

(2010) 03 SC CK 0067

In the Supreme Court Of India

Case No : Criminal Appeal No. 548 of 2010 (Arising out of Special Leave Petition (Criminal) No. 8600 of 2008)

Rameshbhai Pandurao Hedau

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173(2), 173(8), 190
Penal Code, 1860 (IPC) — Section 114, 120B, 302

Citation : AIR 2010 SC 1877 : (2010) 2 ALD(Cri) 520 : (2010) CriLJ 2441 :
(2010) 3 JT 254 : (2010) 2 SCALE 166 : (2010) 4 SCC 185 : (2010) 3 SCR 522 :
(2010) 1 UC 656

Hon'ble Judges : Cyriac Joseph, J; Altamas kabir, J

Bench : Division Bench

Advocate : Chaitanya Joshi, Nachiketa Joshi, Sudhakar Joshi and Ranjith K.C,
for the Appellant; Meenakshi Lekhi, Hemantika Wahi, Somnath Padan and Jesal,
for the Respondent

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted.

2. The Appellant is the elder brother of the deceased, Kamleshbhai, whose dead body was found near Govindbhai Ghat on Sarkhej Narol Highway on 17th October, 2006. At the time of his death, Kamleshbhai was serving with M/s Airstate International Courier and his usual working time was from 1.00 p.m. to 7.00 p.m. On 17th October, 2006, on receipt of information, the Appellant went to the above-mentioned spot and found the dead body of his brother. On 17th October, 2006 itself, post- mortem was conducted by the Medical Officer of the Civil Hospital, Ahmedabad. After the post-mortem examination was conducted, the opinion of the doctor as to the cause of death was kept pending till the reports from the FSL and HTP were made available. On 21st December, 2006, upon receipt of the said reports, the Medical Officer was of the opinion that the cause of death of the deceased was on account of cardio-respiratory arrest due

to lungs pathology. In other words, Kamleshbhai's death was not found to be unnatural but as a result of natural causes. The Investigating Officer had also occasion to record the statements of the Appellant, his relatives and others. On the basis of the said statements and the report of the post- mortem examination, the investigation was closed by the Investigating Officer attached to Vatva Police Station.

3. Dissatisfied with the closure of the investigation, the Appellant filed a complaint before the Metropolitan Magistrate No. 20 at Ahmedabad on 17th April, 2007, which was numbered as Enquiry Case No. 17 of 2007. In the complaint, the Appellant alleged that offences had been committed under Sections 302, 114 read with Section 120B Indian Penal Code and prayed for an order to be passed for an inquiry u/s 156(3) Cr.P.C. for taking action against the accused. Instead of directing an investigation to be conducted by higher police officials u/s 156(3) Cr.P.C., the learned Metropolitan Magistrate by his order dated 17th April, 2007, postponed the issuance of process and kept the complaint for Court inquiry, in accordance with Section 202 Cr.P.C.

4. The Appellant herein filed a Criminal Writ Petition, being Special Criminal Application No. 1458 of 2007 before the Gujarat High Court, which was dismissed in limine on 2nd July, 2008, by a learned Single Judge upon holding that no case had been made out for directing investigation u/s 156(3) Cr.P.C. It is the said order of the High Court which has been questioned in the present appeal.

5. Appearing in support of the appeal, Mr. Nachiketa Joshi, Advocate, submitted that the learned Metropolitan Magistrate, Ahmedabad, had committed an error in rejecting the Appellant's prayer for an investigation u/s 156(3) of the Code and taking recourse to Section 202 of the Code instead. It was submitted that having regard to the serious nature of the offence complained of, an inquiry by the Court u/s 202 Cr.P.C. would not be apposite in preference to an investigation by the higher police officials u/s 156(3) of the Code. Mr. Joshi submitted that the order of the learned Metropolitan Magistrate, as well as that of the High Court, failed to recognize the gravity of the offence and the attempt made to cover up the incident which has caused a miscarriage of justice. Mr. Joshi further submitted that the Courts were ill-equipped to deal with an investigation which would be required to be undertaken in the instant case and, accordingly, the orders passed by the learned Magistrate, as well as the High Court, were liable to be set aside with a direction to higher officials of the police in the District to conduct a proper investigation u/s 156(3) of the Code.

6. In support of his aforesaid submissions, Mr. Joshi referred to the decision of this Court in *Suresh Chand Jain v. State of M.P.* (2001) 2 SCC 628, wherein while considering the power of the Magistrate u/s 156(3) Cr.P.C., it was held that such power is vested in the Magistrate before taking cognizance of the offence. In such a case, before taking cognizance of an offence the Magistrate always has the jurisdiction to direct an investigation u/s 156(3) of the Code on a fresh complaint.

7. Mr. Joshi also referred to the decision of this Court in Dharmeshbhai Vasudevabhai and Others Vs. State of Gujarat and Others, , wherein, while considering the power of the Magistrate to recall an order for investigation passed by him u/s 156(3) Cr.P.C., this Court appears to have taken the same view as was expressed in Suresh Chand Jain's case (supra) to the effect that before taking cognizance the Magistrate can invoke his powers u/s 156(3) Cr.P.C. but once he takes cognizance, he has to proceed in accordance with the procedure embodied in Chapter XV thereof, including the power to conduct an inquiry or investigation u/s 202 of the Code.

8. Mr. Joshi's submissions were vehemently opposed on behalf of the State of Gujarat by Ms. Meenakshi Lekhi, Advocate, who contended that once a final report had been filed by the investigating authorities u/s 173(2) Cr.P.C., there was no further scope for an investigation u/s 156(3) Cr.P.C. on the basis of a fresh complaint and the only remedy available to the complainant would be by way of a complaint u/s 200 Cr.P.C. Ms. Lekhi submitted that the scheme of the Code of Criminal Procedure was such that once an investigation on a complaint had been concluded and a final report had been submitted by the investigating agency to the Magistrate u/s 173(2) of the Code, any fresh complaint by way of a protest petition could only be entertained u/s 200 and if the Magistrate so thought fit, an inquiry or investigation could be conducted u/s 202 of the Code. Ms. Lekhi submitted that the provisions of Section 202 Cr.P.C. had been correctly invoked by the Magistrate and the prayer for investigation u/s 156(3) of the Code made by the Appellant had been rightly rejected.

9. In support of her submissions, Ms. Lekhi firstly referred to the decision of this Court in Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, . Reference was made to paragraph 17 of the said judgment wherein the distinction between an investigation u/s 156(3) of the Code and one u/s 202(1) of the Code has been highlighted. It was explained that while Section 156(3) occurs in Chapter XII of the Code, which deals with the powers of the police to investigate into an offence, Section 202 thereof deals with complaints made to Magistrates where the power to direct an inquiry operates in a different sphere. While the power to direct a police investigation u/s 156(3) is exercisable at the pre-cognizance stage, the power to direct an investigation or an inquiry u/s 202(1) is exercisable at the post-cognizance stage when the Magistrate is in seisin of the case. Ms. Lekhi contended that since the police had already conducted an investigation and had filed the final report u/s 173(2) of the Code and the same having been accepted by the learned Magistrate, the only course open to the appellant was to file a fresh complaint u/s 200 of the Code. Since the appellant had filed a fresh complaint by way of a protest petition, the learned Magistrate had rightly invoked the provisions of Section 202 to order an inquiry without directing a fresh investigation as prayed for by the appellant.

10. We have carefully considered the submissions made on behalf of the respective parties and we find no reason to interfere with the order of the High

Court impugned in the appeal. From the scheme of Chapters XII and XV of the Code of Criminal Procedure, it is quite clear that the two contemplate two different situations. Chapter XII deals with the power of the police authorities to investigate in respect of cognizable offence on receipt of information thereof. Section 156, which forms part of Chapter XII, deals with the power of an Officer in-charge of a police station to investigate cognizable cases and provides as follows:

156. Police Officer's power to investigate cognizable cases.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned.

11. It will thus be seen that the power of the police authorities to investigate a cognizable offence is not dependent on an order of the Magistrate. At the same time, such power may be exercised by the officer concerned on an order being passed by any Magistrate empowered u/s 190 of the Code for making such an investigation. Chapter XII deals with the conduct of investigation of both cognizable and non- cognizable offences and the steps to be taken in that regard culminating in the filing of the report of the investigation on completion thereof u/s 173(2) of the Code. At this stage it may also be indicated that under Sub-section (8) of Section 173 the police is empowered to conduct further investigation in respect of an offence even after a report under Sub-section (2) is forwarded to the Magistrate.

12. However, all these steps are to be taken by the learned Magistrate prior to taking cognizance of the offence. On the other hand, Chapter XV deals with complaints filed before the Magistrate for taking cognizance of an offence. It has been sought to be urged by Ms. Lekhi, learned Counsel appearing for the State of Gujarat, that once an investigation is undertaken by the police and a final report is filed, no further order could be made on a protest petition, which is in the nature of a fresh complaint for a further investigation u/s 156(3) of the Code.

13. The settled legal position has been enunciated by this Court in several decisions to which we shall refer presently. The Courts are ad idem on the question that the powers u/s 156(3) can be invoked by a learned Magistrate at a pre- cognizance stage, whereas powers u/s 202 of the Code are to be invoked after cognizance is taken on a complaint but before issuance of process. Such a view has been expressed in Suresh Chand Jain's case (supra) as well as in Dharmeshbhai Vasudevabhai's case (supra) and the case of Devarapalli

Lakshminarayana Reddy's case (supra).

14. The three aforesaid cases have been cited on behalf of the parties. We may also refer to the decision of this Court in *Dilawar Singh v. State of Delhi* (2007) 12 SCC 641, where the difference in the investigative procedure in Chapters XII and XV of the Code has been recognized and in that case this Court also appears to have taken the view that any Judicial Magistrate, before taking cognizance of an offence, can order investigation u/s 156(3) of the Code and in doing so, he is not required to examine the complainant since he was not taking cognizance of any offence therein for the purpose of enabling the police to start investigation. Reference has been made to the decision of this Court in *Suresh Chand Jain's case* (supra). In other words, as indicated in the decisions referred to hereinabove, once a Magistrate takes cognizance of the offence, he is, thereafter, precluded from ordering an investigation u/s 156(3) of the Code.

15. It is now well-settled that in ordering an investigation u/s 156(3) of the Code, the Magistrate is not empowered to take cognizance of the offence and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information received from any person, other than a police officer, u/s 190 of the Code. Section 200 which falls in Chapter XV, indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by a police officer before issuing process.

16. Reference was also made to the decision of this Court in *Mohd. Yousuf Vs. Smt. Afaq Jahan and Another*, , where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated u/s 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

17. The law is well-settled that an investigation ordered by the Magistrate under Chapter XII is at the pre-cognizance stage and the inquiry and/or investigation ordered u/s 202 is at the post-cognizance stage. What we have to consider is whether the Magistrate committed any error in refusing the appellant's prayer for an investigation by the police u/s 156(3) of the Code and resorting to Section 202 of the Code instead, since both the two courses were available to him.

18. The power to direct an investigation to the police authorities is available to the Magistrate both u/s 156(3) Cr.P.C. and u/s 202 Cr.P.C. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power u/s 156(3) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation u/s

202 is at the post-cognizance stage. The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint u/s 200 of the Code and has thereafter proceeded u/s 202 Cr.P.C. and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of Section 202 the learned Magistrate deems it fit, he may either dismiss the complaint u/s 203 or proceed in terms of Section 193 and commit the case to the Court of Sessions.

19. We, therefore, see no reason to interfere with the order of the learned Magistrate and the views expressed by the High Court in the impugned order on the invocation of jurisdiction by the learned Magistrate u/s 202 Cr.P.C. The appeal is, accordingly, dismissed.