

(1998) 08 AHC CK 0135

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2724 of 1998

Shesh Nath Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-08-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 156(2), 161, 162
Penal Code, 1860 (IPC) — Section 307
Railways Act, 1989 — Section 120

Citation : (1999) CriLJ 296

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : R.P. Mishra and Rajeev Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—The present application u/s 482 Cr. P.C. has been filed with a prayer for quashing the proceedings in S. T. No. 128 of 1989 under Sections 302 and 120 of the Railways Act now pending before the VIIth Addl. Sessions Judge at Deoria. It is stated that the applicant had moved an application for discharge on the ground that cognizance was illegally taken but the learned Addl. Sessions Judge had rejected the application and directed that charges be framed. Normally, an order framing charge is open to revision and an application u/s 482 Cr. P.C. is not ordinarily entertained in such cases. Learned counsel, however, submitted that he was not claiming a discharge on the basis of the materials on record, rather he was challenging the very basis of the prosecution initiated upon the charge-sheet.

2. The FIR in the instant case (case Crime No. 52, of 1986) was registered against the applicant on 7-4-86. An investigation was taken up by the GRPS, Bhatni. During such investigation, on 5-5-86, a radiogram was sent to the concerned police station by the S. P., C.B. C. I. D. to inform that further

investigation in the case be entrusted to CBCID. Despite this information, the GRPS allegedly continued with the investigation and submitted a final report on 25-3-87. The final report, however, was not acted upon by the magistrate and no order was passed thereon.

3. It was alleged further that with the change of political power in the Government, certain political pressure was exerted upon the GRPS to file a charge-sheet and a charge-sheet was submitted on 2-11-1997 although there had been no order for a further investigation from the Court or from any higher-ups in the police hierarchy. The charge-sheet, however, did not indicate if it was a result of further investigation or re-investigation. This charge-sheet did not disclose the fact of submission of final report at an early stage. It was stated that the Court had acted mechanically without looking to the facts that investigation had been entrusted to the CBCID and that a final report had already been submitted by police. After taking cognizance the magistrate committed the case to the Court of session and an objection was taken before it regarding the legality of the charge-sheet. This objection, as aforesaid, was rejected on 25-6-98.

4. An additional ground was taken by the applicant for quashing the proceedings on the ground of delay as the matter was initiated in 1986 and a charge was ordered to be framed in 1997..

5. So far the point last-mentioned, it could only be stated that the charge-sheet had been submitted only on 2-11-97 and the offence alleged is u/s 307 IPC. The matter has reached the stage of charge and the prima facie seriousness of the allegations requires that the trial should be taken up and be concluded, without, of course, unnecessary delay.

6. As regards entrustment of investigation to the CBCID the only paper that was brought on record is in Annexure-2. This was a radiogram from the S.P., CBCID, U.P. to S.P., Deoria, whereby a direction was issued to withhold charge-sheet/final report in the case registered against Birjanand Singh, ex-President, District Board and others about the incident of bomb thrown on Trevini Date on 7-4-1986 at Lar Road Station, P.S. GRP, Bhatni, as the case was being looked after by the C. B. The radiogram does not indicate if the change in investigation was under any government order and the very fact that even thereafter the GRP had proceeded with the investigation and had submitted two reports subsequently suggests that the direction of changing investigating agency was not given any serious follow-up. In this connection, reference may be made to Section 156(2) Cr. P.C. which reads as follows :

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.

7. This Section 156 spoke of police officers' powers to investigate cognizable cases and once a report (either charge-sheet or final report:) is submitted, the

report could be challenged on the merits thereof but not on the question of authority of the police officer to investigate, provided the investigation was in accordance with Section 156(1) Cr. P.C. In the absence of any positive order having been placed on record and upon a liberal interpretation of Sections 156(1) and (2) Cr. P.C. the officer-in-charge of GRPS, Bhatni, had every authority to investigate the case as the incident had taken place within his jurisdiction and the reports submitted by the investigating officer could not be challenged on this ground.

8. The next point that may be considered is the one of existence of two reports, one a final report and the other charge-sheet. It was stated that the magistrate had not acted upon the final report at all and the magistrate could not have taken cognizance on the charge-sheet on the face of filing of an earlier final report. It was also contended that there could not have been a further investigation without any order from the authorities and in no case there could be a re-investigation.

9. Reliance was placed by the learned counsel on a decision of the Supreme Court in the case of Sampat Singh and Others Vs. State of Haryana and Others, . It was a case where an investigation was taken up for an offence under the Prevention of Corruption Act, read with certain offences under the IPC. The offences were exclusively triable by a Special Court. Police had submitted cancellation report u/s 173 Cr. P.C. before the magistrate and the magistrate discharged the accused on the basis of that report. It was observed that the magistrate should have forwarded the report to the Special Judge as he himself had no jurisdiction over the matter. The magistrate's order was set aside with a direction upon him to transmit all the papers along with the cancellation report to the Special Judge having jurisdiction. It was further observed in this case that it was not for a Court to keep track of an investigation and watch its progress day to day, but when an investigation culminates into a final report as contemplated u/s 173 Cr. P.C., then the competent Court enjoins a duty within its authority sanctioned by law to scrupulously scrutinise the same and the accompaniments and by applying its judicial mind, either to accept or to reject the final report. Reliance was also placed on another decision, one by our own High Court in the case of Gajendra Kumar Agarwal as reported in 1994 (31) All Cri C 341 . It was held in this case, following the principles enunciated by the Supreme Court in the case reported in Bhagwant Singh Vs. Commissioner of Police and Another, , that before rejecting a final report the Court should hear the accused.

10. We may take up the last-mentioned case first. The decision of the Supreme Court as reported in Bhagwant Singh Vs. Commissioner of Police and Another, was in respect of giving a reasonable opportunity to the complainant before accepting a final report. This was spoken of because the case was initiated by the complainant and on the principle that the case must not end against him unless he gets an opportunity to meet the report against him. With all reverence to the Hon"ble Single Judge it is felt that this opportunity which was given by the

Supreme Court to the complainant could not have been extended to an accused before rejecting a final report as in numerous decisions it has been held by the Courts in India including the apex Court that an accused has no locus standi before he is summoned in a case. The accused could not get a parity with the complainant at the stage of acceptance or rejection of a final report for the simple reason that the complainant had already been on record while the accused was only to come on record, if at all the magistrate takes cognizance despite the final report. The applicant in the present case may not, therefore, in my view, reap any benefit from the circumstances of the present case as he had no locus standi before being summoned in the case. After receipt of summons, he might have a chance as per the decision of this court in Kailash, Chowdhury's case to agitate on the point of cognizance on the merits of the materials on record. But that is totally a different point beyond the scope of the present application.

11. As regards the non-acceptance of the final report for years together, certainly the observation of the Supreme Court is Very much relevant to the facts of the present case but the observation was made in paragraph 8 of the judgment with a concluding sentence, "In the present case, that stage has come on the submission of the final report, namely, the cancellation report, by the investigating officer." The Court really desired that the proper court should now consider the final report. The requirement of an earlier decision on the final report has been emphasized in this case, but the case-law does not direct that mere delay in taking a decision would be fatal to the taking up of further proceedings. This final report was followed by a charge-sheet. Nothing has been brought on record that it was done after a further investigation or re-investigation.

12. We may look to the provisions of Section 173 Cr. P. C. now. It speaks of submissions of report by the police officer on completion of investigation and once it is completed, the officer-in-charge is to forward to the magistrate,, empowered to take cognizance of the offence a , report, in a particular form, as prescribed in this section. The report could either be for prosecuting the offenders and such report is known as a charge-sheet. The report could, in the alternative, be one for closing the proceedings, in common parlance known as final report. Both these reports are to be based on materials collected during investigation and such materials are to be found in the case-diary which is to be maintained according to Section 172 Cr. P.C. The case-diary is also to contain the statements of the witnesses recorded under Sections 161 and 162. Thus, the report of the police officer, submitted u/s 173 Cr. P.C., can clearly be divided in two parts - one part is to contain the case-diary, statements of the witnesses and observations made by the investigating officer during investigation and list of materials, seized etc., and the second part covers his opinion upon those materials - whether to proceed with the case or not. Charge-sheet or final report is really the opinion of the police officer and the law is clear and certain that a magistrate taking cognizance of a police report u/s 190(1)(b) is to look to the

facts for taking cognizance of any offence and he may ignore the opinion of the police officer. To further clarify the matter, it may be stated that even upon a charge-sheet the magistrate may find that there was nothing to take cognizance upon the facts made out in the case-diary, or even upon a final report the magistrate could take cognizance if the facts suggests existence of an offence.

13. The only thing that has been urged here is that the final report and the charge-sheet were spaced by a period of about 10 years. Section 173(8) Cr. P.C. gives ample power to the investigating agency to make further investigation and to make a report to the Court again upon such investigation and once such further report is filed, the provisions of Sub-sections (2) to (6) of Section 173 Cr. P.C. would apply. Here also a case-law was relied upon by the learned counsel, as report in K. Chandrasekhar Vs. The State of Kerala and Others, It was held that the words further investigation were different from re-investigation and Section 173(8) did not permit re-investigation. It was the infamous ISRO Spy case in which the Government of Kerala gave consent to the CBI to investigate and that investigation ended in final report. Thereafter the consent was withdrawn and the matter was reinvestigated by the State Police and this was deprecated by the Supreme Court in the above-noted case. In the case at our hand, however, as indicated above, no material is there to indicate that the case was ever entrusted to the CBCID barring a radiogram from the SP, CBCID and there is no material again to indicate that it was withdrawn arbitrarily. We are faced with a situation where an investigating agency had submitted two contradictory opinions on the materials gathered during investigation. It was for the Court prima facie to appreciate the materials and to take cognizance and the Court had taken cognizance and the case has reached the stage of charge-sheet and a judicial decision has come from the court of sessions that materials were there not only for taking cognizance but for framing charge as well. The order of cognizance and the order dated 25-6-98 are, therefore, not against the principles of law and the proceedings cannot be quashed.

14. In the light of the above, the present application stands dismissed.