
(2017) 02 MP CK 0174
In the Madhya Pradesh High Court
Case No : 11145 of 2016

Shiv Kumar Jhaver (Dead) Through L.Rs.	APPELLANT
Vs	
State Bank of India and Others	RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 173](#), [Section 190](#), [Section 157](#), [Section 173\(2\)](#), [Section 17](#)

Citation : (2017) 02 MP CK 0174

Hon'ble Judges : Ved Prakash Sharma

Bench : Single Bench

Advocate : Vivek Dalal, Peyush Jain

Final Decision : Dismissed

Judgement

1. The petitioner above-named seeks to invoke extra ordinary jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 (for short "the Code") for quashment of order dated 22/09/2016 passed by learned Judicial Magistrate First Class, Indore whereby, cognizance has been taken under Section 190(1)(b) of "The Code", on the basis of police report submitted under Section 173(2) of "The Code", against the petitioner for offences under Sections 420, 467, 468, 471, 431, 432 and 120B of IPC.

2. It is not a matter of dispute that pursuant to the complaint made by one Usha Jain, alleging that despite full payment of consideration for purchase of a plot by her to M/s. Phoenix Devcons Pvt. Ltd., the possession of the agreed plot has not been delivered to her, Crime No.13/2016 was registered at police station Crime Branch district Indore against directors / officials of the company for offences under Sections 420, 467, 468, 471 r/w Section 120-B of IPC. On 22nd September, 2016 charge-sheet against six persons including petitioner Ritesh Ajmera was filed before the Court of competent Magistrate. It was stated in the

charge- sheet that as eight accused persons are yet to be apprehended and that the custody period of 90 days qua petitioner and five other arrested persons is going to complete, therefore, keeping the investigation open a charge-sheet is being filed against the persons already apprehended in the matter and a supplementary charge-sheet will be filed against the petitioner and other accused persons under Section 173(8) of "The Code" at a later stage.

3. The learned Magistrate, vide the impugned order took cognizance in the matter. The order passed by learned Magistrate was unsuccessfully challenged before the learned Additional Sessions Judge, Indore by way of Cr.R. No.735/2016.

4. The order passed by the learned Magistrate as well as the order passed by learned revisional Court (dated 27/10/2016) are challenged on the ground that the order dated 22/09/2016 passed by the learned Magistrate, taking cognizance against the petitioner, has been passed on the basis of incomplete charge-sheet because as per prosecution a supplementary charge-sheet is yet to be filed at a later stage, therefore, the learned Magistrate has committed a serious error in taking cognizance against the petitioner on the basis of incomplete charge-sheet. Reliance in this regard has been placed on the following decisions:

1. Ram Lal Narang v. State (Delhi Admin) AIR 1979 SC 1791.
2. State of Bihar & Anr. v. J.A.C. Saldhana & Ors., (1980) 1 SCC 554 .
3. Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346.
4. Hari Chand and Raj Pal v. State, ILR 1977 Delhi 367.
5. Hargovind Bhargava and Ors. v. State of M.P. & Ors., 2016(2) JLJ 245.

5. Per contra, it is submitted by the learned Public Prosecutor that charge-sheet comprising material, prima- facie, indicating towards complicity of the petitioner and five other persons has been filed before the learned Magistrate. Further submission is that as many as eight accused persons namely Nilesh Ajmera, Yogita Ajmera, Sonali Ajmera, Rajat Bohra, Jitendra Panwar, Ambarish Singh, Khalil and Vikas Soni are absconding, therefore, investigation has been kept open and that charge-sheet against the six persons including the petitioner, against whom, prima-facie, material is available as regards their complicity in commission of offences under Sections 420, 467, 468, 471, 431, 432 and 120B of IPC, has been filed which is inconformity with the provisions of Sections 173(2), 173(8) and Section 190 of "The Code". It has been contended that the decisions rendered by Hon"ble the apex Court in Ram Lal Narang's case (Supra), State of Bihar & Anr. v. J.A.C. Saldhana (Supra) and Rama Chaudhary (Supra) do not espouse the cause of the petitioner; on the contrary, the proposition of law laid down in these decisions is that there is a significant difference between "further investigation", "re-investigation" and "De-novo investigation"; while "De-novo investigation" or "re- investigation" cannot be conducted without permission of the Court, "further investigation" is permissible under Section

173(8) of "The Code" and if the investigating agency, on the basis of such "further investigation" finds additional material against the persons who have already been charge- sheeted, then such material can be placed before the concerned court by way of "supplementary charge-sheet", and therefore, it cannot be said that the learned Magistrate has committed any error in taking cognizance against the petitioner and other persons or that the learned revisional Court has committed any error in declining to interfere with the order of the learned Magistrate.

6. Heard the learned counsel for the parties and perused the record.

7. Provisions of Section 190 (1) (b), 190(2), 2(r), 173(1), 173(2) and 173(8) and of "The Code" being relevant need to be noticed here, which are as under:

"2. Definitions

(r) " police report" means a report forwarded by a police officer to Magistrate under sub- section (2) of section 173; 173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay. (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating..... (3)

(4)

(5)

(6)

(7)

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

190 Cognizance of offences by Magistrates. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a)

(b) upon a police report of such facts;

(c)

(2)"

8. The pivotal issue requiring consideration by this Court is whether the Court of the competent Magistrate can take cognizance under Section 190(1)(b) of "The Code" against the persons on the basis of police report forwarded by the police officer under Section 173(2) of "The Code" even when it is stated that the investigation is not complete because certain other accused persons are yet to be apprehended, interrogated and that a supplementary charge-sheet shall be filed later on?

9. In order to appreciate the controversy involved in the case, it is apposite to refer the concluding para of the charge-sheet, which has been reproduced in para-5 of the petition and runs as under:

"VERNACULR MATTER OMITTED"

10. In Ram Lal Narang's case (Supra) the apex Court has considered the scheme of "The Code" as regards submission of the police report before the Magistrate and the power of Magistrate to take cognizance under Section 190(1)(b) the relevant observations are as under:

"14.....Section 156 Criminal Procedure Code invested the Police with the power to investigate into cognizable offences without the order of a Court. If, from the information received or otherwise, the officer in charge of a Police Station suspected the commission of a cognizable offence, he was required to send forthwith a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and than to proceed in person or depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case and to take measures for the discovery and arrest of the offender (Section 157 Criminal Procedure Code). He was required to complete the investigation without unnecessary delay, and, as soon as it was completed, to forward to a Magistrate empowered to take cognizance of the offence upon a police report, a report in the prescribed form, setting forth the names of the parties, the nature of the information and the names of the persons who appeared to be acquainted with the circumstances of the case (Section 173(1) Criminal Procedure Code). He was also required to state whether the accused had been forwarded in custody or had been released on bail. Upon receipt of the report submitted under Section 173(1) Criminal Procedure Code by the officer incharge of the Police Station, the Magistrate empowered to take cognizance of an offence upon a police report might take cognizance of the offence (Section 190(1)

(b) Criminal Procedure Code). Thereafter, if, in the opinion of the Magistrate taking cognizance of the offence, there was sufficient ground for proceeding, the Magistrate was required to issue the necessary process to secure the attendance of the accused (Section 204 Criminal Procedure Code)....."

11. From the aforesaid observations, two things can, clearly be deciphered, firstly, as soon as investigation is complete, the concerned police officer has to forward to the Magistrate a report in prescribed format, secondly, if in the opinion of the Magistrate taking cognizance of the offence, there is sufficient ground for proceeding, the Magistrate is required to issue the necessary process to secure attendance of the accused. In the aforesaid case, the apex Court has further dealt with the provisions contained in Section 173(8) of "The Code", which was introduced on the basis of recommendations made by the Law Commission of India. The relevant part of the recommendation which has been quoted in the aforesaid judgment is reproduced here for the sake of convenience:-

"14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting, the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re- open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused".

12. The apex Court after referring to the aforesaid and some decisions relevant on the point, observed as under in para 21 of the judgment:

"Anyone acquainted with the day today working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a "supplemental report". It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. 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 Code of Criminal Procedure 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 proceedings 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."

13. The aforesaid observations, abundantly, make it clear that even after submission of a report contemplated under Section 173 of "The Code", the investigating agency may continue with the investigation in exercise of powers under Section 173(8) of "The Code" and submit a "supplemental report". It further flows from the aforesaid enunciation of law, that the Magistrate before whom the report has been submitted under Section 173(2) of "The Code" may proceed to take cognizance if he is of the view that there is sufficient material to do so. The contention that further investigation of police would trench upon the proceedings before the Court was rejected by the apex Court holding that whatever the police may do, the final discretion with regard to further action is with the Magistrate. The aforesaid observations have been made considering the practical necessity of the police possessing the power to make further investigation and submit a "supplemental report", which, as stated by apex Court, is in the interest of both the prosecution and the defence.

14. As held by the apex Court in Rama Chaudhary's case (Supra) the law does not mandate taking of prior permission of the Magistrate for further investigation and that carrying out a further investigation even after filing of the charge-sheet is statutory right of the police. Relevant observations made by apex Court in para 15,16,17 & 18 of the report runs as under:

"14. Sub-section (1) of Section 173 of Cr.P.C. makes it clear that every investigation shall be completed without unnecessary delay. Sub-section (2) mandates that as soon as the investigation is completed, the officer in charge of

the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government mentioning the name of the parties, nature of information, name of the persons who appear to be acquainted with the circumstances of the case and further particulars such as the name of the offences that have been committed, arrest of the accused and details about his release with or without sureties.

15. Among other sub-sections, we are very much concerned about sub- section (8) of Section 173 which reads as under:- "173. (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

17. From a plain reading of sub- section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub- section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

18. Sub- section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation. (Emphasis supplied). 15. In the instant case, the material on record clearly indicates that charge-sheet [report under Section 173(2) of "The Code"] has been filed qua the petitioner and other 5 accused persons against whom the investigation agency was of the view that sufficient material is available with regard to commission of offence alleged against them. Considering the fact that as many as eight accused persons could not be

apprehended and in view of the possibility that further evidence may be collected against the charged-sheeted persons, as well those who are yet to be apprehended; the investigation was kept open.

16. It is not the case of "re-investigation" and "De- novo investigation". As explained above (para-16) a further investigation, even after filing of the charge-sheet is statutory right of the investigating agency. The co-ordinate Bench of this Court in "Hargovind Bhargava (Supra)", a case relied upon by the learned counsel for the petitioner without considering the aforesaid proposition of law, as explained by the apex Court, has observed in para-14 of the report as under:

"14. The investigating officer cannot be permitted to keep the investigation pending for some accused and to file the charge-sheet against the arrested accused to defeat the provisions of Section 167(2) of Cr.P.C. so that bail should not be granted due to incomplete investigation to the persons who were arrested by the investigating officer. But such procedure is commonly practiced in our State by a few investigating officers that they keep the investigation pending for some of the accused as a right in the light of the provisions of Section 173 (8) of Cr.P.C. However due to such procedure the Session Court starts trial against few accused persons and in the meantime supplementary charge- sheet is filed by adding one or two accused and thereafter re-trial starts if previous trial is not completed and again a piecemeal charge- sheet is filed against remaining accused persons resulting in a retrial or a fresh trial. Such activities of police creates multiplicity of trial against the accused persons who were arrested earlier."

17. The aforesaid observations are clearly contrary to the dictum of law laid down by Honb"le the apex Court in Rama Chaudhary's case (Supra) hence per-incuriam. Applicability of Section 167(2) of Cr.P.C, is altogether a different matter. In the instant case the petitioner has already been released on bail. Hence applicability of Section 167(2) of "The Code" is not involved herein.

18. In view of the aforesaid, this Court does not find any merit in the petition hence, the prayer for quashment of impugned order taking cognizance against the petitioner is liable to be rejected.

19. Resultantly, this petition is dismissed sans merit.