

---

**(1971) 03 PAT CK 0014**  
**In the Patna High Court**  
**Case No : Criminal Rev. No. 1093 of 1970**

The State of Bihar

APPELLANT

Vs

Sudhir Kumar Mandal and Ratneshwar Thakur

RESPONDENT

---

**Date of Decision :** 18-03-1971

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 154, 155, 155(2), 156, 156(1)  
Penal Code, 1860 (IPC) — Section 378, 379, 403, 467, 471

**Citation :** (1971) PLJR 367

**Hon'ble Judges :** C.P. Sinha, J

**Bench :** Single Bench

**Advocate :** K.P. Verma, Government Advocate and Lala Kailash Bihari Prasad, for the Appellant; Baidyanath Prasad No. 2 and Birendra Mohan Singh, for the Respondent

---

## Judgement

C.P. Sinha, J.—This revision by the State is directed against the order of the Sub-divisional Magistrate, Dumka dated the 19th February, 1970 under which he has cancelled the first information report in the case u/s 379 of the Indian Penal Code and discharged the accused opposite party. As it appears, this criminal case has arisen in the following circumstances. On 17th January, 1970, the informant, who is an Executive Engineer of the Public Works Department posted at Dumka went to witness the evening cinema show along with his wife who carried her purse (Shanti Niketan type) containing a bunch of key, a pair of golden earrings and a handkerchief. They left the cinema house after the show was over leaving the purse there by mistake. When they detected this mistake at their residence, he (husband) at once sent a written report dated 17th January, 1970 (9.45 P.M.) to the Officer-in-charge of Dumka Town Police Station for necessary action. On the basis of that report, the Officer-in-charge drew up a formal first information report that very night against unknown, u/s 379, I.P.C. and took up investigation. In course of that investigation the police searched the residential places of these opposite parties. The residence of opposite party no. 1, Sudhir Kumar Mandal, was a room in the building named "New Bihar", and that of

Ratneshwar Thakur, opposite party no. 2, a room in Indralaya Hotel. It has been stated by learned Government Advocate that these two buildings are about a mile apart in the town of Dumka. Ratneshwar's search was effected at 9-15 A.M. and that of Sudhir Kumar Mandal at 10 A.M. From the box of Ratneshwar a bunch of key, one piece of gold bali were recovered in course of that search. So also from the box of Sudhir Kumar Mandal a Shanti Nike-tan type hand bag and a gold ball were recovered. The police seized these articles for which necessary seizure lists were prepared before witnesses. Next day (19-1-1970), these articles were put on test identification parade in which they were duly identified by the informant.

2. On 18-1-1970 both the accused persons were produced in custody before the Sub-divisional Magistrate who granted them bail on 19.1.1970. While the investigation in the case was still going on and the submission of the final form in the case was awaited, on 22.1.1970 these accused persons filed a petition before the Sub-divisional Magistrate requesting that the investigation in the case should be stopped and they be discharged. That prayer was seriously objected to on behalf of the State. In due course, the Sub-divisional Magistrate heard the parties on 6.2.1970 and by his impugned order dated 19.2.1970 cancelled the first information report and discharged the accused. As observed above, it is against this order of the Sub-divisional Magistrate that the State has filed this revision.

3. Learned Government Advocate appearing for the State has assailed the legality of the impugned order on the ground that since the case was still under investigation by the police it was wholly beyond the authority of the Magistrate to stop or cancel the investigation which falls exclusively within the domain of the police. According to him, if the Magistrate had any jurisdiction to take action in the matter that was after the submission of the final form and not earlier. As already stated, the final form in the case was still being awaited and as I am informed, the police has not submitted any final form in the case till now.

4. On behalf of the opposite parties their counsel Mr. Baidyanath Prasad No. 2 and Mr. Birendra Mohan Singh have endeavored to support the legality of the impugned order on the ground that on the facts complained the case would not come u/s 379, I.P.C. At the most, it would be a case u/s 403, I.P.C. in the light of illustration (g) of Section 378, which being non-cognizable cannot be investigated by police without prior order of a Magistrate, as laid down in Section 155(2) Cr.P.C. Since the police have not been given any order to hold its investigation the action of the police in starting the investigation is wholly without jurisdiction. In this view of the matter, the Magistrate is fully competent to stop them from proceeding with the investigation and also to discharge the accused to save them from unnecessary harassment. Such an action on his part is essential for the ends of justice.

5. After having considered the facts and circumstances of the case, I am unable to agree with the above contention canvassed by the opposite party. As already

shown, on the basis of the written report received from the informant the police instituted a case u/s 379 which clearly fell into the category of cognizable cases. Since the case instituted was a cognizable one the police were fully authorized to investigate into it as per Section 156(1), Cr.P.C. Since the final form in the case is yet to come it will not be advisable for this Court to express any opinion on question as to whether the case appropriately falls u/s 379 or 403 of the Indian Penal Code. Determination of this point is dependent on the evidence collected in the case which is not yet complete. In the circumstances the point of investigation has to be decided at present on the case as it stands in the First Information Report and not on what it should or would be. As already indicated, it is registered as a case u/s 379 in the police papers and accordingly they have full statutory right to hold and continue its investigation according to law till the submission of the final form. The Magistrate till then has no authority to interfere with the course of investigation much less to cancel it. The investigation being an exclusive preserve of the police any interference with it before the submission of final form in the case is wholly unwarranted in law. For these reasons, the Magistrate's action in canceling the first information report and consequently discharging the accused persons when the investigation by police was still in progress cannot be sustained being against law.

6. In support of the above view reference may be made to the following decisions. The first case is (1) State of West Bengal Vs. S.N. Basak, . Its facts, relevant for the present purpose, were these. On March 26, 1960 on the report of the Sub-Inspector of Police Enforcement Branch, first information report was drawn against the accused and investigation taken up. On April 4, the respondent surrendered in the court of the Judicial Magistrate and was granted bail. On May 9, he filed a petition under Sections 439 and 561A of the Criminal Procedure Code and prayed for a rule to quash the police investigation on the ground that it was without jurisdiction. On hearing the parties the Calcutta High Court allowed the prayer and quashed the police investigation as being without jurisdiction. On appeal against that order, the Supreme Court held:

At the time the respondent filed the petition in the High Court, only a written report was made to the police by the Sub-Inspector of Police Enforcement Branch and on the basis of that report a first information report was recorded by the Officer-in-charge of the Police Station and investigation had started. There was no case pending at the time excepting that the respondent had appeared before the Court, had surrendered and had been admitted to bail. The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 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 or under the inherent power of the court u/s 561A of the Criminal Procedure Code.

7. In a latter case (2) S.N. Sharma Vs. Bipen Kumar Tiwari and Others, it has been held by the Supreme Court that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. As I have already shown, at the time the impugned order was made all that had taken place in the instant case was that the two accused, after their arrest, were produced before the Magistrate on 18.1.1970 and they were admitted to bail the next day. As the police investigation in the case was still going on there could be no question of submission of the report by the police till then.

8. The case of (3) Abdul Halim and Another Vs. State of West Bengal, relied upon by the opposite parties seems to be of little help to them. In that case the facts were quite different. There, the genuineness of a document produced by the accused in course of proceeding u/s 44(1) of the Estates Acquisition Act was challenged by the other side who produced a certified copy of the document which was at variance with the one filed by the petitioners. The Settlement Officer referred the matter to the Police without any previous enquiry. There was also no complaint by him as required by Sections 195 and 476, Criminal Procedure Code. The police held investigation and submitted charge-sheet against the petitioners under Sections 467, 474 and 471 of the Indian Penal Code and on receipt thereof the trial court took cognizance in the case and put the accused on trial. The point urged before the Magistrate that the police investigation in the case, which was non-cognizable offence, was illegal in the absence of an appropriate previous order u/s 155(2), Criminal Procedure Code was overruled by the Magistrate and he took its cognizance treating that charge-sheet to be a report by a police officer. In the revision before the Calcutta High Court, his Lordship held that the provisions of Section 155(2) cannot be rendered nugatory by police report in a non-cognizable case where there has been no previous order under Sub-section (2) of Section 155 as a valid report u/s 190(1) (b). Consequently the investigation resulting in the charge-sheet upon which the Magistrate took cognizance was held to be illegal. In the present case, as already mentioned, the police has registered it u/s 379 which is cognizable. On that fact, it cannot be said that the police in taking up its investigation had embarked upon doing something which was not sanctioned by law. In the case of (4) Nukul Chandra Banerjee and others V. The State (1970 P.L.J.R. 431) the single Judge of this Court held that where the allegation in the first information report, even if they are taken at their face value and accepted in its entirety, do not make out an offence, the police has no authority to proceed with the investigation and to allow it to proceed with the investigation will amount to mala fide exercise or an abuse of power. This authority is however hardly helpful to the opposite party in view of the fact that in the instant case on the allegations made it cannot be said that they did not make out any offence. On the other hand, they did point out to the commission of an offence and the police was obliged to draw a formal first

information report on that basis and initiate investigation. For the above reasons, the impugned order of the Magistrate under which he has cancelled the first information report and discharged the accused persons is quite illegal and must be quashed. In the result, the revision is allowed and the Magistrate's order dated 19-2-1970 is set aside. The investigation in the case will proceed in accordance with law.