

(1992) 11 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 189 of 1989

T.K. Kodandaram

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (1993) CriLJ 1926

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Public Prosecutor and L. Nageswara Rao, for the Respondent

Judgement

1. This is an application, filed under S. 482 of Code of Criminal Procedure (for short Cr.P.C.) praying to quash the proceedings connected with the order dated 25-1-1989 in S.C. (SR) No. 138 of 1989 on the file of the Metropolitan Magistrate, Secunderabad and consequently the F.I.R. dated 25-1-1989 in Crime No. 23 of 1989 of Marredpally Police Station, Secunderabad.

1A. Sri T. K. Kodandaram, the party in person urged the following two contentions :

(1) Unless the complainant is examined under S. 200, Cr.P.C., the learned Magistrate cannot refer the case to the police for investigation, so the order dated 25-1-1989 referring the complaint to police is illegal and all consequential proceedings are liable to be quashed.

(2) The action of the Station House Officer, Marredpally Police Station, Secunderabad, (third respondent herein) in registering the complaint is illegal as a private complaint cannot be converted into a police case under S. 190(1)(b), Cr.P.C., so the F.I.R. issued by the third respondent on 25-1-1989 in Crime No. 23 of 1989 of Marredpally Police Station, has to be quashed.

2. The learned Public Prosecutor has submitted that the order passed by the learned Magistrate is in accordance with law and he had strictly followed the procedure contemplated by the Code of Criminal Procedure. His further submission is that at the state of investigation the High Court will not interfere with the investigation by the police, Sri L. Nageswara Rao, the learned counsel for the fourth respondent adopts the arguments of the Public Prosecutor and submits that the criminal petition is without merit and the same may be dismissed.

3. On these contentions the questions that arise for consideration are :

(1) Whether the order of the Metropolitan Magistrate, dated 25-1-1989 passed without examining the complainant under S. 200, Cr.P.C. and referring the complaint under S. 156(3), Cr.P.C. to police for investigation and report is legal.

(2) Whether the F.I.R. issued by the third respondent on 25-1-1989 on the basis of the referred complaint is liable to be quashed.

4. To answer these questions, it would be necessary to refer to the facts giving rise to this application. One P. Anjinamma was the owner of premises bearing Municipal No. 10-2-91, situated at West Marredpally, Secunderabad. It is the case of the petitioner that the said P. Anjinamma had bequeathed the said house in favour of his daughter Smt. P. Urmila wife of the petitioner under a registered will dated 4-1-1980; she entrusted the management of the said house to the petitioner and he is looking after the same. He invested an amount of Rs. 50,000/- for repairs and refurnishing and let out the down stairs portion to three tenants and upstairs portion of the said premises to a voluntary organisation "WEAVERS". The fourth respondent who is alleged to have given up his Hindu faith and thus lost right to inherit the property from his parents, filed a complaint against the petitioner under sections 120B, 465, 471, 474 read with 420 and 418, I.P.C. in the Court of Metropolitan Magistrate, Secunderabad. That was numbered as C.C. (SR) No. 138 of 1989 on the file of the Metropolitan Magistrate, Secunderabad. The grievance of the petitioner is that when the petitioner appeared before the learned Magistrate he refused to hear the petitioner and on 25-1-1989 passed order for investigation by and report of the police under S. 156(3), Cr.P.C. even without examining the complainant (fourth respondent). The Inspector of Police, Marredpally (sixth respondent herein) registered the case as Crime No. 23 of 1989 under sections 120B, 465, 471, 474 read with 420 and 418, I.P.C. on the basis of the said order of the learned Magistrate referring the complaint to police treating it as information under S. 154, Cr.P.C. and issued F.I.R., which is alleged to be mala fide.

5. First I shall take up the first question. Chapter XV of Cr.P.C. deals with "Complaints to Magistrates". It contains four sections (Ss. 200 - 203). Here we are concerned with S. 200. It reads as follows :

"A Magistrate taking cognizance of an Offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of

such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under S. 192;

Provided further that if the Magistrate makes over the case to another Magistrate under S. 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

6. A perusal of the Section extracted above, makes it clear that a Magistrate taking cognizance of an offence under a complaint has to examine upon oath the complainant and the witnesses present, if any. It further provides that the substance of such examination should be reduced to writing and be signed by the complainant, witnesses and Magistrate. The first proviso says that the complainant and witnesses need not be examined when the complaint is made in writing and when a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; and if the Magistrate makes over the case for inquiry or trial to another Magistrate under S. 192. The second proviso dispenses with the examination of the complainant and the witnesses by the latter Magistrate, if the Magistrate taking over the case has already examined them.

7. It is also relevant to refer to S. 156, Cr.P.C. here, which deals with the power of the Police Officers to investigate cognizable cases and which is in the following terms :

(1) Any Officer in charge 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 under S. 190 may order such an investigation as above mentioned."

8. From a perusal of sub-section (3) it is clear that a Magistrate empowered under S. 190 has discretion to order investigation about any cognizable case to the Police. S. 190 which falls in Chapter XIV, deals with cognizance of offences by Magistrates. It says that subject of the provisions of Chapter XIV any Magistrate of the First Class or any Magistrate of the Second Class specially empowered in

that behalf under sub-section (2), may take cognizance of any offence -

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts; and
- (c) upon information received from any person other than a Police Officer, or upon his own knowledge, that such offence has been committed.

9. In *Tula Ram and Others Vs. Kishore Singh*, the question before the Supreme Court was, where a Magistrate orders investigation by the Police before taking cognizance under S. 156(3), Cr.P.C., has the power to issue notice to the complainant, record his statement and statement of his witnesses and issued process under S. 204, Cr.P.C. ? After discussing scope of Sections 156(3), 190(1) (a), 200, 202 and 204, their Lordships laid down the following proposition :

"(1) A Magistrate can order investigation under S. 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Ss. 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 under S. 156(3) though in cases not falling within the proviso to S. 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by S. 202 of the Code.

(2) 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 S. 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 himself.

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

(3) In case the Magistrate after considering the statement of the complaint 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.

(4) Where a Magistrate orders investigation by the police before taking cognizance under 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 under S. 190 of the Code.

10. They are re-affirmed in *H.S. Bains, Director, Small Savings-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of*

Chandigarh), .

11. In *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, , the question which fell for consideration of the Supreme Court was, "whether in view of the first proviso to S. 202(1) of Cr.P.C., a Magistrate who received a complaint, disclosing an offence exclusive triable by the Court of Session, is debarred from sending the same to the police for investigation under S. 156(3), Cr.P.C."

12. In that case, on 26-7-1975 the first respondent made a complaint before the J.F.C.M. Dharmavaram against the appellants alleging that they committed offences under sections 147, 148, 149, 307, 395, 448, 378 and 302 of the I.P.C. The learned Magistrate forwarded the complaint under S. 156(3) to the police for investigation and report. The appellants filed an application under S. 482, Cr.P.C. in our High Court praying that the order of the learned Magistrate be quashed as being illegal. That petition was dismissed by the High Court on October 20, 1975. The correctness of the order of the High Court was questioned in the Supreme Court. In para 17 of the judgment, the Supreme Court observed -

"Section 156(3) occurs in Chapter XII, under the caption : "Information to the police and their powers to investigate", while S. 202 is in Chapter XV which bears the heading "Of complaints to Magistrate". The power to order police investigation under S. 156(3) is different from the power to direct investigation conferred by S. 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizance offence, the power under S. 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under S. 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter. XV, he is not competent to switch back to the pre-cognizance stage and avail of S. 156(3). It may be noted further that an order made under sub-section (3) of S. 156, is in the nature of a peremptory reminder of intimation to the police to exercise their plenary powers of investigation under S. 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under S. 156 and ends with a report or charge-sheet under S. 173. On the other hand, S. 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under S. 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus the object of an investigation under S. 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

It was held in that case that the Magistrate did not apply his mind to the

complaint for deciding whether or not there was sufficient ground for proceeding, but only ordered investigation under S. 156(3) and did not bring into motion the machinery of Chapter XV, he did not examine the complainant or his witnesses under S. 200, Cr.P.C. which was the first step in the procedure prescribed under that Chapter and that the question of taking the next step of that procedure envisaged in S. 202 did not arise. Approving the action of the Magistrate it was observed that instead of taking cognizance of the offence, he had, in the exercise of his discretion, sent the complaint for investigation by police under S. 156.

13. From the above discussion it follows that on a private complaint the Magistrate may either take cognizance of the alleged offence under S. 190(1)(a) or (c) in which case he has to follow the procedure under Chapter XV commencing by examining the complainant and his witnesses, if any, under S. 200, Cr.P.C. or order investigation and report by police into the alleged offence under S. 156(3) in which case he need not examine the complainant or his witnesses under S. 200, Cr.P.C. before passing the order. Thus, power under S. 156(3) can be exercised by a Magistrate only at the pre-cognizance stage but if he takes cognizance of the alleged offence by following the procedure postulated in Chapter XV, he cannot resort to S. 156(3), Cr.P.C. but he has to have recourse to S. 202, Cr.P.C. for post-cognizance investigation.

14. From a perusal of the record of the Magistrate in this case, it is clear that the Magistrate has not taken cognizance of the offence and that at the pre-cognizance stage he had ordered investigation into the case. Therefore, the impugned order of the learned Magistrate dated 25-1-1989 cannot be said to be illegal so as to quash it under inherent powers of the High Court under S. 482, Cr.P.C.

15. Now we come to the second point. Relying upon the judgment of the Punjab and Haryana High Court in *Raghubir Singh v. State of Haryana* 1990 (1) Crimes 600, the petitioner submits that registration of the case by the police on the basis (of) the complaint referred by the Magistrate is illegal and the F.I.R. issued by the third respondent on 25-1-1989 has to be quashed. It may be necessary to refer to provisions of S. 154, Cr.P.C. which provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police Station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. A copy of the information as recorded under sub-section (1) shall be given forthwith to the informant.

15A. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . The Supreme Court laid down that -

"The condition which is sine qua non for recording a First Information Report is

that there must be an information and that information must disclose a cognizable offence. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of S. 154(1) the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

Thus, it is clear that once the police comes to know of commission of cognizable offence, it is bound to register a case, investigate and report the same to the Magistrate forthwith.

16. In Raghbir Singh's case (supra) a learned single Judge of the Haryana High Court held that the learned Magistrate can send the complaint to the police for investigation, but not for registration of the case. In that case a private complaint filed after about 28-30 years of the alleged offences was forwarded by the learned Magistrate under S. 156(3) of Cr.P.C. to the concerned Station House Officer of the police for registration of the case and investigation. In respect of the direction of the learned Magistrate to register the case, the learned Judge held that the Magistrate could not send the case for registration. In coming to that conclusion the learned Judge followed two cases of that Court in Jai Singh v. Nand Lal 1987 P&H Cri Cases 644, and Rattan Amol Singh v. State of Punjab 1988 (1) P&H 144 and observed, -

"that the view of this Court in fact based on Supreme Court observations in D. Lakshminarayana v. V. Narayana (supra)".

Observation of the Supreme Court relied upon is, however, not quoted. So far as I could see the only relevant observation is :

"Thus the object of an investigation under S. 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him".

This observation relates to order of Magistrate in proceedings under Chapter XV wherein investigation was ordered under S. 202 after cognizance of the offence had already been taken. In that context it was observed that the object of investigation was not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him. It cannot be applied to investigation ordered under S. 156(3) before taking cognizance of the offence. For this reason, with respect I am unable to agree with the opinion expressed by the learned Judge. However the learned Judge has further held that in terms of S. 156(3) the Court could send the complaint to police for investigation. In the instant case the learned X Metropolitan Magistrate sent the complaint for investigation which is in accordance with the provisions of S. 156(3), Cr.P.C. Hence this case is of no assistance to the petitioner.

17. In Polavarapu Jagadiswararao Vs. Kondapaturi Venkateswarlu and Another, , our High Court has held that under S. 154, Cr.P.C. every citizen is entitled to give

information to the police regarding the commission of a cognizance offence, on receipt of which, the police would make investigation into the offence under S. 156, Cr.P.C. and may file a charge-sheet if there is a prima facie case found out or file a referred report otherwise. The learned single Judge observed that the legislature enacted specific provisions enabling a private citizen to move the Court direct by filing a complaint under S. 200, Cr.P.C. on receipt of which, the Magistrate would record sworn statements of the complaint and witnesses, if any, present and if satisfied that there exists a prima facie case would take cognizance of the offence under S. 190(1)(a), Cr.P.C. and that he is also empowered to postpone the issue of process against the accused under S. 202, Cr.P.C. in which event he may inquire into the case direct himself or refer the case to the police for investigation. Thus, both the courses under S. 154 and under S. 200, Cr.P.C. are open and available to a private citizen. Thus observing the learned Judge held that simply because there was a right under S. 154, Cr.P.C. consequent upon which the police would investigate, it cannot be said that the right under S. 200, Cr.P.C. is not available for purposes of taking recourse. In my view this case has no relevance to the point in issue.

18. The petitioner further submits that a private complaint cannot be converted into a case upon police report and that the objections as to limitation or otherwise would not be available to him. I am afraid, I cannot accept this contention. When on a private complaint a Magistrate orders investigation and report by the police under S. 156(3), Cr.P.C. it cannot be said that it amounts to converting the case into one under S. 190(1)(b). This is only at pre-cognizance stage. After the report is submitted by the police to the Magistrate pursuant to the order under S. 156(3), as the proceedings have been initiated under S. 190(1)(a), the case will not get converted into one under S. 190(1)(b) on the ground that the police registered F.I.R. on the basis of the order of the Magistrate referring the complaint for investigation and report. And when the Magistrate decides to take cognizance of the offence all questions with regard to limitation or otherwise will be open for consideration by the Magistrate. Merely because investigation has been ordered by the Magistrate under S. 156(3), Cr.P.C. it cannot be said that the accused would have no right to raise objection with regard to limitation or otherwise at appropriate stage.

19. It is now well settled that this Court will not exercise its inherent powers to quash the proceedings at the stage of investigation prior to filing of charge-sheet or before taking cognizance of the complaint.

20. In *Emperor v. Nazir Ahmad* AIR (32) 1945 PC 18 : 1945 (46) Cri LJ 413, the Privy Council laid down that police have statutory right under Sections 154 and 156 to investigate the offences and the High Court cannot interfere in exercise of inherent powers under S. 482, Cr.P.C. and that interference can only be made when the charge is preferred before the Court.

21. In *Ramlal Yadav v. State of U.P.* Crimes 1989 (2) 491 : 1989 Cri LJ 1013, application under S. 482, Cr.P.C. was filed praying that the F.I.R. and the

investigation on its basis be quashed. A Special Bench of the Allahabad High Court held that the power of the High Court under S. 482, Cr.P.C. to quash and F.I.R. or a complaint had to be exercised with reference to proceedings in the court after filing of a charge-sheet or a complaint and not with reference to investigation prior to filing of the charge-sheet.

22. In this case, it has been noticed above, that the Magistrate has not taken cognizance of the offence alleged in the private complaint, so the question of exercising power u/s 482, Cr.P.C. does not arise.

23. Having regard to the circumstances of the case and for the reasons stated above, I do not find any merit in this petition. It is accordingly dismissed.

24. Petition dismissed.