
(2006) 03 AHC CK 0066

In the Allahabad High Court

Case No : Criminal Misc. Application No. 4928 of 1987

Ramji, Lalji, Ashok Kumar and Siya Ram

APPELLANT

Vs

Bhagwan Prasad and State of U.P.

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 169, 173(2), 190(1)
Penal Code, 1860 (IPC) — Section 307, 323, 325

Citation : (2006) 03 AHC CK 0066

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : Tapan Ghosh and N.D. Shukla, for the Appellant; S.K. Pandey and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Amar Saran, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the criminal proceedings in criminal case No. 1409 of 1987 (State v. Ramji and Ors.), u/s 307 IPC, pending in Second Lower criminal Court, Allahabad.

2. I have heard Sri Japan Ghosh, learned Counsel for the applicants and the learned Additional Government Advocate representing the State.

3. The brief facts of the case were that a complaint was filed by Bhagwan Prasad on 23.7.1985 under Sections 323/325/307 IPC alleging that on 5.5.1985 at 10.00 A.M. when the complainant was plucking mangoes along with his brothers, the applicants arrived there carrying Lathi, Danda, Gaddasa, and gun and started abusing the complainant's side. On protest by the complainant, on the exhortation of Siya Ram, Ram Ji fired with the gun of Lalji injuring the complainant on his chest. Lalji and Ashok Kumar have beaten Ishwar Prasad, the brother of the complainant, with Lathi and Danda respectively and caused injuries. When complainant's brother Ishwar Prasad went to the police station to lodge the report, he was locked up. However, Ishwar Prasad's injuries were

examined in the jail hospital and the complainant also got himself medically examined. As the police did not take any action on his application, thereafter the complaint was filed. Thereafter on 27.7.1985, an order was passed by the XVI Additional Munsif Magistrate, Allahabad to the effect that statements u/s 200/202 Cr.P.C have been perused. There are fire arm injuries in the left side chest Hence, prima facie a case u/s 307 IPC appears to have been made out and Station Officer, Karchhana was directed to register and investigate the case u/s 307 IPC. In pursuance of that order a case at case crime No. 106-A of 1985 was registered at police station Karchhana on 3.8.1985. However, on 7.9.1985, the police submitted final report holding that actually the complainant's brother Ishwar Prasad had fired, which struck Ashok Kumar on the back and as Ashok Kumar was running towards the side of Bhatjwan Prasad, hence pellets also struck Bhagwan Prasad and further no one used fire arm from the side of the applicants. It is further mentioned that on 4.10.1985 the final report was accepted by the Magistrate with a one line order and the file was consigned to the record.

4. Thereafter on 1.11.1985 on a protest petition being filed by the complainant, the final report and other papers were perused and the submission of the complainant was accepted that even after the acceptance of the final report, if the court is satisfied by the statement of the complainant and materials furnished by him, then the court could take cognizance. The court placed reliance on the case of P.N. Pandey v. State 1968 ALJ 768. On being satisfied by this contention and injury report etc. of the injured, an order of re-investigation was passed by the learned Magistrate. Thereafter, it appears that fresh investigation was done, but again final report appears to have been submitted on 7.9.1986 by the police. This final report also substantially reiterated the earlier final report dated 7.9.1987 to the effect that firing had been made from the side of the complainant by Ishwar Prasad, which struck Ashok Kumar and thereafter the complainant. The complainant again preferred a protest petition on 26.9.1986 and against this second final report, an order was passed on 25.3.1987 by the LCC-II, Allahabad summoning the applicants.

5. Firstly, it was argued by the learned Counsel for the applicants that the complaint was filed two and a half months after the incident on 23.7.1985, when the incident is said to have taken place on 5.5.1985. As two persons have received injuries from the side of the complainant and it is mentioned that the police did not take any action on the FIR or application by the complainant, the delay in lodging the complaint cannot be a ground for quashing the criminal proceedings.

6. Secondly, it is contended that once the final report dated 7.9.1985 had been accepted on 4.10.1985 and the order of acceptance of the final report had gone unchallenged, the case could not have been re-opened on an application moved by opposite party No. 1 and the order of reinvestigation cannot be passed.

7. I do not find any force in this contention. A one line order, which stated "Seen.

F.R. Accepted" was passed. As has been mentioned in the case of P.N. Pandey (Supra) that an order accepting final report is not an order of acquittal and Section 403 (Section 300 under the new Code) which debars re-opening of the trial after an earlier acquittal could possibly have no application. In this context it was observed by the Division Bench in P.N. Pandey (Supra) as follows:

The order approving the report u/s 169 of Cr.P.C. is not an order of acquittal and Section 403 of Cr.P.C. can possibly have no application to the question under consideration. The aforesaid order again is not even an order of discharge and it is significant that a fresh complaint is entertainable on the passing of an order of discharge. If a fresh complaint can be filed after an order of discharge, it should, in our opinion, be open to a Magistrate to take cognizance of a case on second thought after having accepted the final report u/s 169 of Cr.P.C. In the case of Rama Shanker Vs. The State of Uttar Pradesh, the police had at first submitted a final report u/s 169 of Cr.P.C. This report appears to have been accepted by the Magistrate concerned. Thereafter the police submitted a charge sheet against the accused persons and cognizance of the case was taken by a Magistrate. In the aforesaid setting of facts a question arose whether it was open to the Magistrate to take cognizance of the case subsequently after having accepted the report u/s 169 of Cr.P.C. and it was held that the failure of the Magistrate to take cognizance of the offence on the earlier report did not prevent him taking cognizance on the subsequent report. In the case of Mahabir Prasad Agarwala and Another Vs. The State, also it was held that if at one stage a Magistrate accepts the final report and does not wish to proceed with the matter further, but subsequently either new facts come to light or after hearing the parties and perusing the papers available he finds that on the previous occasion he had overlooked an important aspect of the case, it is open to him to revise his earlier order.

8. The said decision has been cited with approval in Sabir Ali v. State 1988 A.C.J. 264 wherein it has been held that if it is pointed out to the Magistrate that on previous occasion he has overlooked some aspect of the case, then he can revise his earlier order.

9. Thus, there is no bar for the Magistrate in entertaining the application for passing the order dated 1.11.1985 that he on being satisfied and on perusal of the material and having heard the complainant's counsel, relying on the decision of P.N. Pandey (Supra) that on the basis of the statements of the witnesses, injury report, he found that it was a fit case for a fresh investigation.

10. The case cited by Shri Ghosh, Krishna Prasad v. Paras Nath 1978 (15) ACC 201 for the proposition that once an order has become final as it was not challenged in a superior court, it could not be re-opened in the same proceedings. I think this decision of the learned Single Judge is distinguishable because that was a case in which after detailed hearing of both the parties, on a remand of the matter from the High Court, the Magistrate had arrived at a conclusion that one of the party is entitled for the possession and it restrained

the other party from dispossessing other party in proceedings u/s 145 and 146 Cr.P.C.. The aggrieved party had challenged the order in revision, which was dismissed. However, after the dismissal of the revision the applicant had moved an application for enforcement of delivery of possession of the property in his favour on the basis of the earlier order of the Magistrate, but the Magistrate had eventually rejected that prayer for enforcement of that order. It was in this context, it was observed by the court that after hearing both the parties at length, the order was allowed to become final and it was not open to the Magistrate to ignore the order and refuse the delivery of possession of the disputed shop to the applicant.

11. In the present case I have seen that the earlier one line order dated 4.10.1985 had been passed by the Magistrate only on seeing the final report and it was not after the decision of the lis between the parties after hearing both the parties.

12. The case of State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, cited by the learned Counsel for the applicants for the proposition that a wrong decision by the court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides is also distinguishable as in that case also the order was passed after exhaustive hearing of the parties and it was in that context that the aforesaid observations were made.

13. Likewise, another decision in Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another, relied upon by the learned Counsel for the applicants for the proposition that the Magistrate has no inherent power to review his order of dismissing the complaint case for default also needs clarification.

14. It may be mentioned that in paragraph 9 of A.S. Gauraya's case it is provided that a second complaint is permissible in law if it could be brought within the limitations imposed by this Court in Pramatha Nath Talukdar v. Sarol Raman Sarkar 1962 Supp (2) SCR 297 although it has mentioned that filing of the second complaint is not the same thing as reviving a dismissed complaint after recalling the earlier order of dismissal.

15. More recently in the case of Mahesh Chand Vs. B. Janardhan Reddy and Another, , it has been clearly mentioned in paragraph 12 that only because the Magistrate has accepted the final report, the same could not stand in his way of taking cognizance of a complaint/protest petition, but the circumstances when such a power could be exercised need to be examined. This case has also considered the case of Pramatha Nath Talukdar (Supra) and the observations thereof that it cannot be said to be in the interest of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into.

16. But obviously the bar on a fresh consideration of the final report on a protest

petition in reference to circumstances when there has been full consideration of the case of the complainant and not when the matter has been dismissed in limine without giving any opportunity of hearing to the complainant. Specifically, it has been mentioned in paragraph 19 in Mahesh Chand (Supra) that the High Court was not correct in holding that the second complaint was completely barred. It would be useful to quote paragraph 19 of the aforesaid law report in extenso:

Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate u/s 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.

17. In the present case one line order dated 4.10.1985 accepting the final report also needed to be recalled because the said order had been passed without giving any opportunity to the informant to register his objection on the final report.

18. In Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, relying on Bhagwant Singh Vs. Commissioner of Police and Another, it has been held that even though there is no provision in the Code to file a protest petition by the informant who lodged the first information report, but in Bhagwant Singh's case it was stressed that it was incumbent on the Magistrate, who was not inclined to take cognizance or to issue process on the report, which was forwarded to him u/s 173(2)(i), he was to give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. There was complete failure in the present case for affording any opportunity to the complainant/informant to be heard, but in its place the one line order accepting the final report was passed.

19. In Gangadhar (Supra) it has further been pointed out that if the informant has no notice and opportunity to be heard at the time when the final report of the police was being considered, then he could not be faulted even if the pretest petition was filed by him belatedly.

20. I, therefore, find no illegality in the order of the learned Magistrate dated 1.11.1985 directing fresh investigation of the case in pursuance of the objection of the complainant to the acceptance of the final report dated 4.10.1985 by an ex parte single line order.

21. It has been next contended by the learned Counsel for the applicants that on fresh investigation, the police once again submitted a final report on 7.9.1986 on the same lines as its earlier final report and that another protest petition dated 26.9.1986 was filed against the same and in a mechanical manner without giving reasons to disagree with the final report, the learned lower criminal court-II passed the impugned order dated 25.3.1987, which translated into English, reads as follows:

F.R. Received today. It is ordered that the case be registered. The accused may be summoned for 5.5.1987.

22. It is argued that this order also lacks reasons and needs to be set aside and that in any case it is illegal and the procedure of complaint case as provided under Chapter XV has not been followed.

23. I find no substance in this contention of the learned Counsel for the applicants also.

24. In the recent decision in the case of Deputy Chief Controller of Imports and Exports v. Roshan Lal Aqarwal and Ors. 2003 (46) ACC 686 it has been clearly held by the Apex Court that there is no such, legal requirement imposed on a Magistrate for passing detailed order while issuing summons.

25. In this connection, paragraph 8,9, and 10 of the aforesaid law report may be usefully perused

8. The second reasons given by the High Court for allowing the petition filed by the respondents (accused) is that the order passed by the Special Court taking cognizance of the offence does not show that the learned Magistrate had even perused the complaint or that he had applied his judicial mind before taking of the cognizance. The order passed by the learned Magistral reads as under:

Cognizance taken, Register the case. Issue summons to the accused.

9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Limited and Ors. AIR 2000 SC 1456 and after noticing the law laid down in Kanti Bhadra Shah v. State of West Bengal 2000 (40) ACC 441 (SC) it was held as follows:

The legislature has stressed the need to record reasons in certain situations such

as dismissal of a complaint without issuing process There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.

10. This being the settled legal position, the order passed by the learned Magistrate could not be faulted on the ground given by the High Court.

26. So far as the contention of the learned Counsel for the applicants that procedure of the complaint case ought to have been followed in this case, it is well settled now that it is open to the Magistrate to take cognizance on the basis of FIR, protest petition and other materials on record specially when no affidavits have been filed and witnesses have not been examined on oath and there is not necessity to follow the procedure of the complaint case and the Magistrate is free to ignore the conclusion arrived at by the investigating officer on an independent application of his mind, he may take cognizance on the facts of the case and direct issuance of process to the accused in exercise of his power u/s 190(1)(b) of the Code. Of course, it is open for him to act under Sections 200 and 202 Cr.P.C also. This has been laid down in *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, which has been followed with approval in *Gangadhar Janardan Mhatre (Supra)* in paragraph 9.

27. Also on merit, I think the Magistrate has not committed any error in taking cognizance of the case as there was inherent improbability in the police case that it was the fire from the side of the complainant himself, i.e. the fire by the complainant Ishwar Prasad's brother, which struck the complainant Bhagwan Prasad after it struck the applicant Ashok Kumar. At any rate, only prima facie material was required to be seen at this stage and whether the manner of incident favouring the applicants as noted in the final reports of the police, is acceptable or not are the matters which can presently be appreciated by the trial court during the trial and not in these cursory proceedings u/s 482 Cr.P.C.

28. In this view of the matter, there is no force in this application for quashing the criminal proceedings. It is accordingly rejected.

29. As the proceedings in this case have remained stayed for a long time since 29.4.1987, the trial court is directed to conclude the trial expeditiously.

30. Office is directed to communicate this order to the trial court concerned within a week.