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(1969) 09 OHC CK 0027

In the Orissa High Court

Case No : Criminal Revision No. 235 of 1967

State — APPELLANT

Vs

Balaram Singh and Another — RESPONDENT

Date of Decision : 26-09-1969

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 157, 157(1), 159

Citation : AIR 1970 Ori 107 : (1970) CriLJ 913

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : N.V. Ramdas, for Government Advocate, for the Appellant; S. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

B.K. Patra, J.—The short point that arises for consideration in this case is whether a Magistrate acting u/s 159 Cr. P. C. has got the power to stop investigation by the Police of a cognizable offence while the investigation is already in progress, and to order a magisterial enquiry.

2. Opposite party no. 1 was at the relevant time the Sub-Inspector of Police in charge of the Atgarh Police Station and opposite party No. 2 was the Sub-Inspector of Police in charge of Motor Vehicles in the office of the Superintendent of Police, Cuttack. A first Information Report was lodged against them m the Vigilance Police Station accusing them of having committed offences u/s 161 I. P. C. and Section 5(2)(41) of the Prevention of Corruption Act, 1947 . (Act 2 of 1947) and the investigation was taken up by the Deputy Superintendent of Vigilance, Cuttack. While the matter was pending investigation by the Vigilance Police, opposite party no, 1 filed an application u/s 159 Cr. P. C. before the Additional District Magistrate (Judl.), Cuttack for staying investigation by the Vigilance Police and for directing magisterial enquiry into the case. The learned A. D. M. (Judl.) by his order dated 1-4-67 allowed the application and directed the Vigilance Police to stop further investigation and ordered the Sub-divisional

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Magistrate, Atgarh to make magisterial enquiry into the matter. The correctness and legality of this order is challenged by the State,

3. Chapter XIV of the Code of Criminal Procedure deals with information to the Police and their powers to investigate. When an information is given to an Officer in charge of a Police Station of the commission within the limits of such station of a non-cognizable offence, the Police Officer has no power to investigate into that offence without specific orders from a Magistrate (Section 155 Cr. P. C.). Where, however, information relating to the commission of a cognizable offence is given at a Police Station, the Officer-in-charge of the Station is empowered u/s 156 Cr. P. C. to investigate into it without the orders of a Magistrate, Section 157 Cr. P. C, provides that if from the information received or otherwise, an Officer-in-charge of a Police Station has reason to suspect the commission of an offence which he is empowered under the Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall then proceed in person, or depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case. Then follow the two provisos. Proviso (a) says that when any information as to the commission of such offence is given against a person by name and the case is not of a serious nature the officer-in-charge of a Police Station need not proceed in person or depute a subordinate officer to make investigation on the spot. Proviso (b) says that if it appears to the officer-in-charge that there is no sufficient ground for entering on an investigation, he shall not investigate the case. Section 159 which is material for our purpose reads thus:

"159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code."

It may be noticed that Section 159 Cr, P. C. which confers power on the Magistrate either to proceed or to depute a subordinate Magistrate to proceed to the spot to hold a preliminary enquiry into the case does not expressly confer upon, him the power to stop investigation by the Police which is already in progress.

4. It is, however, contended on behalf of the opposite parties that when u/s 159 Cr. P. C. power is given to the Magistrate to direct the Police to make an investigation, it is implied that he has also the power to direct the Police to stop investigation. The point for consideration therefore is what are the occasions when the Magistrate can "direct an investigation". The word "direct" which means "command" would only signify that something which was not being done should be done and in Section 159 Cr. P. C., the word "direct", would connote that the Police are not engaged in investigation and the Magistrate orders them to do so. The word "direct" therefore would be meaningless in relation to the investigation by the Police which is already in progress. The Police themselves are doing a

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thing and no direction from the Court to do that which has already been done would be necessary or called for. The occasion to "direct an investigation" would therefore arise where the investigation is not done by the Police as in a case covered by Proviso (b) to Section 157 Cr. P. C. The real difficulty would arise in a case falling under Sub-section (1) of Section 157 Cr. P. C. where the police has already taken up an investigation of a cognizable offence and the question is whether in such a case a Magistrate can direct the Police to stop investigation and substitute a magisterial enquiry by himself or by his subordinates,

5. The leading case on the subject is AIR 1945 18 (Privy Council) . That was a case where the District Magistrate under the orders of the Chief Justice of the Lahore High Court ordered the Police to stop investigation into a cognizable offence. Their Lordships while holding that the Court has no power to do so made the following observation;

"In their Lordships'' opinion however, the more serious aspect of the case is to be found in the resultant inference by the Court with the duties of the Police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court."

Following this decision, the Lahore High Court in the Crown v. Mohammad Sadiq Niaz AIR 1949 Lah 204 held that Section 159 does not empower a Magistrate to restrain police investigation and order Magisterial enquiry where investigation of a cognizable offence by the Police is already proceeding. The Supreme Court in State of West Bengal Vs. S.N. Basak, , has held that Section 154 Cr. P. C. deals with information in cognizable offences and S. 156 Cr. P. C. with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power u/s 439 Cr. P. C. or under the inherent power of the Court u/s 561 Cr. P. C. when there was no case pending at the time excepting that the person against whom the investigation has started had appeared before the Court, had surrendered and had been admitted to bail. The same view was emphasized by a Bench of the Patna High Court in The State of Bihar Vs. Baijnath Sharma, . In that case a complaint was filed and registered u/s 420 I. P. C. and proceedings were started against the accused and simultaneously police inquiry into the matter was going on with the help of the C. I. D., as the case was of inter-provincial nature and on application of the

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complainant the Magistrate had ordered withdrawal of the police investigation. The Court held that if both things were allowed to continue simultaneously and if the police comes to the conclusion after completion of their investigation that the complaint is false and submit a report for prosecution of the complainant and if, in the meantime, the cognizance taken by the Magistrate is allowed to stand, two contradictory cases will be pending trial at one and the same time. The resultant position would be that in one case the complainant would be called upon to prove his case and in another the prosecution would be called upon to prove that the complainant''s case is false. The Court therefore ordered that the Police investigation should be allowed to continue, and, the order summoning the accused be quashed. Their Lordships further observed that after the completion of the police investigation, when the police will submit a report to the Magistrate, it will be open to him, after consideration of the Police report and the documents which have been filed by the complainant, to reconsider the whole matter and then to decide what should be done in the circumstances of the case. The point to be emphasized here is that the order of withdrawing the police investigation was quashed.

6. In support of their contention that the Additional District Magistrate had the power to stop investigation and direct an enquiry to be made by a Magistrate, the opposite parties placed reliance on an observation of Narasimham, C.J. in Kasinath Misra v. Achyutananda Das 29 CLT 164. The facts of that case are these: The opposite party lodged information at the Athgarh police station against the four petitioners and two other persons including the then Sub-divisional Officer of Athgarh alleging that at the instigation of the Sub-divisional Officer the other persons trespassed into his compound, broke down a stone wall which he had constructed and put up a new boundary wall after encroaching into his area. The Police registered a case and took up investigation, but as the Sub-divisional Officer himself was named as one of the accused the Superintendent of Police rightly thought that the matter should be reported to the District Magistrate. Further investigation by the Police was therefore stopped and the help of the District Magistrate was sought. The District Magistrate directed the A. D. M. (Executive) to hold a judicial enquiry which was done and he reported that there was a bona fide boundary dispute between the petitioners and the opposite party. The District Magistrate accepted that report and directed the Police to submit final report--mistake of fact or mistake of law. Subsequently on the information of the opposite party, two other cases were registered against the petitioners by the Police and in both of them they filed final reports. Thereupon, the opposite party filed three protest petitions before the S. D. M. (Judl.) challenging the submission of final report by the Police. The S. D. M. treated these petitions as complaints, but without examining the complainant on solemn affirmation and without even discussing the reasons given by the A. D. M. in his enquiry in the previous case, he straightway issued summons against the petitioners observing that the order of the District Magistrate directing the A. D. M. (Executive) to hold a judicial enquiry and the judicial enquiry held by the

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latter were both illegal in view of the allocation of functions made between the Judiciary and the Executive in the Executive Instructions issued by Government. His Lordship while pointing out that the Executive Instructions cannot have the effect of amending the Criminal Procedure Code itself held that so long as the District Magistrate functions as "District Magistrate" and the A. D. M. (Executive) also exercises functions as "Additional District Magistrate" under the Code, their action cannot be held to be illegal. It would be manifest from the report that the question whether the Magistrate has got power to stop Police Investigation did not at all arise for consideration in that case. Indeed from the recital of facts it would appear that it is the Superintendent of Police who stopped further investigation by the Police and sought the help of the District Magistrate to get the matter enquired by a Magistrate. But unfortunately in paragraph 5 of the judgment, the following passage occurs:

"5. Thus when the Superintendent of Police reported the matter to the District Magistrate mainly because the Sub-divisional Officer himself was implicated as an accused the District Magistrate had undoubted jurisdiction u/s 159 Criminal Procedure Code to stop investigation and direct an enquiry to be made by a fairly senior officer above the rank of Sub-divisional Officer. He rightly chose the A. D. M. (Executive) for that purpose. There is nothing illegal in his action in ordering an enquiry to be made by the Executive A. D. M. or in latter holding such an enquiry. Similarly, on receipt of his report, the District Magistrate was justified in ordering the Police to submit final report."

The aforesaid statement does not fit in with the statement made in paragraph 2 of the judgment to the following effect that--

"... as the Sub-divisional Officer himself was named as one of the accused Superintendent of Police rightly thought that the matter should be reported to the District Magistrate. Further investigation by the Police was therefore stopped and the help of the District Magistrate was sought. The District Magistrate directed the A. D. M. (Executive) to hold a judicial enquiry."

It therefore appears to me to be clear from the aforesaid statements that the Officer who stopped further police investigation was the Superintendent of Police and not the District Magistrate. The observation of the learned Chief Justice therefore that the District Magistrate had undoubted jurisdiction u/s 159 Cr. P. C. to stop investigation and directing an enquiry to be made by a Magistrate was, if I may say so with respect, unnecessary for the decision of that case, apart from it being not in conformity with law.

7. In the result, I would hold that the order of the learned Additional District Magistrate (Judicial) ordering the Vigilance Police to stop further investigation is clearly illegal. I would therefore allow this application and quash the impugned order dated 1-4-1967 passed by him.

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