
(2004) 07 PAT CK 0038
In the Patna High Court
Case No : Cr. Misc. No. 3706 of 2002

Vishwanath Rai alias Visho Rai and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0038

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 (in short "the Code"). It has come up for admission.

2. This application has been filed for quashing the order dated 11.1.2002 passed by the learned Chief Judicial Magistrate, Samasipur in Nagar (Muffasil) P.S. Case No. 146 of 2001 whereby and whereunder order for issue of warrant of arrest was passed against the present petitioners. They have contended that opposite party No. 2 had handed over written complaint to the Officer Incharge of Nagar (Muffasil) police station (opposite Party No. 2) with respect to an occurrence alleged to have taken place on 20.4.2001, alleging therein that the named accused alongwith some unknown persons had assaulted the brother of opposite party No.

4 and other family members. Accordingly a case under various sections of the Indian Penal Code including Section 307 of the Indian Penal Code as also u/s 27 of the Arms Act, was filed after completing the investigations in which 12 persons were named as accused persons . Subsequently, however, a petition was filed before the learned Chief Judicial Magistrate by the Investigating Officer praying for the issue of non-bailable warrant of arrest against these petitioners, though he never sought permission of the Court or any authority to reopen the investigations. The learned Chief Judicial Magistrate even after accepting the charge-sheet and taking cognizance of the offence ordered for the issue of warrant of arrest against these petitioners presumably under the provisions of Section 173(8) of the Code and thereby he re-opened the investigation of the

case. In the course of investigation not a single witness had made any specific allegation against these petitioners who are respectable members of the society. Under these circumstances it was prayed to quash the impugned order dated 11.1.2002.

3. I have heard the learned counsel for the petitioners. He has submitted that the learned Chief Judicial Magistrate had no authority under law to order for the issue of warrant of-arrest against these petitioners specially when no charge-sheet was submitted against them and the charge-sheet submitted in this case was accepted by the learned Chief Judicial Magistrate on the basis of which the had taken cognizance of the offence. In other words it has been submitted that once cognizance of the offence has been taken against certain accused persons the same can not be retaken against any-body-else and in this view of the matter the impugned order issuing warrants of arrest against the present petitioners has got to be quashed.

4. This takes us to the consideration of provisions of law for further investigation in a case in accordance with Section 173(8) of the Code which runs as follows :-

"(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon, such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

It may be mentioned here that Section 173 of the Code relates to the report of Police Officer on completion of the investigation. Its sub-section (2) says that as soon as the investigation is completed the Officer Incharge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on police report, a report in form prescribed by the State Government. It has been pointed out that this report is commonly known as charge-sheet or final report. It has been pointed out on behalf of the petitioners that with the submission of this report the police investigation comes to an end. There after the police is not left with any authority to reinvestigate the case. However, in this connection a reference can be made to sub-section (8) of Section 173 of the Code as noticed above. This sub-section has been newly added to Section 173 of the Code and in its respect the law commission in its 41st report has reported as follows :-

"14,23. A report u/s 173 is normaliy the end of the investigation. Some time, however, the police officer after submitting the report u/s 173 comes upon the evidence bearing on the guilt or innocence of the accused. We would have thought that the police officer can collect that evidence and sent it to the Magistrate concerned. It appears, however, that Courts have, some times taken the narrow view that once a final report u/s 173 has been sent, the police officer

can not Open the case again and can not reopen the investigation. This view places hindrance in the way of investigating agency which can be very un-fair to the prosecution and for that matter, even to the accused. It should be made clear in Section 173 that competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh materials must of course be furnished to the accused."

5. The Supreme Court in this connection has observed that even after the police report u/s 173(2) of the Code has been submitted a superior police officer can make further investigation on its own and it is immaterial and irrelevant that it does not act at the direction of the State Government. This view finds support from the case of State of Bihar and Another Vs. J.A.C. Saldanha and Others, It has been further pointed out by the Hon"ble Supreme Court that what would visualise in sub-section (8) of Section 173 of the Code is that it can not be said that the Magistrate has no jurisdiction to take cognizance after the final report submitted by the police has been once accepted. After the submission of a report further investigation can be made and further documents can be filed as held in the case of Ram Lal Narang v. State (Delhi Admn.) AIR 1979 SC 1991. In this case the Hon"ble Supreme Court has reiterated that even after the filling of the charge- sheet further investigation is not together ruled out merely because cognizance has been taken by the Court, when the defective investigation comes to light during the course of trial it may be cured by the further investigation if the circumstances permit it. From the aforesaid it would become clear that further investigation under sub-section (8) of Section 173 of the Code can be held if after the close of investigation and submission of the charge-sheet the police finds some fresh material with respect to the case or finds that some more persons apart from those already sent up for trial were also involved in the case. It has also been pointed out that there is nothing in Section 173(8) of the Code to suggest that the Court is obliged to hear the accused before any direction for further investigation is made as has been held in the case of Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others,

6. In this connection a reference may also be made to the settled principles of criminal jurisprudence that at the stage of investigation the police should be left free to exercise its discrimination. In the present case the investigation or further investigation under sub-suction (8) of Section 173 of the Code is still pending. The question is whether at this stage further investigation can be quashed or not. In this connection a reference may be made to the case of Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 32 . In this decision the following observation is of considerable importance.

"The functions of. the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case...."

Also it was observed in this decision that the judiciary should not, interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.

7. This decision has been followed in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, In this decision it has been held that if the allegations made disclose cognizable offence the police has got a right to investigate and in such a situation the Court has no power to stop investigation.

8. Further a reference may also be made to an earlier decision of the Hon''ble Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, In this decision it has been held that ordinarily criminal proceedings instituted against an accused must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. These two cases have been referred too by the Hon''ble Supreme Court in recent decision in the case of M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, In this decision the High Court of Madhya Pradesh had quashed the investigation pursuant to the registration of a criminal case against the petitioner, setting aside this decision of the High Court the Hon''ble Supreme Court has observed that the investigation into an offence is statutory function of the police and the superintendence thereof is vested in the S''tate Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. Thus where the investigation which is still on its way and the further investigation in the offence is legally permissible as contemplated by Section 173(8) of Cr.PC, the quashing of investigation by the High Court would not be permissible. In this case the law with respect to further investigation as permissible u/s 173(8) of the Code was under examination. In its paragraph 4 it has been observed as follows :-

"4. We have carefully examined the submission of both the learned counsel. After going through the impugned order and other connected papers, we feel that the High Court was not justified in quashing the investigation which is still on its way. Needless to emphasise that the further investigation in the offence is legally permissible as contemplated by Section 173(8) of Criminal Procedure Code."

9. From the impugned order it appears that the learned Chief Judicial Magistrate was informed by the police that supplementary investigation in the offence was still in progress and accordingly it was prayed that non-bailable warrant of arrest may be issued against three accused persons who are the present petitioners. As pointed out above the law with respect to the further investigation has been contained in Section 173(8) of the Code with respect to which I have already made a reference. From this it would appear that there is nothing like final charge-sheet and in a case in which cognizance of the offence is taken by the Magistrate on the basis of the charge-sheet submitted by the police u/s 173 of the Code there is nothing in law to stop the Chief Judicial Magistrate to order for further investigation or if the police proceeds with the further investigation to take action in accordance with the prayer of the police for the issuance of

warrant of arrest in respect of those accused whose involvement in the crime had appeared subsequently.

10. From the above discussions it would appear that there is no merit in this application and it is not fit for admission.

11. In the result, this application is rejected.