
(1956) 01 AHC CK 0038

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 428 of 1955

Rama Shanker

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 25-01-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173, 190, 439

Citation : AIR 1956 All 525 : (1956) 26 AWR 334

Hon'ble Judges : Upadhya, J;Desai, J

Bench : Division Bench

Advocate : A.P. Pandey, for the Appellant; Srirama, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Desai, J.—This is an application for quashing the proceedings pending against the applicant in the court of a first class Magistrate or transferring the proceedings to another district. The proceedings are u/s 406, I. P. C., commenced on a report of the police. The case against him is that he embezzled a large sum of money which was entrusted to him for being carried from one place to another. A Panchayat Raj inspector made a report against the applicant on 8-7-1954 on the following allegations :

2. The Inspector encashed a cheque for the sum of Rs. 5,746/14/- at Ghazipur in the presence of the applicant who is a businessman. The Inspector was afraid of carrying such a large sum of money from Ghazipur to Dildarnagar where his headquarters are. The applicant offered to carry the money, which was kept in a purse, from Ghazipur to Tarighat across the Ganges. The applicant and the Inspector separated. When some time later the Inspector met the applicant at Tarighat and asked for the money, the applicant told him that he had already returned it to him. Actually the money had not been returned.

3. The police investigated into the matter, raided the applicants' shop and

recovered Rs. 1016/-, found the applicant absent and took proceedings against him under Sections 87 and 88, Cr. P. C., and arrested his brother. The applicant surrendered himself in court on the following day and pleaded alibi during the investigation.

4. It is alleged by the applicant that the investigating officer at first submitted a final report as the result of the investigation but later on he submitted a charge-sheet against him in accordance with a direction given to him by the District Magistrate while inspecting the police station. The Magistrate took cognizance of the offence on the charge-sheet submitted by the police and the applicant is being tried.

Departmental proceedings were taken against the Inspector also for losing the money which belonged to the Panchayat Raj Department. The Inspector deposited the whole amount with the District Panchayat Officer. But these facts do not affect the applicant's guilt, if any.

5. It is stated in the charge-sheet that on investigation the report made by the Inspector was found to be true and that consequently the offence of Section 406, I. P. C., was made out. That the allegations made in the report make out an offence u/s 406, I. P. C., admits of no doubt. All the ingredients of the offence are alleged and if the report is true, the applicant is guilty.

The police have found the report to be true after investigation and it is not open to any court to say at this stage that there is no truth in the report. Whether there is any truth in it or not will be seen when the trial is concluded. Before the trial is concluded no finding on this point can be given and the proceedings cannot be quashed on the ground that the applicant has committed no offence. This is not the stage for considering the alibi evidence of the applicant; he should produce it when he is called upon to defend himself at the trial.

6. Now I come to the most important question whether any illegality was committed by the Magistrate's taking cognizance of the offence against the applicant on a charge-sheet submitted to him by the investigating officer under administrative directions of the District Magistrate after he had once submitted a final report. The investigation was done by the investigating officer u/s 156, Criminal P. C. If upon investigation an investigating officer finds that there is no sufficient evidence or reasonable ground of suspicion to justify prosecution of the accused, he is required by Section 169 of the Code to release him from custody.

If, on the other hand, he finds that there is sufficient evidence or reasonable ground of suspicion, he is required by Section 170 to forward him under custody to the Magistrate having jurisdiction over him. Section 173 requires the investigating officer on completing the investigation to report the result in the prescribed form to the Magistrate empowered to take cognizance of the offence. This report includes both the reports popularly known as "final report" and "charge-sheet."

Under Section 190 a first class Magistrate may take cognizance of any offence upon receiving a complaint of facts constituting such offence, or upon a report in writing of such facts made by any police officer, or upon an information received from any other person, or upon his own knowledge or suspicion. The police officer's report referred to in the section includes a report made by an investigating officer u/s 173. These are all the provisions of law governing the question before us.

7. A first class Magistrate is competent u/s 190 to take cognizance of an offence upon a report in writing of such facts made by an investigating officer. It is unnecessary to go into the question whether he is bound to take cognizance or it is discretionary with him to take cognizance upon a report made by any police officer, because in the present case the Magistrate has taken cognizance. He is not required to take into consideration any particular fact.

If there is a report in writing of facts constituting an offence, according to one view he must take cognizance regardless of all other facts. If he is not bound and it is within his discretion whether to take cognizance or not, his taking cognizance cannot be challenged unless he exercises his discretion arbitrarily or against the established principles. Taking cognizance of an offence is certainly a judicial matter and subject to the revisional jurisdiction of the High Court.

If the learned Magistrate erroneously took cognizance of the offence against the applicant, his order of taking cognizance of the offence could be revised by this Court u/s 439 of the Code. When it is open to the applicant to move this Court to exercise its revisional jurisdiction, he cannot move it to exercise its inherent jurisdiction. But even if he had invoked this Court's revisional jurisdiction, so long as he could not make out that the learned Magistrate had exercised his discretion arbitrarily or erroneously he could not succeed.

There was nothing arbitrary or erroneous in the learned Magistrate's taking cognizance, because the report of the investigating officer referred to the first information report made by the Inspector against the applicant and mentioned that the first information report was found to be true upon investigation. The law does not require a Magistrate to take into consideration whether previously the investigating officer had reported that the first information report had not been found to be true or whether he had been directed by the District Magistrate to submit a charge-sheet instead of a final report.

It is not known whether the final report had reached the learned Magistrate or not. We assume that it had and he had accepted it. But even then he was not barred by any law from taking cognizance on a subsequent report, provided it mentioned facts constituting the offence. The matter is not governed by any such principle as of *res judicata* and the learned Magistrate's failure to take cognizance of the offence on the earlier report did not prevent his taking cognizance on the subsequent report. A first class Magistrate's powers to take cognizance are vast and the law has placed no limits on them.

8. Even if it be said that the investigating officer had no power to submit a charge-sheet after he had submitted a final report and consequently the charge-sheet did not amount in the eye of law to a report in writing of facts constituting an offence made by a police officer, it was undoubtedly an information given to the learned Magistrate and there was nothing to prevent his taking cognizance of the offence on it.

It was his absolute discretion to treat it as an information and once he treated it as such, it was open to him to take cognizance of the offence. Therefore, no illegality whatsoever was committed by the learned Magistrate's taking cognizance of the offence.

9. Really no illegality was committed by the investigating officer in submitting a charge-sheet after previously submitting a final report. With great respect we do not agree with the view taken in -- Shukadeva Sahay Vs. Hamid Mian, , to the effect that directing an investigating officer to submit a charge-sheet is a judicial order. An investigating officer is required by Section 173 of the Code to submit a charge-sheet, but this does not render his act of submitting a charge-sheet a judicial act.

A court has no judicial control over investigations and over the manner, or the circumstances, in which an investigating officer makes his report u/s 173. An investigating officer's act is wholly administrative. There is, therefore, nothing to prevent his submitting another report in supersession of an earlier one. He can do it on his own initiative, or under direction of the Superintendent of Police or the District Magistrate. If the Superintendent of Police or the District Magistrate directs him to submit a charge-sheet to replace a final report, the direction is administrative and not subject to any control by a court.

A report u/s 173 has to be made by an investigating officer through a superior officer and the superior officer has been expressly authorized to direct the investigating officer to make further investigation pending the Magistrate's orders. If a final report is submitted at first but on further investigation ordered by the superior police officer the investigating officer finds that the accused has committed an offence, he would naturally be bound to submit a charge-sheet against him to supersede the final report.

It would have been useless to direct him to make further investigation if he could not follow up the further investigation with another report.

10. We, therefore, find that no case is made out for quashing the proceedings.

11. There is no justification for transferring the case to another district. . The District Magistrate, who had directed the police to submit a charge-sheet has been transferred from the district. No allegations were made against the trying Magistrate or any other authority in the district. The applicant, therefore, has no reasonable ground for apprehending that he will not. have a fair trial in Ghazipur district.

12. The application is dismissed.