police issued notice dated 5.6.2003 to the petitionersaccused under Section 160 of the Code directing them to appear in case FIR No. 546 dated 21.8.2002.

2. Shri Ramesh Chahal, learned counsel for the petitioner has argued that FIR in his case is liable to be quashed because once cancellation report under Section 169 of the Code has been filed recording the finding that the allegations against

the petitioners were false no proceedings could be initiated thereafter against them. Learned counsel has further submitted that even the Magistrate not entitled to refer the case to the police under Section 156(3) of the Code because the only course available to him is to proceed by recording preliminary evidence under Section 200 of the Code. The whole procedure adopted by the Magistrate is illegal and, therefore, the FIR as well as the subsequent proceedings are liable to be quashed.

3. After hearing the learned counsel at some length, I do not find any legal ground to quash the FIR because various ingredients of different penal Sections mentioned in the FIR have been fulfilled and it was prima facie established from the allegations that the petitioners have committed those offences. It is true that the police after investigation has submitted its report under Section 169 of the Code showing lack of evidence against the petitioners accused but that report is yet to be accepted by the Magistrate. However, that itself does not absolve the petitioners accused from the allegations levelled in the FIR because despite the report under Section 169 of the Code, the Magistrate has been adequately empowered to proceed against the accused petitioners if on the basis of his own analysis he finds substance in the allegations levelled against the petitioners accused. It is one thing to say that the police after investigation has found the petitioner accused innocent regarding the offences alleged to have committed by them and it cannot be directed to present a challan. However, it is quite another thing that the Magistrate despite the report under Section 169 of the Code could proceed against the petitioner accused because the police report is not the final word about the guilt of the accused. In somewhat similar situation, the Supreme Court in the case of H.S. Bains v. State, 1980(4) SCC 631 has taken the aforementioned view. The mere fact that Magistrate has earlier ordered investigation by the police by exercising powers under Section 156(3) of the Code would not constitute a valid ground to reach the conclusion that the FIR or the complaint is liable to be quashed. The following observations of their Lordships in this regard may with advantage be noticed :

"On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the police and he may decide to issue process even if the police recommended that there is no sufficient ground for proceeding further. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements

upon oath of the complainant and the witnesses present under Section 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156(3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Secs. 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an enquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be." (emphasis added)

4. The Supreme Court also distinguished the earlier view taken in the case of *Abhinandan Jha v. Dinesh, Mishra* AIR 1968 SC 117 clarifying that the role of the police/investigating agency and that of the Court is well defined under the Code. It further held that they do not interfere in the field of each other. On the one hand, the Magistrate cannot direct the investigating agency to present a challan where the police has come to the conclusion that there is no evidence but at the same time nothing deter the Magistrate from proceeding on his own by recording preliminary evidence and then issue the process against the accused. Therefore, the police report submitted under Sections 169 or 173 of the Code are not the final word with regard to the judicial discretion to be exercised by the Magistrate.

5. The argument raised by the learned counsel for the petitioner that under Section 198 of the Code, the Magistrate could proceed only on the basis of the complaint without referring the matter to the police for investigation under Section 156(3) of the Code has not impressed me because a perusal of Section 198(1)(c) of the Code shows that the Magistrate could proceed against the accused if the complaint under Section 494 of the Code is presented by the person aggrieved i.e. by wife herself or by her father, mother, brother, sister, son or daughter so on and so forth. The submission of the learned counsel that the expression 'complaint' used in Section 198(1)(c) of the Code should be narrowly construed to mean only a private complaint is also not acceptable because even in respect of private complaint, the Magistrate can exercise power under Section 156(3) of the Code and direct the investigation by the police because there is no embargo placed on the power of the Magistrate to direct investigation of even noncognizable offences by the State investigating machinery. Moreover, in the instant case, the offences alleged to have been committed by the petitioner/accused includes offences under Section 506 read with Section 34 IPC

which were cognizable in nature as per the Code. In any case, such an argument cannot constitute the basis for quashing the FIR and subsequent proceedings at this stage. The argument is wholly misconceived and is thus liable to be rejected.

6. For the reasons recorded above, this petition fails and the same is dismissed.