
(1983) 02 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 227/82

Udairam and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 21-02-1983

Acts Referred:

Antiquities and Art Treasures Act, 1972 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 200, 210, 397

Penal Code, 1860 (IPC) — Section 114, 120B, 144, 307, 320

Citation : (1983) RLW 349 : (1983) WLN 155

Hon'ble Judges : S.C. Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—Both these petitions have been filed by the petitioners Udai Ram, Krishna Ram and Mst. Birdli in the following circumstances On 9 th January, 1980, Smt. Kesar, wife of petitioner Udai Ram, (hereinafter referred to as "the Complainant") lodged a report at police out post Sankhu against the petitioner in these petitions and two other persons, namely, Naurang Ram, the father of petitioners Udai Ram and Krishna Ram and Smt. Birdali the mother of the said petitioners. In the said report, it was stated that the aforesaid five accused persons mentioned in the report caught hold of the complainant and that petitioner Udai Ram sprinkled kerosene on the clothes of the complainant and set the same on fire and that she raised an alarm where upon a number of persons from the neighbourhood arrived and the fire was extinguished and she was saved. On the basis of the aforesaid report, a case under Sections 356, 352 and 307/114 I.P.C was registered against the accused persons at P.S. Hamirwas. The case was investigated by SHO, PS Hamirwas and the Deputy Superintendent of Police, Rajgarh and after investigation, the police submitted a final report to the effect that no incident, as stated by the complainant, had taken place. Before the said final report could be considered by the Magistrate, the complainant filed the private petition in the court of Chief Judl. Magistrate, Churu against the

acceptance of the final report and in view of the said petition, the Chief Judl. Magistrate, Churu called for the papers. On 5th May, 1980, the Chief Judl. Magistrate perused the final report submitted by the police and recorded the statement of the complaint u/s 200 Cr. PC and, after observing that the statements recorded u/s 161 Cr. PC the police diary, the site plan are corroborated by the statement of the complainant recorded u/s 200 Cr. PC took cognizance of the offence u/s 342/336 against the petitioner Udai Ram and offence u/s 336/114/342 IPC against four other persons named in the FIR while the aforesaid proceedings were pending before the Chief Judl. Magistrate, Churu, the complainant moved the State Government for further investigation into her complaint for the reason that the Deputy Superintendent of Police, Rajgarh, had not properly investigated the case and that he was supporting the accused persons and thereupon the State Government referred the case for further investigation to the CID (CB) Rajasthan Jaipur, The matter was investigated by the CID (CB) Rajasthan Jaipur and after investigation, it was found that the offence u/s 307/336/342/114 IPC was made out against the accused persons. In view of the aforesaid investigation, a charge sheet dated 9th January, 1981 was submitted in the court of Munsif and Judl. Magistrate Rajgarh. On the basis of the aforesaid charge sheet, the Munsif and Judl. Magistrate, Rajgarh by his order dated 27th January, 1981 took cognizance of the offence under Sections 307, 336, 342 and 144 IPC against the five accused persons mentioned in the charge sheet and also passed the order of calling of the record from the court of Chief Judl. Magistrate Churu. The Chief Judl. Magistrate by his order dated 4th April, 1981 sent the papers to the court of Munsif and Judl. Magistrate Rajgarh for the reason that the police had filed the challan u/s 307 IPC in that court and in view of the provisions of Section 210(2) Cr. PC both the cases should be tried by the same Magistrate as on a police report. After the receipt of the papers in his court, the Munsif and Judl. Magistrate Rajgarh, passed the order dated 15th May 1981, whereby he committed all the live accused persons to the court of sessions for trial The Sessions Judge, Churu after examining the papers, passed the order dated 7th July, 1982, discharging accused Naurang Ram and Smt. Birdli on the ground that, no offence was disclosed as against the said accused persons. The Sessions Judge, however, directed that a charge u/s 307 be framed against petitioner Udai Ram and a charge u/s 307 read with Sections 114 and 342 IPC be framed against the petitioners Krishna Ram and Smt. Dhani. Thereupon the petitioners filed these two petitions S.B. Criminal Revision Petition No. 286/82 has been filed u/s 397/402 Cr PC and in that petition, the petitioners have challenged the correctness of the order dated 7th July, 1982 passed by the Sessions Judge, Churu framing charges against the petitioner and has prayed that the said charges be quashed. Criminal Misc. Petition No. 227/82 has been filed u/s 482 Cr. PC and in the said petition, the petitioners have challenged the proceedings that were taken by the Munsif and Judl. Magistrate, Rajgarh on the charge sheet that was filed by the police before him.

2. The first contention that was urged by Shri S.K. Goyal, the learned counsel for

the petitioners was that it was not competent for the police to further investigate the matter after the police had filed the final report and that the charge sheet that was submitted by the police in the court of Munsif and Judl. Magistrate, Rajgarh, on the basis of the further investigation was, therefore, without jurisdiction and proceedings that were initiated by the Munsif and Judl. Magistrate, Rajgarh on the basis of the aforesaid charge sheet were also without jurisdiction. In support of his aforesaid submission, Shri Goyal and placed reliance on the decision of a learned Single Judge of this court in Hanuman and Another Vs. Raj., and the decision of the Madras High Court in Namasivayam Vs. State,

3. In Hanuman and Another Vs. Raj., the police after conducting the investigation had filed a challan against one Naurang u/s 320 IPC in the court of Addl. District Magistrate and the said case was transferred to the file of Tehsildar, Rajgarh. While the aforesaid case was pending before the Tehsildar, Rajgarh, the police conducted further investigation and on the basis of the aforesaid investigation the police filed another challan against two other accused persons, namely, Hanuman and his brother Rupa, and the said challan was put up before another Magistrate, namely Magistrate First Class, Rajgarh. An objection was raised that the second challan could not be filed during the pendency of the proceedings before the Tehsildar, Rajgarh, or on the basis of the earlier challan and that in any event, the same should have been filed before the same court before whom the earlier challan was filed. This court held that the police had put up a complete challan against Naurang and the case was pending before a Magistrate, the action of the police in resuming investigation and putting up a new challan against the accused as a result of those further investigation was unauthorised and unlawful. This Court also held that when, as a result of investigation of an offence by the police, a challan has been put up by the police before a particular Magistrate, then any further or supplementary challan has to be put up before the same Magistrate, before whom the former challan had been put up or before the Magistrate who took cognizance of the case on transfer to him and not before any other Magistrate and, therefore, the proceedings that were taken by the Magistrate First Class, Rajgarh on the subsequent challan were invalid

4. In Namasivayam Vs. State, the police after completing the investigation had submitted a final report and the said final report was accepted by the Magistrate and thereafter another Inspector of Police conducted a fresh investigation on the original complaint and on the basis of the fresh investigation, a charge sheet was filed. A learned Judge of the Madras High Court quashed the proceedings that were initiated on the basis of the subsequent charge sheet on the view that the order that was passed by accepting the final report was a judicial order and in view of the aforesaid order, it was not open for a police officer to reopen the investigation unless the order passed by the Magistrate accepting the final report was set aside by higher court or a fresh complaint was filed by the complainant and permission of the Magistrate for reinvestigation had been obtained.

5. The question as to whether the police can reinvestigate a matter in respect of which a report has already been submitted before the Magistrate was considered by the Supreme Court in *Ram Lal Narang Vs. State (Delhi Administration)*, . In that case, the police after investigation had submitted a charge sheet against two persons, viz, N.N.Malik and H.L.Mehra in the court of Special Magistrate, Ambala and on the basis of the aforesaid charge sheet, the Special Magistrate, Ambala took cognizance of the offence u/s 120B read with Sections 406 and 420 IPC. against those accused persons. Subsequently, the aforesaid case was withdrawn with the permission of the Special Magistrate, Ambala. After further investigation another charge, sheet was filed in the court of Chief Judl. Magistrate, Dehli for the offence u/s 120B IPC read with Sections 420, 411 and 406 IPC and Section 25(1) of the Antiquities and Art Treasures Act, 1972. It was filed against three other accused persons, namely, Raj lal Narang, Manoharlal Narang and Om Prakash Narang. The validity of the proceedings that were taken on the subsequent charge sheet was challenged before the Supreme Court on the ground that after the police had filed the charge sheet before the Special Magistrate, Ambala, it was not competent for the police to reinvestigate the matter. In that case, the Supreme Court was examining the legal position under the provision of the Code of Criminal Procedure, 1898 (old Code) The Supreme Court, while, observing that there was no provision in the old Code prescribing the procedure to be followed by the police, where, after the submission of a report u/s 173(3), the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation have also observed that there was no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report u/s 173(1) or after the Magistrate had taken cognizance of the offence. In the said case, the Supreme Court has noticed the various decisions of the various High Courts on the poms including the decision of this court in *Hanuman and Another Vs. Raj.*, and has laid down.

Anyone acquainted with the day to day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interest of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quite and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future

course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the court of any offence. We think that in the interests of the independence of the Magistracy and the judiciary, in the interests of the purity of the Administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.

In that case, the Supreme Court has noticed the recommendations made by the Law Commission in its 41st report and the provisions that have been introduced in Sub-section (8) of Section 173 of the Code of Criminal Procedure, 1973 (new code), wherein express provision has been made permitting further investigation in respect of an offence after report under Sub-section (2) of Section 173 has been forwarded to the Magistrate. In view of the aforesaid decision of the Supreme Court in *Ram Lal Narang Vs. State (Delhi Administration)*, and Sub-section (8) of Section 173 Cr.PC (new), it must be held that the police has the power to further investigate the matter after the report u/s 173(2) has been submitted by it before the Magistrate.

6. Shri Goyal has, however, submitted that the said principle would apply only to those cases where the police has filed charge sheet and the Magistrate has taken cognizance on the basis of the charge sheet and the matter is pending before the

Magistrate and that it would not apply to cases where the police had submitted a final report. In my view, there is no reason to make such a distinction. The power of the police to make a further investigation into a matter is available to the police in all cases where a report u/s 173 Cr. P.C. has been submitted before the Magistrate irrespective of the fact whether the police has submitted the charge sheet or whether it has submitted a final report. All that can be said is that in cases where the police has submitted a final report and the Magistrate has passed an order accepting the final report, it is expected that the police, before reinvestigating the matter, should seek the permission of the Magistrate who had passed the order accepting the final report because the order passed by the Magistrate accepting the final report is a judicial order and in view of the said judicial order, it would not be proper on the part of the police to start fresh investigation unless the order passed by the Magistrate accepting on the final report is set aside by a higher court on the relevant circumstances are placed before the Magistrate who had passed the order accepting the final report and the permission of the said Magistrate for further investigation is obtained.

7. Shri Goyal has next submitted that the order dated 5th May 1980 that was passed by the Chief Judl. Magistrate Churu, must be construed as an order accepting the final report that was submitted by the police and in view of the said order, it was not open to the police to make further investigation without the permission of the Chief Judl. Magistrate, Churu, and to submit a fresh charge sheet. I am unable to accept the aforesaid contention. The order dated 5th May, 1980 passed by the Chief Judl. Magistrate, Churu shows that the Chief Judl. Magistrate after considering the final report recorded the statement of the complainant u/s 200 CrPC and has observed that the statements recorded u/s 161 CrPC, the police diary and the site plan are corroborated by the statement recorded u/s 200 Cr PC and thereafter he took cognizance of the offences u/s 342/336 IPC against the petitioner Udai Ram and of the offences under Sections 336/114/342 IPC as against other accused persons. Thus the aforesaid order dated 5th May, 1980 cannot be said to be an order whereby the Chief Judl. Magistrate had accepted the final report submitted by the police. In the circumstances there was no legal impediment on the part of police in making further investigation into the matter after having submitted the final report and that the subsequent charge sheet that was submitted by the police on the basis of the said investigation cannot be said to be invalid.

8. Shri Goyal has lastly submitted that even if it was competent for the police to make further investigation, into the matter and to submit a charge sheet, the same could only have been submitted in the Court of Chief Judl. Magistrate, Churu before whom the earlier report (final report) had been submitted and before whom the proceedings were pending and that it could not be submitted before another viz.. the Munsif and Judl. Magistrate, Rajgarh and that the proceedings that were taken by the Munsif and Judl. Magistrate, Rajgarh, on the basis of the aforesaid charge sheet were illegal and void. In my opinion, there is considerable force in the aforesaid submission of Shri Goyal. The

charge sheet that was submitted after further investigation was in the nature of a supplementary report under Sub-section 173 CrPC and such a report has to be submitted before the Magistrate before whom the original report Sub-section (2) of Section 173 was submitted. In the present case, the report under sub-section (2) of Section 173 was submitted before the Chief Judl. Magistrate, Churu and the charge sheet dated 9th January, 1981 that was submitted in the court of Munsif and Judl. Magistrate, Rajgarh shows that the Investigating officer was aware of the fact that proceedings were pending before the Chief Judl. Magistrate, Churu. In the circumstances, the Investigating officer, who was in charge of the subsequent investigation and who had submitted the charge sheet dated 9th January, 1981 should have submitted the same in the court of Chief Judl. Magistrate, Churu and it was the Chief Judl. Magistrate, Churu, who alone could consider what further action should be taken on the basis of the aforesaid charge sheet. To the same effect is the decision of this court in Hanuuman v. State (supra). The action of the investigating officer who conducted further investigation in the case filing the charge sheet in the court of Munsif and Judl. Magistrate, Rajgarh and the orders passed by the Munsif and Judl. Magistrate on the basis of the said charge sheet cannot be sustained and must be quashed. If the order passed by the Munsif and Judl. Magistrate, Rajgarh, passed on the charge sheet are quashed there was no valid order committing the accused persons for trial to the court of sessions and the order dated 7th July 1982 passed by the Sessions Judge, Churu framing charge against the petitioner cannot also be sustained and must also be quashed and the matter must go back to the Chief Judl. Magistrate, Churu to consider the charge sheet that has been submitted by the police and take appropriate action in accordance with law on the basis of the said charge sheet.

9. In the result, both the petitions are allowed and the orders that were passed by the Munsif and Judl. Magistrate, Rajgarh in case No. 27/81 on the basis of the charge sheet dated 9th January, 1981, that was submitted by the police in his court, the order dated 4th April, 1982 passed by the Chief Judl. Magistrate, Churu in criminal case No. 141/80 transferring the said case to the court of Munsif and Judl. Magistrate, Rajgarh, as well as the order dated 7th July, 1982 passed by the Sessions Judge Churu, in Sessions case No. 28/81 are quashed. The matter will go back to the court of Chief Judl. Magistrate, Churu who will consider the charge sheet dated 9th January, 1981 that has been submitted by the police and take appropriate action in accordance with law on the said charge sheet.