
(2002) 09 AHC CK 0160

In the Allahabad High Court

Case No : Criminal Miscellaneous A. No. 7793 of 2002

Pooran Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1)

Citation : (2003) CriLJ 2275 : (2003) 2 RCR(Criminal) 737

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : N.L. Pandey, for the Appellant; Ashwani Kumar Misra, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

U.S. Tripathi, J.—This petition u/s 482, Cr. P. C. has been filed for quashing the order dated 30-7-2002, passed by Addl. Chief Judicial Magistrate, Muzaffar Nagar, rejecting the final report, taking cognizance against the applicants and summoning them for trial under Sections 420, 467 and 468, 1. P. C.

2. Opposite party No. 3, Sompal Singh moved an application before the A. C. J. M., Muzaffar Nagar u/s 156(3), Cr. P. C. for ordering Station Officer, Charthawal for registration of case and investigation against the applicant with the allegations that they prepared a forged and fictitious document in order to take wrongful gain and committed cheating with Kisan Sewa Sehkari Samiti, Biralasi and committed offence punishable under Sections 420, 467 and 468, I.P.C. After investigation the police submitted final report. On receipt of the above final report notices were issued to the complainant. He filed protest petition. The learned Magistrate on considering the above protest petition and evidence collected during investigation rejected the final report and summoned the applicants for trial for the offence punishable under Sections 420, 467 and 468, I. P. C.

3. The above order has been challenged in this petition.
4. Heard Shri N.L. Pandey, learned counsel for the applicant, learned AGA for opposite party No. 1 and 2, Shri Ashwani Kumar Misra, learned counsel for opposite party No. 3 and perused the record.
5. The contention of the learned counsel for the applicant was that the learned Magistrate has wrongly summoned the applicant and if he had to summon them he would have adopted the procedure for complaint case and would have made inquiry as envisaged u/s 200 and 202, Cr. P. C. and, therefore, the order of the Magistrate without complying above procedure was bad in law.
6. On the other hand the learned counsel for the opposite party No. 3 contended that the learned Magistrate has adopted the correct procedure.
7. Having gone through the legal position I find that the contention of the learned counsel for the applicant is not tenable.
8. The Apex Court in the case of Abhinandan Jha and Others Vs. Dinesh Mishra, had answered the dealing with the report submitted by the police u/s 173, Cr. P. C. that no case is made out for sending up an accused for trial, which report as to call a "final report". It was held that even in those cases if the Magistrate agrees with the said report, he may accept the final report and close the proceedings, but there may be instances when the Magistrate may take a view on consideration of the final report; that the opinion formed by the police is not based on full and complete investigation in which case, the Magistrate will have ample jurisdiction to give directions to the police u/s 156(3), Cr. P. C. i.e. if the Magistrate feels after considering the final report that the investigation is unsatisfactory or incomplete or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct police to make further investigation u/s 156(3), Cr. P. C. The police after such further investigation may submit a charge sheet, or again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms opinion that the facts set out in the final report constitute an offence he can take cognizance of the offence, u/s 190(1)(b), notwithstanding the contrary opinion of the police expressed in the final report.
9. The above view was again reiterated by the Apex Court in the case of Mrs. Rupam Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, and held as below :--

"In Abhinandan Jha v. Dinesh Mishra (supra) the question arose whether a Magistrate to whom a report u/s 173(1), Cr. P. C. had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge sheet on his disagreeing with that report. In answering the question this Court first observed that the use of the words "may take cognizance of any offence" in Sub-section (1) of Section 190. Cr. P. C. imports the exercise of "judicial discretion" and the Magistrate who receives the report u/

s 173, Cr. P. C. will have to consider the said report and judicially take a decision whether or not to take cognizance of the offence. The Court then held, in answering the question posed before it, that the Magistrate had no jurisdiction to direct the police to submit a charge sheet but it was open to the Magistrate to agree or disagree with the police report, if he agreed with the report that there was no case made out for issuing process to the accused he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect u/s 156(3). It was further held that if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance thereof notwithstanding contrary opinion of the police expressed in the report."

10. Thus, it is clear from the above decision of the Apex Court that the Magistrate can take cognizance u/s 190(1)(b) even on submission of final report by the police i.e. upon a police report and he is not bound to adopt the procedure of complaint as required for taking cognizance u/s 190(1)(a), Cr. P. C.

11. The Magistrate has taken cognizance after rejecting the final report and there was nothing wrong with the procedure adopted by him.

12. The petition has no force and is dismissed summarily.