

(1980) 03 BOM CK 0009

In the Bombay High Court

Case No : Criminal Applns. No's. 1127, 1189, 1193, 1241 to 1244, 1246, 1248, 1249, 1252, 1253, 1256, 1257, 1258, 1261 and 1264 of 1977

The State of Maharashtra

APPELLANT

Vs

Fulchand Dagadoo and others

RESPONDENT

Date of Decision : 10-03-1980

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 190, 204, 482
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (1981) CriLJ 503

Hon'ble Judges : Mehta, J;B.C. Gadgil, J

Bench : Division Bench

Judgement

Gadgil, J.—These seventeen applications can be conveniently decided by a common judgment.

2. It would be sufficient to give a few facts of one of these case. In Criminal Application No. 1127 of 1977 the matter arose from an order passed by the Judicial Magistrate, First Class (Railways), Aurangabad, in C.C. No. 725/75. The accused (the respondent in this application) is alleged to have committed offences under Sections 279 and 337 of the I.P.C. The accused was arrested on 16th march, 1975 and was released on bail. The police investigated the matter and then filed the charge-sheet on 30th April, 1975. This charge-sheet was numbered as Criminal Case No. 725 of 1975. The learned Judicial magistrate passed order dated 6th June, 1977 that the charge-sheet should be returned to the police with direction that the accused be arrested when available and thereafter the charge-sheet should be produced along with the accused. The Magistrate further observed that with this direction the case should stand disposed of.

3. As far as the facts of the rest of the applications are concerned, suffice it to say that all these cases arose out of the charge-sheets filed by the police under

one or other section of the I.P.C. and the same Magistrate has passed a similar order for returning the charge-sheet.

4. Mr. Kotwal appearing for the State contended that the impugned order is not tenable as under the Cr.P.C. a procedure has been prescribed which has to be followed by the Magistrate in every case. He further contended that there is no provision in the Cr.P.C. which would enable the Magistrate to return the charge-sheet simply because the police did not produce the accused along with the charge-sheet.

5. It is needless to say that the Magistrate can take cognizance u/s 190 of the Cr.P.C. on the basis of any of the three matters viz., (a) a complaint (b) a police report (c) information received from any other person. A police report contemplated by Sec. 190 is the report u/s 173 which reads as follows :

"173. (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 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.

(3)"

As to what should be done after taking cognizance u/s 190 is laid down in Section 204 of the Cr.P.C. We will reproduce sub-section (1) which reads as follows :

"204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such

Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction."

The case then proceeds after the production of the accused with the help of summons or warrant. In these matters, the learned Magistrate has not followed this procedure. He has observed that the cases remain on dormant file if the accused is not brought by the police along with the charge-sheet and that the police station officer keeps no interest after filing the charge-sheet and the warrant of arrest remains as an unattended paper. He has further stated in his order that every Civil or Criminal Court has inherent power and that it was necessary to pass an order that the charge-sheet should be returned with a direction that it should be filed again after securing the arrest of the accused.

6. It was contended by Mr. Kotwal that it will be too broad a proposition to say that in every case the accused must be produced along with the charge-sheet. According to him the contents of the police report contemplated by Section 173 give an indication that the police have to inform the Court whether the accused has been arrested and whether he has been released on bail. The taking of cognizance u/s 190 does not depend upon the presence of the accused in the Court. The process of securing the presence of the accused in the Court is mentioned in Section 204 of the Code. We may also add that in certain cases, the Court has the power to record evidence in the absence of the absent accused. For example, Section 299 of the Code says that if the accused is proved to have absconded, the Court may record the deposition of the witnesses and that evidence can be used against the accused in a trial which may begin after the arrest if the person who has been so examined was dead at the time of recording evidence in the presence of the accused. We are making mention of this provision of Section 299 mainly for the purpose of showing that it would not be correct to say that the presence of the accused along with the charge-sheet is a must.

7. It was urged on behalf of the respondents by Mr. Vaishnav and by Mr. Agarwal that the Magistrate has passed an equitable order that he would take cognizance when the police could produce the accused along with the charge-sheet. They further contended that the State cannot claim that such type of order should be interfered with either under Article 227 of the Constitution or u/s 482 of the Cr.P.C. In our opinion, the crux of the matter is as to whether there should be such an order of returning the charge-sheet simply because the police have not produced the accused along with the charge-sheet. It is true that u/s 41 of the Code, the police officer can arrest any person without warrant, if he is concerned with a cognizable offence but that provision would not enable the Magistrate to pass an order that the police must produce the accused along with the charge-sheet.

8. In the result, all these applications succeed. The impugned orders passed by the Magistrate are quashed and the Magistrate is directed to take cognizance of the offence on the basis of the police report and proceed further according to

law. Rule is made absolute.

9. Rule made absolute.