
(2008) 05 AHC CK 0169
In the Allahabad High Court

Shamim alias Lal Babu

APPELLANT

Vs

State of U.P. and Ram Lal

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 173
Penal Code, 1860 (IPC) — Section 201, 304, 308

Citation : (2008) 05 AHC CK 0169

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.K. Mittal, J.—The revision has been filed for quashing the order dated 17.3.2008 passed by Additional Sessions Judge (Special Judge) E.C. Act, Basti, in Criminal Revision No. 1160/06, whereby he allowed the revision and set aside the order dated 25.11.2006 passed by learned Magistrate and remanded the case for decision according to law.

2. I have heard Sri Rajul Bhargava. learned Counsel for the revisionist, learned AGA and have perused the material on record.

3. The brief facts of the case are that the first information report was lodged by one Ram Lal Chaukidar of the village on 6.9.2006 at 5.30 p.m. at Police Station Dhudhara, alleging that on 5.9.2006 Amar Singh Chaudhary who was Muneem at the shop of Akbar Master had gone to clean the tank on the roof of the house of Akbar Master. At that place Shamim @ Lal Babu son of Akbar Master was handling the licensee rifle of his father, which fired and the shot after hitting the wall, hit Amar Singh Chaudary as a result of which he received injuries. First he was taken to Basti for treatment and then Lucknow.

4. Amar Singh Chaudhary was medically examined on 5.9.2006 in the District Hospital and the following injuries were found on his person (1) Firearm wound of entry 1 cm. x 1 cm. depth not probed on the right side back of abdomen

above posterior superior iliac spine. Fresh bleeding was present and x-ray of abdomen was advised. (2) Firearm wound of exit 5cm. x 3 cm. on right side abdomen 7 cm. below umbilicus part of intestine was coming out from wound and fresh bleeding was present. X-ray was advised. Patient was admitted. The boy Amar Singh Chaudhary died consequent to the injuries on 16.9.2006. The post mortem examination was conducted on 17.9.2006 at 1 p.m. at Balaram Pur hospital Lucknow. The cause of death has been noted as septicaemia as a result of anti mortem injuries.

5. After investigation the Investigating Officer submitted charge sheet under Sections 304, 201 and 308 IPC and the learned Magistrate took cognizance under these sections. Ram Kumar Chaudhary father of the deceased moved an application for further investigation in the Court of the learned Magistrate alleging that the report in the matter was lodged by Ram Lal And his son was shifted to Basti and then to Lucknow without informing him. It was wrong to say that the bullet first hit the wall and then the boy. Had it been so there would have been no injury resulting in rupture of abdomen where from the intestine also came out. The statements of the applicant and his family members were not recorded by the Investigating Officer and he only examined two witnesses closely related to the accused. The Investigating Officer even did not interrogate the Medical Officer as to whether the bullet directly hit the body or first hit the wall and then the body. The Investigating Officer also did not take the rifle, cartridge the bullet and blood from the place of occurrence in custody. He has reduced the offence. In the circumstances, the prayer was made for direction for further investigation.

6. The learned Magistrate by order dated 25.11.2006 held that although case was initially registered u/s 308 IPC but the charge sheet has been submitted u/s 304 IPC and perusal of the case diary also shows that rifle was also taken in custody and its chemical examination was also done. The cognizance has been taken on the charge sheet and there was no occasion for any further investigation. Feeling aggrieved by this order the father of the deceased preferred criminal revision.

7. The learned Additional Sessions Judge allowed the revision on the ground that Investigating Officer did not make proper investigation and also did not show the place where the bullet had allegedly first hit the wall in the site plan and also he did not mention any such fact in the case diary. The Investigating Officer did not interrogate any of the family members of the deceased and did not make them witnesses. He also held that the Investigating Officer did not record the statement of Medical Officer regarding the nature of injuries and that the Investigating Officer had missed important points during investigation. He placed reliance on the case of M.N. Sheikh v. State of Gujrat and Ors. 2007 (NOC) CLT 493 and came to the conclusion that further investigation could be directed. Consequently he allowed the revision and directed the Magistrate to pass legal order. Feeling aggrieved the accused has come up in this revision.

8. The learned Counsel for the revisionist has raised a legal point and has contended that the impugned order is not legal because after submission of the charge sheet and taking of the cognizance of the offence, the further investigation could not be directed by the Court. The further investigation can be taken in very exceptional circumstances only when certain material evidence having material bearing on the facts of the case could not be collected or was ignored during investigation. The statements of the family members of the deceased were not relevant and the learned lower Court has not recorded any reason as to how further investigation was necessary in the matter. Against it the learned Counsel for the State has contended that the police has statutory right to make further investigation u/s 173(8) Cr.P.C. and the Court can also direct further investigation if it finds that proper investigation has not been made.

9. As far as the power of the police to make further investigation is concerned there is no dispute. In the old Criminal Procedure Code, 1898 although there was no specific provision to that effect but still the right of the police to make further investigation was recognized by the law courts. However, in the new Cr.P.C. specific provision has been made u/s 173(8) Cr.P.C. which authorises the police to make further investigation. In the case of *Ram Lal Narang v. State (Delhi Administration)* 1979 (Cri) SCC. 479, question of further investigation after submitting report u/s 173(1) Cr.P.C. where Magistrate had already taken cognizance was considered and it was held that "There was, of-course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report u/s 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out it was generally thought by many High Courts though doubted by a few that the police were not barred from further investigation by the circumstance that a report u/s 173(1) had already been submitted and a Magistrate had already taken cognizance of the offence."

10. In the case of *Ram Lal Narang (Supra)* the Hon"ble Apex Court referred the judgement of *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, and held that this decision is a clear authority for the view that further investigation is not altogether ruled out merely because the cognizance of the case has been taken by the court; defective investigation coming to light during the course of a trial may be cured by a further investigation if circumstances permit it.

11. In the case of *Ram Lal Narang (supra)* in para 20 of the judgement it has been held as under-

In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved

accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Cr.P.C. in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

12. While referring to the case of Ram Lal Narang (supra) the Hon''ble Apex Court in the case of State of Andhra Pradesh v. A.S. Peter (2008) 1 SCC 427 has held in para 14 that this Court while opining that further investigation is permissible in law, held that the Magistrate has a discretion in the matter to direct further investigation, even if he had taken cognizance of the offence.

13. Therefore, the Magistrate has the power to direct for further investigation if the circumstances and facts of the case so require. The power of the Magistrate to order further investigation is an independent power and does not affect the power of the Investigating Officer to further investigate the case even after submission of his report vide Section 173(8). The Magistrate can even order reopening of the investigation after the police submits the final report vide State of Bihar and Another Vs. J.A.C. Saldanha and Others,

14. There can be no doubt about the fact that the Investigating Officer is required to make proper investigation and if the Court finds that the investigation has not been properly made, the Court can direct for further investigation after the report has been submitted u/s 173(2) Cr.P.C. The Magistrate has power to direct for further investigation u/s 156(3) Cr.P.C. as well as u/s 173(8) Cr.P.C. although u/s 156(3) Cr.P.C. the Magistrate directs for investigation at pre-cognizance stage but the result of two investigation is same. The Investigating Officer has to submit the report u/s 173(2) Cr.P.C. From the cases of State of Andhra Pradesh v. A.S. Peter (supra) and Ram Lal Narang (supra), it is clear that the Magistrate can direct for further investigation even after taking cognizance in the matter.

15. In the instant case the Magistrate has failed to exercise the jurisdiction vested in him and the revisional court was competent enough to pass the impugned order. The facts of this case particularly the allegation that the

deceased was shot at by the accused has not been properly investigated as according to Investigating Officer, the shot first hit the wall and then it reflected and hit the deceased. The Investigating Officer did not enquire about the injuries from the Medical Officer. Considering the nature of injuries, the theory as taken during investigation does not appear to be probable and correct. In the circumstances, further investigation was necessary and the learned Revisional Court rightly allowed the revision and passed the impugned order which does not call for any interference and the present revision is devoid of merits and is liable to be dismissed.

16. The revision is hereby dismissed.