

(2005) 10 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Revision No. 633 of 2005

Utpal Chandra Bhuyan (Dr.) and Others	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125, 152, 153, 154, 155
Penal Code, 1860 (IPC) — Section 304(A), 34

Citation : (2006) 1 GLT 725

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : J.M. Choudhury, B.M. Choudhury and P.K. Deka, for the Appellant;
R.K. Bora, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—This revision u/s 401/397 read with Section 482 of the Code of Criminal Procedure has been filed challenging the order dated 26.08.2005 passed by the learned Sessions Judge, Tinsukia in CrI. Revision No. 31(2) 2005 dismissing the revision petition preferred by the Petitioner No. 1 against the order dated 09.06.2005 passed by the learned Chief Judicial Magistrate, Tinsukia in G.R. Case No. 606/98 taking cognizance of offence u/s 304(A)/34 IPC.

2. Brief resume of essential facts necessary for disposal of this case: on the basis of an FIR lodged by one Shri Joinul Haque Borbhuyan, Sub Inspector of Police, Tinsukia Police Station on 26.04.98 Tinsukia P.S. Case No. 244/98 u/s 304(A)/34 IPC was registered. Prosecution case, inter alia, is that one Purnima Tanti was admitted in the Gynecology Department of the Tinsukia Civil Hospital on 13.06.98 for delivery, but she expired in the next morning of 14.06.98 due to negligence of the doctors and nurses on duty. On completion of investigation, police submitted final report No. 291 dated 26.12.2002. The evidence so collected by the police during investigation is stated to be insufficient against the

accused Petitioners. On perusal of the Final Report, the learned Chief Judicial Magistrate not being satisfied with the Report, recorded statement of the then Superintendent of the Civil Hospital on 07.06.2005 u/s 202 Code of Criminal Procedure. On perusal of the materials on record, the learned Chief Judicial Magistrate took cognizance of offence u/s 304(A)/34 IPC against the accused Petitioner and issued necessary process against the Petitioners vide order dated 09.06.05. The aforesaid order dated 09.06.05 was challenged before the learned Sessions Judge, Tinsukia by filing Criminal Revision No. 31(2) 2005. The learned Sessions Judge after hearing the parties, dismissed the revision petition vide judgment dated 26.08.2005. Challenging the said order, the present petition has been filed by the accused Petitioners for quashing of the prosecution case.

3. I have heard Mr. J.M. Choudhury, learned Senior Counsel assisted by Mr. B.M. Choudhury for the Petitioner and also heard Mr. R.K. Bora, learned Additional Public Prosecutor, Assam.

4. Mr. Choudhury in support of his case has submitted that the learned Chief Judicial Magistrate acted beyond his jurisdiction by examining a witness u/s 202 Code of Criminal Procedure when the police submitted final report in the case for Insufficient evidence. It is further submitted that the learned Chief Judicial Magistrate has the power only to direct the police for further investigation and thereupon could have taken cognizance if sufficient materials were found against the Petitioners. By resorting to the provisions of Section 202 Code of Criminal Procedure and going to record statement of prosecution witness, the learned Chief Judicial Magistrate has acted beyond jurisdiction. It is further submitted that the learned Sessions Judge also committed illegality in rejecting the revision petition, which was filed challenging the impugned order dated 26.08.2005.

5. Mr. R.K. Bora, learned Additional Public Prosecutor, Assam on the other hand submitted that the present case being second revision is barred u/s 397(3) Code of Criminal Procedure. It is further submitted that the learned Magistrate is empowered by the Code of Criminal Procedure to examine witness in such a situation and the impugned order is not without jurisdiction.

6. On the rival contentions of the parties, two questions cell for decision in this petition, namely, (a) whether the power u/s 397(3) is attracted in this case on the face of dismissal of the Criminal Revision No. 3(31) 2005 challenging the impugned order by one of the Petitioners, and (b) whether the learned Chief Judicial Magistrate, has/had jurisdiction to proceed u/s 202 Code of Criminal Procedure when a final report was submitted by the police after investigation u/s 173 Code of Criminal Procedure.

7. In support of his contention regarding maintainability of the petition Mr. Choudhury has referred to a decision of this Court reported in Bulbuli Dutta Vs. Subodh Datta, The said case was filed u/s 482 Code of Criminal Procedure read with Article 227 of the Constitution of India by a destitute lady claiming maintenance for her minor daughter from her husband, which was rejected by

the Court below. In view of exceptional facts and circumstances of that case, this Court relying on a decision of the Apex Court in *Prasanna Kumar Dey v. State of West Bengal* AIR 2003 SC 4412 , which was also a case u/s 125 Code of Criminal Procedure interfered in the matter. Reliance was also placed on decisions of the Apex Court rendered in (1) *Krishnan and another Vs. Krishnaveni and another*, and (2) *Ganesh Narayan Hegde Vs. S. Bangarappa and Others*, Facts of the present case are not identical to that of the case of *Bulbuli Dutta* (supra).

8. When a criminal case is registered on the basis of the information regarding commission of an offence, u/s 154 Code of Criminal Procedure the concerned Investigating Officer is required to investigate the case. Investigation under the Code of Criminal Procedure takes in several aspects and stages ending ultimately with formation of opinion by the police as to whether on the materials so collected during investigation, a case is made out to place the accused before the Magistrate for trial. The submission of either charge sheet or a final report is dependant on the nature of the opinion so formed by the Police. The formation of the said opinion by the police is the final step in the investigation and the final step is to be taken only by police and by no other party.

9. Section 169 Code of Criminal Procedure, inter alia, provides that if upon investigation under Chapter XII it appears by the Officer-in-charge of the Police Station that there is no sufficient evidence etc., the police officer shall release the accused, if he is in custody on his executing a bond or may direct to appear as and when required to appear before the Magistrate empowered to take cognizance of the offence on police report and to try case or commit him for trial. This provision is obviously incorporated to meet the contingency of a Magistrate when he considers the report of the Investigating Officer and judicially takes a view different from the police. This view finds support from the decision of the Apex Court rendered in *Abhinandan Jha and Others Vs. Dinesh Mishra*, where Vaidyalingam J speaking for the Court at para 16 has held as follows:

16. In this connection, the provisions of Section 169 of the Code, are relevant. They specifically provide that even though, on investigation, a police officer, or other investigating officer, is of the opinion that there is no case for proceeding against the accused, he is bound, while releasing the accused to take a bond from him to appear, if and when required before a Magistrate. This provision is obviously to meet a contingency of the Magistrate, when he considers the report of the investigating officer, and judiciously takes a view different from the police.

10. Again in the case of *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, the Apex Court at paragraph 9 has reflected on the provisions of Chapter XII, XIV and XVI of the Code of Criminal Procedure as follows:

9. Before we examine the contentions of the learned Counsel for the Appellant and the second Respondent, we may briefly refer to some of the provisions in Chapters XII, XIV, XV and XVI of the Code. Section 155 in Chapter XII pertains to information laid to the police regarding non-cognizable cases and Sub-section

(2) lays down that no police officer shall investigate a non cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Section 156 (1) confers power on an officer in charge of a police station to investigate any cognizable case without the order of a Magistrate. Section 156(3) authorizes a Magistrate, empowered u/s 190 to order the police to make an investigation as provided for in Section 156(1). The other provisions in the Chapter from Section 157 onwards set out the powers of investigation of the police and the procedure to be followed. Section 169 prescribes the procedure to be followed by an officer in charge of a police station if it appears to him upon investigation of a case that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 prescribes the procedure to be followed by the officer in charge of a police station if it appears to him upon investigation that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 173(1) enjoins a Police Officer to complete the investigation is completed the officer in charge of a police station should forward to a Magistrate empowered to take cognizance of an offence on a police report, a report in the prescribed form stating the various particulars mentioned in that Sub-section.

11. When a report is submitted by police after investigation to the Magistrate u/s 173(2) Code of Criminal Procedure, the Magistrate may take cognizance of the offence u/s 190(1)(b) and issue process to the accused provided there are materials. The Magistrate may exercise his power irrespective of the view expressed by police in their report whether offence has been made out or not. The report of the police only contains facts collected during the investigation and such conclusion drawn up by police on those facts. If the Magistrate is satisfied upon the materials so collected during the investigation that there are sufficient materials for taking cognizance of the offence alleged to issue process, the Magistrate is entitled to pass such appropriate order irrespective of the conclusion drawn by the Investigating Officer. The Magistrate is not bound by the opinion of the police officer as to whether offence has been made out or not. Magistrate is also entitled on receipt of the police report to proceed u/s 200 Code of Criminal Procedure by taking cognizance of the offence on the basis of complaint originally submitted to him. Accordingly, the Magistrate is empowered to take necessary action as provided u/s 200 Code of Criminal Procedure as authorized to record statement of the complainant's witness on oath and thereafter to decide whether the complaint should be dismissed or process should be issued. This view also finds support from the decision of the Apex Court rendered in *M/s India Carat Pvt. Ltd (supra)*. At paragraph 13 of the said judgment, the Apex Court, inter alia held as under:

...The Magistrate may exercise his powers in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not.... Alternately, the Magistrate, on receiving the police report may without issuing process or dropping the proceeding proceed to act u/s 200 by taking

cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statement upon oath of the complainant and the witnesses present and thereafter decide whether the complaint should be dismissed or process should be issued.

12. The provision relating to information to the police and their power to investigate contain in Chapter XII of the Code of Criminal Procedure Chapter XII contains Section 152 to Section 176. Chapter XIV Code of Criminal Procedure Provides conditions requisite for initiation of the proceeding contained in Section 190 to Section 199. u/s 190, the Magistrate is empowered to take cognizance of an offence upon receiving a complaint of facts constituting such offence upon police report of such facts or upon investigation received from any person other than police officer or upon his own knowledge. For ready reference, Section 190 is quoted hereinbelow:

Section 190 Cognizance of offences by Magistrates-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this 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;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

13. A close scrutiny of Section 190 Code of Criminal Procedure it is apparent that the Magistrate may take cognizance of any offence upon information received from any person other than Police Officer and upon his own knowledge that such offence has been committed. In order to exercise such power, the Magistrate is certainly entitled to record statement of the complainant or a witness on oath. In the instant case, the Magistrate having exercised such power to record statement of witness of the then Superintendent of Civil Hospital cannot be said to be without jurisdiction.

14. Accordingly, I hold that examination of the then Superintendent of the Civil Hospital by the learned Chief Judicial Magistrate, Tinsukia cannot be held to be without jurisdiction requiring interference by this Court at this stage.

15. In view of the aforesaid discussion, this revision petition stands dismissed.