
(1988) 08 AHC CK 0020
In the Allahabad High Court
Case No : Writ Petition No. 6579 of 1988

Suresh Chandra Sen and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(2), 157, 173(8), 177
Penal Code, 1860 (IPC) — Section 161, 218, 318, 383, 384
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1989) 2 AWC 1008

Hon'ble Judges : S.C. Mathur, J;G.B. Singh, J

Bench : Division Bench

Advocate : Raghuvendra Kumar Singh, for the Appellant;

Final Decision : Dismissed

Judgement

G.B. Singh, J.—This is a petition for issuing a writ in the nature of Certiorari quashing the preliminary enquiry report submitted by the Circle Officer Lalganj and the First Information Report of Crime No. 60 of 1988 Police Station Sairaini district Rae Bareli and the investigation done in pursuance of that First Information Report and issuing a writ in the nature of Mandamus directing the opposite parties not to arrest the Petitioners in connection with the aforesaid case.

2. A dacoity was committed at the house of one Hari Shanker at village Balampur Police Station Sairaini district Rae Bareli on the night between 29/30-11-1987. The first Information Report was lodged about it by Hari Shanker on 30-11-1987 at the aforesaid Police Station. The case was that 10 or 12 dacoits committed dacoity and they looted cash and ornaments worth Rs. 70,000/-. Suresh Chandra Sen S.O. Police Station Sairaini who is Petitioner No. 1 investigated the case. S.I. Krishna Dev Singh Petitioner No. 2 was assisting him in that investigation. S.O. Suresh Chandra Sen arrested two suspects of that case namely Ganga Sagar and

Ram Sanehi on 7-12-1987 and recovered some looted property. Ganga Sagar disclosed names of other dacoits who participated in the aforesaid dacoity. On 26-12-1987 some other suspects were also arrested and looted property was recovered from their possession.

3. According to the Petitioners one Ram Kishore was one of those suspects who were arrested on 26-12-1987. One Suresh Dixit resident of Sairaini District Rae Bareli who is an influential person tried to get Ram Kishore released but failed. C.O., R.B. Singh of Lalganj Circle District Rae Bareli who lodged the First Information Report also made an attempt to get Ram Kishore released but did not succeed. Both Suresh Dixit and C.O., R.B. Singh expressed their anger when they failed to get Ram Kishore released. Suresh Chandra Dixit and others made false complaint to D.I.6. of Lucknow Range against the Petitioners. A wireless message Annexure No. 2 was, therefore, sent by the D.I.G. to the Superintendent of Police for enquiry into the matter. This enquiry was entrusted to C.O., R.B. Singh who submitted incorrect report Annexure NO. 3 against the Petitioners mentioning therein that the Petitioners and one S.I. Prem Shanker Sukhla committed offences under Sections 384/218/161 IPC and 5(2) Prevention of Corruption Act. Against this report S.O., Suresh Chandra Sen made an application to the Superintendent Police Annexure No. 5 that the enquiry may be given to some senior officer where upon Additional S.P. was asked to conduct further enquiries and to check up the report of the Circle Officer. After this, Additional S.P. sent two notices to S.O. Suresh Chandra Sen Petitioner No. 1 but he did not appear before him to disclose what material is in his favour and which of the witnesses should be examined, in support of his contention. Additional S.P. did not find any material to disagree with the Circle Officer and he, therefore, confirmed it on 11-4-1988. His report is Annexure No. 6. After this C.O. R.B. Singh lodged First Information Report against the two Petitioners and S.I. Prem Shanker Shukla on 21-4-1988 Annexure No. 1 at Police Station Sairaini.

4. According to the First Information Report S.O. Suresh Chandra Sen arrested one suspect Gur Shanker on 26-12-1987 who confessed his guilt and disclosed that looted ornaments have been sold by him and another dacoit Prem Kumar to one Sheo Narain Sonar resident of Deviganj Police Station Kotwali Fatehpur for a sum of Rs. 33,330/- and this amount was distributed among the dacoits. S.O. Suresh Chandra Sen arrested Gur Shanker Tewari, Ram Kishore Pandit and Bhagwati on 26-12-1987 and brought them to Police Station Sairaini. They were seen at Police Station Sairaini by the informant Sheo Narain Sonar was also present OD that date at Pelice Station Sairaini. Sheo Narain Sonar disclosed that he sold those ornaments at Kanpur whereupon S.O. Suresh Chandra Sen was directed to go to Kanpur to recover the looted articles. In Case Diary S.O. Suresh Chandra Sen noted that he went to Fetehpur on 29-12-1987 interrogated Sheo Narain Sonar there and took search of his shop The entries made in his log Book of the Government leap No. USU 1373 on which S.O. Suresh Chandra Sen and his party went to Fatehpur do not tally with the entries in the case diary about the places visited by him. It is further alleged in the First Information Report that

on 29-12-1987 S.O. Suresh Chandra Sen did not go to Fatehpur but went to Kanpur along with S.I. Krishna Dev Singh Petitioner No. 2, some other police officers and Sheo Narain Sonar. The informant interrogated more than 18 or 20 persons of Fatehpur and Kanpur. On their interrogation he came to know that S.O. Suresh Chandra Sen and S.I. Krishna Dev Singh took S.I. Prem Shanker Shukla of Police Station Collector ganj Kanpur along with them on 29-12-1987 and went to the shop of firm Surya Kumar Vidya Sagar, Nayaganj, Kanpur along with Sheo narain Sonar. On pointing out of Sheo Narain Sonar Arvind Kumar and Yogendra Kumar who were present at the shop of the Firm were interrogated. The two Petitioners and S.I. Prem Shanker Shukla threatened to take them to the Police Station and extorted a sum of Rs. 20,000/- in cash and ornaments worth Rs. 5000/- looted in the aforesaid dacyoty from them. The Petitioners and S.I. Prem Shanker Shukla concealed taking search of the shop of the Firm, Interrogation of the aforesaid persons and receipt of the aforesaid cash and looted ornaments. They in its place mentioned in the case diary that the Petitioners had gone to Fatehpur. The Petitioners and S.I. Prem Shanker Shukla, therefore, made incorrect entries about the arrest and recovery of the looted articles in the Case Diary and took a sum of Rs. 20000/- and ornaments worth Rs. 5000/- from Arvind Kumar and Yogendra Kumar by extortion and in order to save the partners of the Firm Surya Kumar Vidya Sagar, false records were prepared and illegal gratification was taken. On 30-12-1987 illegal gratification was accepted by them from Sheo Narain Sonar at Police Station Sairaini and they did not take any action against him.

5. On the basis of this First Information Report a case under Sections 384/218/161 IPC and 5(2) of the Prevention of Corruption Act has been registered against the Petitioners and S.I. Prem Shanker Shukla of Police Station Collector ganj Kanpur. From the allegations made in paragraph 29 of the writ petition it appears that Circle Officer Sanjay Srivastava of Circle Salon District Rae Bareli is investigating the case. The Petitioners apprehending their arrest during investigation filed the present writ petition.

6. It was firstly argued by the learned Counsel for the Petitioners that the First Information Report does not disclose any Difence and the investigation commenced on its basis should, therefore, be quashed. We do not find any force in this contention. According to the First Information Report the Petitioners committed offences under Sections 384/218/161 IPC and 5(2) of the Prevention of Corruption Act. Section 384 IPC deals with extortion. It has been defined u/s 383 IPC and made punishable u/s 384 IPC. It shows that when one intentionally puts other person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, commits extortion. In the present case it is alleged that the Petitioner threatened Arvind Kumar and Yogendra Kumar to take them to Police Station and thereby took Rs. 20000/- in cash and ornaments worth Rs. 5000/- from them. The Petitioners did not disclose all this in the Case Diary but made an attempt to conceal all this. It can, therefore, be inferred that the

Petitioners dishonestly induced Arvind Kumar and Yogendra Kumar to deliver them the aforesaid cash and ornaments. The injury need not be physical. Even a threat of involving a person in a criminal charge whether true or false amounts to a fear of injury. Thus, the necessary facts constituting ingredients of offence of extortion punishable u/s 384 IPC are given in the First Information Report. It is also mentioned in the First Information Report that the Petitioners framed incorrect Case Diary omitting recovery from Sheo Narain Sonar and Arvind Kumar and Yogendra Kumar. Section 218 IPC shows that where a public servant charged with the preparation of any record frames that record in a manner which he knows to be incorrect with intent to save any person from legal punishment or to cause loss or injury to the public or to any person is punishable under it. The Petitioners were public servants. There is clear allegation that they made incorrect entries in the Case Diary with intent to save the aforesaid three persons from legal punishment and to cause loss or injury to the person from whose house the said ornaments were looted. Thus, necessary facts constituting the offence u/s 218 IPC are also given in the first information report. There is clear allegation in the First Information Report that the Petitioners being public servants took illegal gratification from the aforesaid persons in respect of their official acts. It is also indicated therein that this was done to favour the aforesaid three persons. Such a case clearly falls within the purview of Section 161 IPC and 5 (2) of the Prevention of Corruption Act. It cannot, therefore, be said that the First Information Report does not disclose a cognizable offence.

7. The offences mentioned in the First Information Report are cognizable and therefore, the police can investigate the matter without any order from the Magistrate. It cannot, therefore, be said that the investigation started on the basis of the aforesaid First Information Report is illegal.

8. It has been held in *S.N. Sharma v. Bipen Kumar Tiwari* 1970 Cri.L.J. SC 764 at page 767 that:

It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.

9. In the present case there is no allegation that Shri Sanjay Srivastava Circle Officer Salon who is investigating the case has malice or ill-will against the Petitioners.

10. In another case *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, following observations made in para 25 are relevant:

There is a clear-cut and well demarcated sphere of activity in the field of crime

detection and crime punishment. Investigation of any offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the Court to take cognizance of the offence u/s 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate.

It has been further held in this case in para 28 that:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its clue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

11. These observations also go to show that the investigation of an offence by the police should not be ordinarily interfered with by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution basing its opinion on seriously disputed questions of facts.

12. The next case is *State of West Bengal v. Swapan Kumar Guha* 1982 Cri.L.J. 819 SC. It has been held in this case that an investigation can be quashed if no cognizable offence is disclosed by the FIR. It is not within the province of the police to investigate into a report which does not disclose commission of a cognizable offence. It has been further held in this case that if an offence is disclosed the High Court under Article 226 of the Constitution will not normally interfere with and investigate into the case and will permit investigation into the offence to be completed. It was also held in this case that if the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of justice will suffer. In this case the following observations made in para 21 are also relevant:

The position which emerges from these decisions and the other decisions which are discussed by Brother A.N. Sen is that the condition precedent to the commencement of investigation u/s 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation u/s 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in *Khawaja Nazir Ahmad* will apply. The Court has then no power to stop the investigation for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

13. In *Jug Raj Verma Vs. State of Rajasthan and Others*, it has been observed that the power under Article 226 of the Constitution cannot be pressed into service to thwart or throttle the investigation at the threshold. It has been further held in this case that it is only after completion of investigation it can be seen as to whether the facts as disclosed in investigation prima facie make out any offence or not. In the present case the First Information Report discloses various cognizable offences said to have been committed by the Petitioners, there is no clear allegation that the investigating officer is actuated by malice and the Petitioners have not placed any material on record showing that no offence as alleged has been committed by them. The Petitioners have, therefore, failed to make out any case for interference with the investigation on the ground that the First Information Report does not disclose any offence.

14. It was also argued by the learned Counsel for the Petitioners that the investigating officer has no jurisdiction to investigate the matter and as such the investigation should not be allowed to proceed. He has submitted in this connection that Shri Sanjay Srivastava is Circle Officer of Salon District Rae Bareilly and the offences mentioned in the First Information Report were committed at Kanpur and so he cannot proceed with the investigation. In this connection he made reference to Section 156 Code of Criminal Procedure. It lays down that any Officer In-charge of a Police Station may without order of the Magistrate investigate any cognizable case which Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII.

15. On the basis of this Section he argued that the Circle Officer who is investigating the case being not Officer in charge of the Police Station within the local area of which the offences have been committed cannot investigate the case. He further mentioned in this connection Section 177 of Chapter XIII of the Criminal Procedure Code which lays down that every offence shall ordinarily be

enquired into and tried by a Court within whose local jurisdiction it was committed. On the basis of these he argued that the Circle Officer Salon who is the Deputy Superintendent of Police should not be allowed to proceed with the investigation. We do not find any force in this connection.

16. Section 36 of the Criminal Procedure Code provides that Police Officers superior in rank to an officer in charge of the Police Station may exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station. The Circle Officer Salon being the Deputy Superintendent of Police is undoubtedly superior in rank to an officer in charge of the police station. He has been appointed for the district Rae Bareli and by distribution of work he has been assigned to look after the work of Salon Circle. Thus, he being appointed for the district which can be taken as local area, he can investigate the offences committed within the District Rae Bareli. The case diary of the case must have been completed within the district Rae Bareli. The concealment by omissions which the Petitioners made in the Case Diary regarding Sheo Narain Sonar, Arvind Kumar and Yogendra Kumar and recovery of articles said to be stolen in the dacoity must, therefore, be deemed to have been committed within the district Rae Bareli. It is also disclosed in the First Information Report that some wrong entries have been made to conceal the interrogation, arrest and recovery from the aforesaid three persons. This also must have been done within district Rae Bareli. The word "ordinarily" used in Section 177 shows that the rule embodied in this Section is a general rule and there are exceptions which are provided in the subsequent provisions of the Code. Section 178 Code of Criminal Procedure lays down that where it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another it may be enquired into or tried by a Court having jurisdiction over any of such local areas. These provisions go to show that if the omissions and wrong entries in the Case Diary were made in the District Rae Bareli, Kanpur or Fatehpur the police of any of such districts can investigate into the matter. Since Circle Officer district Rae Bareli is investigating the matter it cannot be said in view of Section 178 Code of Criminal Procedure that he cannot investigate the matter relating to omissions and incorrect entries made in the Case Diary.

17. The offence of extortion u/s 384 IPC was committed at Kanpur. The illegal gratification from Arvind Kumar and Yogendra Kumar was also taken at Kanpur. So far as the illegal gratification from Sheo Narain Sonar is concerned, it is clearly mentioned in the First Information Report that it was done at Police Station Sairaini district Rae Bareli. It cannot, therefore, be said that the case relating to illegal gratification from Sheo Narain Sonar cannot be investigated by the Circle Officer of district Rae Bareli. As regards the offences said to have been committed at Kanpur Section 184 read with Section 220 Code of Criminal Procedure are in favour of the legality of the investigation. It is mentioned in Section 184 Code of Criminal Procedure that the offences committed by any person are such that he may be charged and tried at one trial for each such

offence by virtue of the provisions of Sections 219, 220 or 221, may be enquired into and tried by any Court competent to enquire into or try any of the offences. Section 220 Code of Criminal Procedure provides that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person he may be charged with and tried at one trial for every such offence. If these provisions are read with Section 156 Code of Criminal Procedure it becomes clear that Circle Officer of Salon District Rae Barili is competent to investigate the matter. A series of acts so connected together has to form the same transaction. The investigating Officer and the two Sub Inspectors who were assisting him in the investigation committed more offences than one. The extortion, bribery and false entries in the Case Diary form part of the same transaction. There is proximity of time, place and unity of purpose and design and continuity of action in this series of acts. The false entries were made in the Case Diary to conceal extortion and bribery. It can, therefore, be easily said that these offences were committed together, form part of the same transaction and as such they can be investigated by the Circle Officer of Salon district Rae Bareilly.

18. It may also be mentioned here that Section 156(2) Code of Criminal Procedure lays down that no proceeding of a police officer in any 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. Thus, this Section also militates against the contention of the learned Counsel for the Petitioner. A glance on this provision makes it clear that if there is any violation of delimitation of power of the officer in charge of the Police Station, it is cured under Sub-Section (2) of Section 156 Code of Criminal Procedure. Learned Counsel for the Petitioner in order to support his contention relied upon two cases. One of them is State Vs. Dhulaji Bavaji, . It has been held in this case that a Magistrate has no power by virtue of Section 177 of the Code of Criminal Procedure to try an accused for an offence committed wholly outside the limits of his jurisdiction. It has been observed above that in Section 177 Code of Criminal Procedure word "ordinarily" has been used. The aforesaid observations in the reported case were made on the general rule embodied in this Section. If the case falls within the exceptions which are provided in subsequent Section of Chapter XIII of the Code of Criminal Procedure this general rule will not apply. In this case the provisions of Sections 178, 184 and 220 Code of Criminal Procedure which appear applicable to the present case were not considered. Thus, this case appears of little help to the learned Counsel for the Petitioner.

19. The second case is Superintendent and Remembrancer of Legal Affairs, Govt. of West Bengal Vs. Kshitish Chandra Roy and Others, . It has been held in this case that where the Magistrate has taken cognizance and has framed charges against the accused he cannot discharge the accused when he finds out that the report has been submitted after investigation by an officer who was not authorised to hold the investigation. It has been further held in this case that in such a circumstances he should stay the case at that stage without discharging

the accused and direct further investigation by an authorised police officer and he may proceed with the trial after such police officer has submitted his report of investigation. The question of cognizance by the Magistrate has not arisen in the present case so far. If the investigating officer finds that no case is made out against the Petitioners it is just possible that cognizance of offences by the Magistrate may not arise. So far as the competency of the Investigating Officer to investigate the offences is concerned it has been observed above that the material placed before the Courts show that he is competent to investigate the case. Thus, this case also does not support the contention of the learned Counsel for the Petitioners.

20. The Petitioners have not been able to show in any way as to why the preliminary enquiry report should be quashed. The First Information Report against the Petitioners has been lodged after making a preliminary enquiry in the matter and it contains necessary facts constituting the ingredients of the alleged offences. The Petitioners have not been able to show that the investigation is being made by an unauthorised investigating officer. The writ petition has, therefore no merits.

21. The writ petition is dismissed. Petition dismissed.