
(1998) 07 MP CK 0026
In the Madhya Pradesh High Court
Case No : Criminal R. No. 149 of 1997

Shyamlal

APPELLANT

Vs

Lau Kush Ram Lakhan Pandey and Others

RESPONDENT

Date of Decision : 07-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202

Citation : (1999) 1 MPLJ 260

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : A. Usmani, for the Appellant; S.D. Khan, for the Respondent

Judgement

Dipak Misra, J.

Invoking the revisional jurisdiction of this Court u/s 401 of the Code of Criminal Procedure (in short "the Code") the complainant-petitioner calls in question the pregnability of the order dated 16-1-1997 passed by the learned Special Judge, Satna, whereby he has dismissed the complaint of the petitioner u/s 203 of the Code.

The facts as have been uncurtained are that the petitioner is in possession in respect of the land measuring 2 Acres, situate at Bari Khurd, Distt. Satna. It is stated in the petition that the petitioner belongs to "Chamar" community. The non-applicants, who are "Brahmins" with the intention and precalculated plan, endeavoured to take possession of the land belonging to the petitioner. The non-applicant No. 1 initiated a proceeding u/s 145 of the Code forming the subject matter of criminal Case No. 17/89 in the Court of City Magistrate, Satna in the year 1989 in which the non-applicant No. 1 became unsuccessful. Thereafter, he filed Civil Suit No. 105-A/95 against the petitioner and others in the Court of Civil Judge, Class-II, Satna and also moved an application for temporary injunction. The said application for interim injunction was rejected on 17-4-1995 which was challenged by the non-applicant No. 1 in Civil Appeal No. 32/95 before the

learned Additional District Judge who refused to interfere. Having lost in both the forums, as stated in the petition, the non-applicant No. 1 along with others tried to enter into the land of the petitioner in an illegal manner which was resisted by the younger brother of the petitioner in his absence but the protest was not paid heed to and the non-applicant No. 1 and his group abused the mother, sister and brother of the petitioner and to some other persons of their community and threatened the younger brother of the petitioner with dire consequences if they made efforts to enter into possession. The non-applicants took away the reaped crops of paddy and Soyabin of the petitioner who after returning to the village orally reported the matter at police station but the same was not recorded. Thereafter the same was reported to the S. P. Satna and a copy of it was given to the Town Inspector of Police Station, Kolegaon. As no action was taken by the police, he filed a complaint petition in the Court of Special Judge, Satna on 7-11-1996. Thereafter he also filed an application u/s 94 of the Code. The learned Special Judge by order dated 19-1-1996 held the allegations made in the complaint petition disclosed a cognizable offence and accordingly directed that a copy of the complaint along with the application filed u/s 94 of the Code be sent to the S.P. concerned who shall cause investigation by a senior officer and submit a report. On 16-12-1996 the report was submitted by the Additional S.P. Satna and the Court placed the matter for further hearing on 16-1-1997. On the date fixed the learned Special Judge recorded the absence of the complainant and held that there was land dispute between the complainant and the accused persons and as per the report of the investigating agency no case was made out for offences punishable u/s 3(i)(v)(vi)(x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 or Section 382/34 of the Indian Penal Code. Being of this view he rejected the application u/s 203 of the Code which is assailed in this revision.

2A. I have heard Mr. A. Usmani, learned counsel for the petitioner and Mr. S. D. Khan, learned counsel for the respondents. It is contended by the learned counsel for the petitioner that the Court below has erred in law in rejecting the complaint of the petitioner without examining and hearing the complaint. It is his further submission that the petitioner was present and, in fact, had signed in the order-sheet but the learned Judge has committed an error of record by recording that the complainant was absent. Mr. Khan learned counsel for the respondents in his turn, supported the impugned order.

On a perusal of the order sheet it is noticed that the learned trial Judge upon receipt of the complaint and the application filed u/s 94 of the Code opined that the allegations disclosed a cognizable offence and accordingly directed the matter to be investigated by a responsible officer to be nominated by the S.P. concerned. This order, in effect, amounts to an order u/s 156(3) of the Code. Section 156 of the Code reads as under :-

"156 (1) Any officer incharge of a police station may, without the order of a Magistrate investigate any cognizable case which a Court having jurisdiction over

the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) 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.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above mentioned."

From the aforesaid provision, it is quite clear that the power of investigation vests with the police in regard to any cognizable offence without the order of a Magistrate. Under sub-section (3) of the Code the Magistrate who has been empowered u/s 190 of the Code may direct the police to investigate a case. Pursuant to the direction given by the competent Magistrate Police investigates and submits a report to the Magistrate who is required to deal with the matter. It is to be noted here that the Magistrate u/s 202 of the Code occurring in Chapter XV has also the authority to direct an investigation to be made by the Police Officer. It is to be borne in mind that there is a distinction between the scope of power of the Magistrate while directing investigation under Sections 156(3) and 202 of the Code. Investigation u/s 156(3) is directed at the pre-cognizance stage whereas the direction u/s 202 of the code relates to a stage after taking cognizance but before issuance of process. The Apex Court in the case of Tula Ram and Others Vs. Kishore Singh, , has laid down the law as follows :-

"1. That a Magistrate can order investigation u/s 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation u/s 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

In case the Magistrate after considering the Statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

Where a Magistrate orders investigation by the police before taking cognizance u/s 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action u/s 190 as described above."

The aforesaid issue again came up for consideration before their Lordships of the Apex Court in the case of H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), wherein their Lordships in paragraph 6 registered the view as under :-

"6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present u/s 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint u/s 203. If in his opinion there is sufficient ground for proceeding he may issue process u/s 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation u/s 156(3). The police will then investigate and submit a report u/s 173(1). On receiving the Police report the Magistrate may take cognizance of the offence u/s 190(l)(b) and straightway issue process. This he may do irrespective of the view expressed by the Police in their report whether an offence has been made out or not. The police report u/s 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present u/s 200, Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation u/s 156(3) and received a report u/s 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation u/s 156(3) and receives a police report u/s 173(1), may thereafter, do one of three things; (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(l)(b) on the basis of the police report and issue process; this

he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence u/s 190(I) (a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

From the aforesaid decisions, it is luminously clear that the Competent Court after receipt of the report may drop the action by holding that there is no sufficient ground for proceeding further or he may take cognizance on the basis of original complaint and proceed to examine the complainant and his witnesses u/s 200 of the Code. In the case at hand, the Court below has observed that there are no materials to proceed against the accused but while doing so he has stated that he has passed the order u/s 203 of the Code. On a bare perusal of the provision envisaged u/s 203 of the Code it is apparent that the complaint u/s 203 of the Code can only be dismissed after considering the statements on oath (if any) of the complainant and the witnesses, and the result of the inquiry or investigation u/s 202 of the Code. As the direction by the Court below to the investigating agency to cause an investigation was not one u/s 202 of the Code the question of dismissal of the complaint u/s 203 did not arise. At best it can be regarded as dismissal of the proceeding for lack of sufficient materials collected, during the investigation in pursuance of the direction u/s 156(3) of the Code.

On a perusal of the impugned order, I find that except referring to the police report, no reasons have been ascribed. It has been mentioned that the complainant was not present. Mr. Usmani, learned counsel for the applicant, has urged with vehemence that the complainant was present on that day and his presence was marked in the order-sheet. Be that as it may, as the reasons have not been recorded for accepting the report and the complainant has a grievance and the Court below has jurisdiction to consider the complaint in spite of the report of the police, I am of the considered opinion that the Court below should hear the complaint in the matter and pass a reasoned order keeping in view the law laid down in the case of Tularam and others (supra) and H. S. Bains (supra).

In view of the aforesaid premises, the impugned order passed by the learned Special Judge, Satna is set aside and the matter is remanded for fresh consideration in accordance with law.

The criminal revision is accordingly disposed of.