
(1977) 05 AHC CK 0019
In the Allahabad High Court
Case No : Criminal Appeal No. 4087 of 1976

Ram Krishna and others

APPELLANT

Vs

Yunus and another

RESPONDENT

Date of Decision : 18-05-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202(1)(b)

Citation : (1977) 05 AHC CK 0019

Hon'ble Judges : S.B.Malik, J

Final Decision : Dismissed

Judgement

S. Malik, J.—This is a petition under Section 482 of the Code of Criminal Procedure praying that the order dated 96i 976 of the Chief Judicial Magistrate, Farrukhabad, directing the police to investigate into the allegations made in the complaint under Section 156(3) of the Code of Criminal Procedure and either to submit a chargesheet or a final report, be quashed.

2. The relevant facts are that Yunus, respondent No. 1 filed a complaint before the Magistrate concerned making allegations which make out an offence punishable under Section 395 of the Indian Penal Code. The learned Magistrate instead of proceeding with the case himself after taking cognizance thereof passed the impugned order under Section 156 (3) of the Code of Criminal Procedure directing the police to investigate it as already mentioned.

3. It was argued on behalf of the applicants that the learned Magistrate acted illegally as he had no option but to take cognizance of the case in view of language of Section 190 of the Code of Criminal Procedure. In support of this view the attention of the Court was drawn to the observations made by the Supreme Court in A. C. Agarwal, S. D. M. Delhi and another v. Mst. Ram Kali etc. (A.I.R. 1966 S. C. 1.). The relevant observations are in paragraph 12 wherein the Supreme Court has observed :

"From the copies of the reports made in these cases to the Magistrate by the

police made available to us at the hearing of these appeals, it is clear that they disclose offence under Section 3 against the respondents. Therefore, the question is whether the Magistrate can chose to ignore the cognizable offence complained of admittedly have recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the scheme of the Acts and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases take those before us the Magistrate who is also a court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Section 3 or 7 as the case may be and only after the disposal of those cases take action under Section 18 if there is occasion for it. Under Section 190 (1)(b) of the Code of Criminal Procedure the Magistrate is bound to take cognizance of any cognizable offence brought to his notice."

4. The case before the Supreme Court was under Suppression of Immoral Traffic in Women and Girls Act, 1956 and while considering the facts of that case the Supreme Court was of the view that in case the Magistrate did not take cognizance of the complaint made before him by the police and instead proceeded under the said Act, it would result in injustice and in a stray sentence observed, "under Section 190 (1) (b) of the Code of Criminal Procedure the Magistrate is bound to take cognizance of any cognizable offence brought to his notice." The observations were specifically made in respect of Section 190 (1)(b) of the Code of Criminal Procedure. The facts of the instant case are different. Here in the complaint, no doubt respondent No. 1 has alleged that the applicants had committed a cognizable offence under Section 395 of the Code of Criminal Procedure. From a perusal of the relevant provisions of the Code of Criminal Procedure it is apparent that two courses were upon to the Magistrate.

He could either take cognizance of the case and proceed with it in accordance with law as laid down in Section 200 of the Code of Criminal Procedure and onwards or direct the police to investigate the case under Section 156 (3) of the Code of Criminal Procedure and completely divert himself of the case. In the instant case, the learned Magistrate has chosen to direct the police to investigate the case under Section 56(3) of the Code of Criminal Procedure. Keeping in view the observations made by the Supreme Court in *Copal Das Sindhr and others v. State of Assam* and another (A.I.R. 1961 S. C. 986.). A perusal of the judgment of the Supreme Court in, *Gopal Das Sindhi v. State of Assam*, (supra) will show that it is almost on all force with the instant case.

5. It was argued by the learned counsel for the applicants that in view of the provisions of Section 202 (1)(a) of the Code of Criminal Procedure, the Magistrate could not have ordered investigation by the police. This contention is obviously erroneous as in the instant case the Magistrate instead of proceeding with the case himself has taken recourse to Section 156 (3) of the Code of Criminal Procedure. Section 202 (1) (b) of the Code of Criminal Procedure would

have come into play if the Magistrate had chosen to proceed with the case himself.

6. Under the circumstances, I see no force in this petition and reject it. The stay order is hereby vacated.