

iqbal and Another Vs. the State of U.P Thru Home Secy., U.P Govt. Lucknow and Others

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Court : Allahabad

Decided On : Jan-10-2013

Judge : Sudhir Kumar Saxena

Appeal No. : U/S 482/378/407 No. 3321 of 2012

Appellant : iqbal and Another

Respondent : The State of U.P Thru Home Secy., U.P Govt. Lucknow and Others

Advocate for Pet/Ap. : Sri. Bhola Singh Patel

Judgement :

Sudhir Kumar Saxena, J.

1. This petition has been filed by accused Iqbal and another under Section 482 Cr.P.C. seeking quashment of the charge-sheet filed in Case No. 653 of 2011 (Crime No. 108 of 2011), under Sections 447/427/352 IPC and 3(1)(IV) of SC/ST Act, P.S. Kurshi, District-Barabanki.

2. Heard Sri Bhola Singh Patel, learned counsel for the petitioner and Sri Rishad Murtza, learned Government Advocate.

3. Charge-sheet shows that Investigating Officer while submitting charge-sheet did not arrest the petitioners on the ground that they enjoy high level political patronage and their arrest may disturb the law and order. Since the process adopted by the Investigating Officer was contrary to law, notice was issued to Investigating Officer who has filed the counter affidavit. Sri Vinay Chandra, the then Investigating Officer, presently posted as Deputy S.P. Vigilance, Lucknow, in his counter affidavit stated that the accused persons belong to Gaddi Community of Muslims and had tried to put political pressure, alleging that the police has been unnecessarily harassing them. It is also stated that they used their local political contacts to pressure local police to avoid arrest and insisted that the case be expunged. Considering the crime not so heinous, he submitted charge-sheet without arresting the accused. In para-6 of the counter affidavit, he has referred to the case of Supreme Court reported in 1994 (31) ACC - 431, Joginder Kumar Vs. State of U.P., and of this Court reported in 2011 (3) JIC 747 (All), Shaukeen Vs. State of U.P. and Ors. Notices were issued to Principal Secretary (Home), Government of U.P. and Director General, Prosecution, as these judgments do not restrain police from arresting accused while submitting charge-sheet.

4. Government Advocate today informs that the position has been clarified and Government Order in this regard has been issued on 03.01.2013. Government Order is unambiguous and states that no charge-sheet can be submitted without disclosing the status of accused. Government Order also refers to the order of Division Bench passed in the case of Shaukeen Vs. State of U.P. and Ors (supra) which did not show any embargo upon power of police to arrest the accused even in the offences punishable upto 7 years.

5. Para 122 of U.P. Police Regulations (which are applicable in State of U.P.) is clear which shows that while submitting charge-sheet, Investigating Officer must comply with the provisions of Sections 161-171 and 173 of Cr.P.C. Relevant extract is being quoted below:

"An investigation should be completed as soon as possible and when complete the Investigating Officer must comply with the provisions of Sections 161-171 and 173 of the Code of Criminal Procedure, 1898. The report prescribed by Section 173

must under that section be submitted by the officer in charge of the police station under intimation to the Superintendent of Police and should be in the form of charge-sheet (Police Form No. 339), if the case is sent for trial and in the form of final report (Police Form No. 340), if the case is not sent for trial."

6. It is, thus, apparent that the charge-sheet sans details about the accused i.e. whether accused is in judicial custody or in police custody or is an absconder, will not be complete and legal. Para 122 of the Police Regulation specifically states that the Investigation Officer must comply with the provisions of Section 161 to 171 and 173 of the Cr.P.C.

7. Section 173 Cr.P.C. makes provisions for submission of report by Investigating Officer. Section 173(2) is relevant for present controversy and same is reproduced hereunder:

"173. Report of police officer on completion of investigation-(1)...

[(1-A).....]

(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, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;
- (b) the nature of the informations;
- (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 under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code (45 of 1860)."

8. If law provides a mode to do a thing in a particular manner, it has to be done in accordance with that mode or not at all and other modes will be deemed to be prohibited.

9. Unless Investigating Officer furnishes these three informations, Magistrate would be justified in not accepting the charge-sheet.

10. Relevant extract of para 122(iv) of U.P. Police Regulations is also important which is being quoted below:

"The information as the result of investigation must, as required by Section 173(i)(b), Criminal Procedure Code, be sent by the office in charge of the police station to the complainant if any in Police Form No. 47, at the time he submits the charge-sheet or the final report, as the case may be"

11. Similar mandate has been provided in Section 173(2)(ii) of Cr.P.C. and the same is being quoted hereunder:-

"The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given."

12. Experience shows that mandate of para 122(iv) and Section 173(2)(ii) of IPC has been observed more in defiance. Principle underlying these provisions is salutary as it enables the victim/informant to know the result of FIR lodged by him. If final report is submitted, he can file objection to the mode and manner of investigation and pray the Magistrate to take cognizance or order further investigation. If charge-sheet is submitted then informant, at the time of cognizance, can object if any person has been wrongly left out or offence complained of, has been minimized. Asking informant to wait till stage of Section 319 Cr.P.C., would amount to further compounding his agony; forgetting the cause of informant or victim is not at all in the interest of criminal justice system.

13. It is, thus, apparent that after completion of the investigation, Investigating Officer is duty-bound to inform the result of investigation to the person who has lodged the FIR whether he submits charge-sheet or final report; therefore, the Magistrate will be fully justified in making this inquiry from the Investigating Officer while accepting the charge-sheet/final report.

14. Although, in paragraph 7 of the Government Order, the word "ordinarily" (samanyatah) has been used, needless to say that this is qualified by subsequent phrase "bina kisi bhedbhao kiye", therefore, it can be said that the charge-sheet has to be submitted after complying with Section 170 Cr.P.C. in every case and no exception is contemplated by the Government Order.

15. Learned Government Advocate rightly submits that the word "ordinarily" has been used to cover the case of absconders.

16. If Investigating Officer submits charge-sheet without arresting the accused persons (unless he is on bail), it can be submitted only if he has been declared absconder and the case under Section 174-A I.P.C. has also been registered as a result of this proclamation.

17. Apex Court in the case of Hardeep Singh Vs. State of Punjab and Ors. reported in 2009 (1) JIC page 62, while interpreting Section 173 Cr.P.C., in para 69 holds that "he shall also communicate to the informant the action taken by him". In para 70 Court says "the report contemplated by Section 173 should contain the information required by the said provision."

18. The division Bench in the case of Shaukin Vs. State of U.P. (supra) has clearly held in para 18 that "there would be no impediment in the Magistrate remanding the accused to judicial custody at later stages as authorized under Section 41(1)(b)(ii)(e) and Section 170(1) Cr.P.C. when the accused is produced before the Magistrate and the case diary shows that sufficient evidence for submitting a charge-sheet has been collected.

19. Delhi High Court in the matter of Court on its own Motion Vs. Central Bureau of Investigation, Crl. M. (M) 3875 of 2003, decided on 28.01.2004 has taken a view

that arrest of the accused even at the time of submitting the charge-sheet is not necessary. With great respect, I find myself unable to agree. It is nobody's case that the accused should be arrested while submitting the charge-sheet. Status of accused should be before the Magistrate whether he is on bail or in jail or is being forwarded by the Investigating officer under Section 170 Cr.P.C. or is an absconder.

20. In para 20, Hon'ble Single Judge of Delhi High Court observed that "Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of co-operation is provided by the accused to the Investigating officer in completing the investigation.

(emphasis supplied)

21. But in para 15, Hon'ble Single Judge himself observed that Section 170 Cr.P.C. connotes the presentation of accused by the Investigating Officer before the Court at the time of filing the charge-sheet where after the role of the Court starts. This position has been clarified by the Government Order in the background of U.P. Police Regulation 122 which Delhi High Court had no occasion to consider

22. Similar is the view of Gujarat High Court in the case of Deendayal Kishanchand and Ors. Vs. State of Gujarat reported in 1983 Cri. L.J. 1583, where impact of U.P. Police Regulations which make it incumbent upon the Investigating Officer to comply with Section 170 Cr.P.C. has not been considered.

23. In the case of Srawan Kumar Tiwari Vs. State of U.P. And Ors. reported in 2010 (5) ALJ 713, a Single Judge of this Court had not considered the impact of U.P. Police Regulation, Government Order dated 03.01.2012 and Section 170 of Cr.P.C. In para 6 of the judgment, learned Judge himself says "so long as the matter is pending for investigation, the Magistrate has no power to interfere with the same and the Magistrate's jurisdiction begins with the submission of the police report under section 173 Cr.P.C." Section 173 Cr.P.C. or the proforma for submitting charge-sheet does not leave any scope for Investigating Officer to say that he would not forward accused, if he is not on bail or is not traceable despite

proclamation.

24. State Government has done well to issue Government Order clarifying the position. This step is sure to curtail the delay in procuring attendance of accused by Magistrate.

25. From a joint reading of Section 173 Cr.P.C., Para 122 of U.P. Police Regulations and Government Order dated 03.01.2010, it is clear that:

(1) Investigating Officer is duty-bound to give information about the result of investigation to complainant (who has lodged the FIR), whether he submits charge-sheet or final report;

(2) while submitting charge-sheet Investigating Officer has to inform Magistrate whether accused is in jail or on bail or is being forwarded with the charge-sheet. If charge-sheet is being submitted after declaring accused as absconder, a case under Section 174-A of IPC has also to be registered;

(3) no charge-sheet can be submitted without complying with the provisions of Section 170 and 173 Cr.P.C.;

(4) ground that accused is political or influential person, as such his arrest may trigger the violence, would not be ground to submit charge-sheet without arresting/forwarding him and

(5) if the report under Section 173 falls short of above compliance, court will be justified in insisting on compliance before accepting it for cognizance or otherwise.

26. Since legal position was not very specific and Government Order clarifying the same has been issued on 3rd January, 2013, Investigating Officer cannot be held guilty in this case. It is expected, however, in future that Investigating Officers would faithfully and strictly act in the spirit of Code of Criminal Procedure, Police Regulation and Government Order.

27. Police Officers should know that they are accountable to only Constitution and the laws made there under and to none else. They should display courage to ignore political pressure while discharging their official duties.

28. The charge-sheet has been filed after investigation which is based on the relevant materials. The charge-sheet can be quashed only on limited grounds which are absolutely lacking in the instant case, as such no interference is possible under Section 482 Cr.P.C.

29. Petitioners are directed to surrender before the court below within three weeks from today and apply for bail, whereupon their prayer for bail shall be considered and decided by the court below in view of the settled law laid down by Hon'ble Apex Court in the case reported in 2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh Vs. State of U.P.

30. Till the aforesaid period or disposal of the bail application, whichever is earlier, no coercive measure shall be taken against the petitioners.

31. Subject to above, petition is disposed of.

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