

(1977) 02 PAT CK 0020

In the Patna High Court

Shreeyest Nandan Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 08-02-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 168, 170, 173, 190, 36

Penal Code, 1860 (IPC) — Section 144, 448

Prevention of Corruption Act, 1988 — Section 4, 5

Citation : (1977) CriLJ 1597

Hon'ble Judges : P.S. Sahay, J

Bench : Single Bench

Judgement

P.S. Sahay, J.—This application is directed against the order dated the 28th June, 1976 taking cognizance against the petitioners Under Sections 144 and 448 of the Indian Penal Code.

2. The short facts for the purpose of this application are as follows. Opposite party No. 2, Janki Saran Singh, is a Clerk in the Election Office of the Nalanda Collectorate and has been a tenant of the premises bearing holding No. 675, Ward No. 8/14 in Mahalla Garapar belonging to one Shreemahto for the last nine years. The said house was sold to petitioner No. 1 sometime in the month of February, 1976, and after that petitioner No. 1 wanted to get vacant possession by ousting the complainant opposite party. On the 24th April, 1976, while opposite party No. 2 was in the office, the petitioners along with others forcibly entered in the house and threw away the articles belonging to opposite party No. 2, and also the inmates of the house were removed. on these allegations a first information report was lodged the same day and investigation was taken up by the police, and it was endorsed to Sri S. Z. Akhtar, Assistant Sub-inspector of Police, by the Officer-in-charge of the police station. During the pendency of the application, it seems an application was filed by opposite party No. 2 before the Sub-divisional Officer, Biharsharif, regarding his forcible eviction from the house, which was endorsed to Sri B. P. Sinha, Deputy Collector and Executive Magistrate, Biharsharif, and he submitted a report which has been filed as

Annexure 1 to the counter-affidavit filed by opposite party No. 2, It seems that a case was also lodged by Rabindra Sharma which is a counter to the instant case and in which a final report was submitted by the police on the 15th May, 1976 that the case was absolutely false (vide Annexure 2 to the counter-affidavit) and the same was accepted by the Chief Judicial Magistrate, Nalanda, on the 6th February 1976 vide Annexure-3,

3. After investigation in the case lodged by opposite party No. 2, a charge- sheet was submitted by Sri Akhtar who had investigated the case. A copy of the same has been filed along with the main application (Annexure 2), in which it was held that the allegations made in the first information report lodged by opposite party No. 2 were found to be true and, therefore, charge-sheet was submitted Under Sections 144 and 448 of the Penal Code. On receipt of the said charge-sheet, the Additional Chief Judicial Magistrate, Biharsharif, Nalanda took cognizance Under Sections 448 and 144 of the Penal Code and transferred the case to the file of Sri T. Pathak, Judicial Magistrate, 1st class, Biharsharif, for disposal, being aggrieved by this order, the petitioners have moved this Court for quashing.

4. Mr. Singh, appearing on behalf of the petitioners, has contended that the charge-sheet was submitted by the Assistant Sub-Inspector, Sri Akhtar, on the 17th May, 1976 and not by the Officer-in- charge of the police station and that Sri Akhtar was not entitled to submit a charge-sheet, and, therefore, the cognizance taken on the said charge-sheet is wholly illegal and without jurisdiction. His further contention is that the investigation of the case was not free and fair because of the enquiry held by the Executive Magistrate, Sri B. P. Sinha, who had given necessary directions to the Assistant Sub-Inspector expressing his opinion that an offence had been committed by the petitioners, which greatly influenced the mind of the investigating officer. In his submissions, therefore, the investigation was wholly tainted and not free and fair and the investigating officer did not look to all the materials which could have shown that the petitioners had not committed any offence.

5. Mr. Angad Ojha, appearing for opposite party No. 2, has contended that though the charge-sheet was not submitted by the officer-in-charge, it was filed at the direction of the Officer-in-charge and, therefore, it will not make any difference and cognizance could be validly taken on such charge-sheet. He has further submitted that the cognizance had been taken on a police report, as required u/s 190 of the Code of Criminal Procedure and there was no illegality about the same. Lastly, he has contended that the investigation was never influenced by the report of Sri B. P. Sinha, who was an Executive Magistrate and had submitted his report on the administrative side. Under the new Code of Criminal Procedure, the power to take cognizance now vests in the Chief Judicial Magistrate or the Sub-divisional Judicial Magistrate, and neither the Sub-divisional Officer nor the Executive Magistrate, Sri B. P. Sinha, had any hand in the matter.

6. In order to appreciate the points raised in this case it will be better to quote

certain provisions which have been mentioned by the learned Counsel appearing on behalf of the petitioners. Section 168 of the Code of Criminal Procedure reads as follows :

Report of investigation by subordinate police officer. -- When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer-in-charge of the police station.

Section 173 lays down :

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.

(a) the names of the parties :

(b) the nature of the information :

(c) the names of the persons who appear to be acquainted with the circumstances of the case :

(d) whether any offence appears to have been committed and, if so, by whom :

(e) whether the accused has been arrested :

(f) whether he has been released on his bond and, if so, whether with or without sureties :

(g) whether he has been forwarded in custody u/s 170.

* * *

Admittedly the investigation was done by the Assistant Sub-Inspector of police and the charge-sheet was also submitted by him which has been filed along with this petition. Now, the question is whether cognizance could be taken on the charge-sheet filed by the Assistant Sub-Inspector of police. Mr. Singh has drawn my attention to a decision of the Supreme Court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, , and he has relied on paragraph 4 of the judgment in which their Lordships, while discussing the scope of the investigating officers, held as follows :

Thus, under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the

trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet u/s 173.

The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate u/s 551.

In the above case, the accused persons were being tried for the contravention of the provision of Sections 4 and 5 of the Prevention of Corruption Act. The investigation, as required u/s 5A of the Prevention of Corruption Act had to be conducted by a police officer not below the rank of the Deputy Superintendent of Police without the order of the Magistrate of the 1st class. In that case there was no such order, and the investigation was done by a lower police officer, and in that context their Lordships held that when there is a specific provision, that had to be followed, which was mandatory in nature and it goes to the jurisdiction of the case, but since the trial had concluded, that point was not available to the accused because no prejudice had been caused and the defect could be cured u/s 537 of the old Code. Mr. Singh has relied on paragraph 10 of the judgment which reads as follows :

It does not follow, however, that the invalidity of the investigation is to be completely ignored by the court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.

It has been vehemently argued on behalf of the petitioners that this matter had been brought to the notice of this Court at the earlier stage, and, therefore, the order taking cognizance should be set aside and the matter should be sent back with a direction that the Officer-in-charge should re-investigate the matter and submit a fresh report in accordance with law. This proposition of law is no doubt sound, but, in my opinion, it will not apply to the facts and circumstances of the instant case. The case reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, was under the provisions of the Prevention of Corruption Act which is a special Act and in which the power to investigate has been given to a police officer not below the rank of a Deputy Superintendent of Police. But police officers below that rank also can investigate only with the permission of the

Magistrate. In the instant case, it is not disputed that the Assistant Sub-Inspector of Police who had actually investigated was : entitled to investigate. After investigation he had no doubt to submit a report as required u/s 168 of the Code and then the Officer-in-charge could submit his report, may be charge-sheet or final form, on his satisfaction. This part has not been done and the charge-sheet, as I have said earlier, had also been submitted by the Assistant Sub-Inspector. But in the charge-sheet itself it is clearly stated that after investigation a prima facie cases has been made out, and the allegations made in the first information report were true and the charge-sheet was being submitted at the direction of the Inspector of Police. On this charge-sheet, as I have said, cognizance has been taken. Therefore, on facts and also in law, the case reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, is clearly distinguishable from the facts of the instant case, and cognizance taken on the charge-sheet submitted by the Assistant Sub-Inspector at the direction of the Officer-in-charge of the police station cannot be held to be illegal. A Magistrate is entitled to take cognizance u/s 190 of the Code of Criminal Procedure which reads as follows :

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) upon receiving a complaint of facts which constitute such offence :

(b) upon a police report of such facts :

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed

(2).....

7. Mr. Ojha has submitted that cognizance is taken on a police report and the word "charge-sheet" is not mentioned, and his contention is that even if the report submitted by the Assistant Sub-Inspector is not a charge-sheet it was a police report within the meaning of Section 190(1)(b) of the Code and cognizance taken thereupon is completely valid. He has also drawn my attention to Section 36 of the Code which is analogous to Section 551 of the old Code where the superior police officers can give necessary direction to subordinate officers, which, according to Mr. Ojha, has been done in the case, as will appear from the charge-sheet itself, It cannot, therefore, be denied that there was a report in writing of facts constituting an offence made by the police officer before the learned Magistrate on which he was competent to take cognizance. u/s 190(1)(b) the report need not be made by the police officer who is authorised to make investigation but may be made by any police officer, The facts of the case reported in H.N. Rishbud and Inder Singh Vs. The State of Delhi, are not applicable to the instant case, as in that case there was a violation of the

mandatory provision of Section 5A of Act 59 of 1952, and it was in that context that it was pointed out that if there is a breach of the mandatory provisions and if it is brought to the notice at the earliest opportunity, then it has to be rectified. No useful purpose would be served by sending the case back for re-investigation to the police when the police report has been filed by an officer who was competent to investigate the case. Merely because the Officer-in-charge has not submitted the report, in my opinion, it will not invalidate the cognizance taken in the case. Therefore, this point raised by learned Counsel on behalf of the petitioners has no substance and must be rejected.

8. Another point which has been raised that the investigation was not free and fair because, of certain directions given by Sri B. P. Sinha, Executive Magistrate is equally without substance. No doubt, in the report submitted, by Sri B. P. Sinha certain observations were made which could have influenced the Investigating officer, but nowhere in the charge sheet or in the order taking cognizance such facts have been mentioned. The first part of the order taking cognizance mentions of a report which was received by the Judicial Magistrate, and the Additional Chief Judicial Magistrate has passed the following order :

Report of Sri B. P. Sinha, Dy. Collector, Bihar Sharif received from the Dy. Collector, The legal section, keep it on record,

Then the Chief Judicial Magistrate applied his mind to the charge-sheet and took cognizance, and he was nowhere influenced by the report of Sri B. P. Sinha which was simply ordered to be kept, on the record. It is no doubt true that this report should not have been sent by Sri B. P. Sinha to the Chief Judicial Magistrate because he had made enquiries on the administrative side, as directed by the sub-divisional officer. The learned Chief Judicial Magistrate rightly ordered the report to be kept, on the record and was not in any way influenced by it.

9. Thus, on a consideration of the points raised on behalf of the petitioners and after hearing learned Counsel for opposite party No. 2, I find that there is no merit in this application. It is accordingly dismissed.