

Mohan Choudhury Vs. the State

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Court : Guwahati

Decided On : Jul-19-1962

Judge : T.N.R. Tirumalpad, J.C.

Appellant : Mohan Choudhury

Respondent : The State

Prior history : T.N.R. Tirumalpad, J.C. 1. This revision petition arises out of the order of the magistrate Shri K.P. Dutt rejecting certain preliminary objections taken by the petitioner before the framing of the charges against the petitioner In P.S. case No. 53(5)60. The petitioner moved the Sessions Judge in revision against the order of the magistrate. But the Sessions Judge rejected the revision and stated that this was not a fit case to make a reference to this Court. 2. On 21.5.1960, Shri K.P. Chakrab

Judgement :

T.N.R. Tirumalpad, J.C.

1. This revision petition arises out of the order of the magistrate Shri K.P. Dutt rejecting certain preliminary objections taken by the petitioner before the framing of the charges against the petitioner In P.S. case No. 53(5)60. The petitioner moved the Sessions Judge in revision against the order of the magistrate. But the Sessions Judge rejected the revision and stated that this was not a fit case to make a reference to this Court.

2. On 21.5.1960, Shri K.P. Chakraborty, Sub-divisional Magistrate, Sadar sent a report to the O/C, Kotwall police station stating that on the said date the petitioner led a procession of 150 persons at about 6 P.M. shouting slogans and on reaching the main gate of the Rehabilitation office tried to force entry into the office and started pushing the police officers and constables on duty and that Shri K.P. Chakraborty as S.D.M. asked the assembly to disperse to which they did not pay any heed, but hurled bricks at the police causing injury to some of them, that thereupon the S.D.M. declared the assembly unlawful, but the violent activities were continued and that finally on the order of the S.D.M. to disperse the unlawful assembly and to arrest the petitioner, who was the leader of the assembly, the police dispersed the riotous mob by the application of force and arrested the petitioner. The S.D.M. requested the O/C, Kotwali police station that a case under Sections 147, 353 and 332, I.P.C. and Section 11 of the West Bengal Security Act be started and investigated.

3. This was treated as a first information report by the O/C, Kotwali police station and P.S. case No. 53(5)60 under Sections 147, 332 and 353, I.P.C. and Section 11 of the West Bengal Security Act, was registered at once and a report was immediately sent by the O/C, Kotwali police station to the S.D.M., enclosing a copy of the S.D.M.'s own report to him, while sending the petitioner to the S.D.M. requesting a remand and praying that he should not be released on bail. The order-sheet of the S.D.M. for 21.5.1960 shows that he passed the following orders:

Received F.I.R. No. 53(5)60 under Sections 147/353/332, I.P.C. and 11 of W.B.S. Act. I.C. has forwarded one Mohan Choudhury alias Bipul Kar Choudhury under arrest with some injury on his back and prayed for remanding him.

The accused is remanded to jail *hajat* till 4.6.1960. Ask M.O. Central Jail to render necessary medical treatment to the *accd.* I.O. to submit report by that date.

4. Then police instigation followed and charge sheet was filed against the petitioner on 6.7.1960 under Sections 147, 149, 332 and 353 I.P.C. and Section 11 of the West Bengal Security Act. On 11.7.1960, Shri K.P. Chakraborty, the S.D.M. passed the following order:

Received C.S. No. 103 dated 6.7.1960 under Sections 147/149/353/332, I.P.C. and 11 of W.B.S. Act against accused. Mohan Choudhury alias Bipul Kar Choudhury. Send the record to Judicial Section.

5. Again on 12.7.1960, he passed another order as follows:

As I am the Informant In this case, the case should not be tried by me. The case is therefore transferred to the file of Shri K.P. Dutt, Magistrate 1st Class for favour of disposal.

6. Then Shri K.P. Dutt took up the case on 13.7.1960 and he directed that the documents and police papers should be furnished to the accused. After some more adjournments when the magistrate wanted to frame charges, a petition was filed before him raising certain preliminary objections.

7. In the said petition, it was stated that Shri K.P. Chakraborty, S.D.M. had taken cognizance of the case when he declared the assembly to be unlawful and ordered the arrest of the petitioner and sent the report to the O/C, Kotwali police, station that after taking cognizance, the magistrate had no power to order police investigation and as such the police investigation was illegal and the charge sheet filed, after police investigation, should not be taken account of for beginning the inquiry under Section 251-A, Cr.P.C. that under Section 34 of the West Bengal Security Act, a magistrate can take cognizance of a case only on a report disclosing facts constituting an offence under that Act by a public servant and that the charge sheet filed by the police cannot be treated as such a report or even as a complaint under Section 4(h), Cr.P.C. and hence no action can be taken under Section 11 of the West Bengal Security Act on the basis of the charge sheet and that therefore the entire proceedings before the magistrate were illegal and should be quashed.

8. Regarding the first contention, the magistrate held that the case cannot fail merely because it was Investigated by the police after the taking of cognizance, by the Sub-divisional Magistrate. Regarding the second point, he held that he has not yet decided whether a charge under Section 11 of the West Bengal Security Act would be justified or not and that it may be urged before he decides to frame a

charge.

9. The learned Sessions Judge held on the first point that Shri K.P. Chakraborty had not taken cognizance of the offence by declaring the assembly as an unlawful assembly or by ordering the arrest of the petitioner and that therefore he was not debarred from ordering police Investigation. With regard to the second point, he held that the magistrate has not yet decided the question and that It may be considered by the magistrate at the time of framing of the charge.

10. It was urged in revision before me that the S.D.M. Shri K.P. Chakraborty was present at the assembly, that he had declared the assembly an unlawful assembly and ordered it to disperse and had directed the petitioner to arrested and that therefore ha had taken cognizance of the offence under Section 190(1)(c) of the Code upon his own knowledge that the offences have been committed and that after taking such cognizance, he has no power under Section 156(3) of the Code to order police Investigation. I am not prepared to accept this argument. Section 64 of the Code permits a magistrate when an offence is committed in his presence within the local limits of his jurisdiction to arrest or order the arrest of the offender. Thus when the offences were committed In the presence of the S.D.M. he had the right to order the arrest of the offender under Section 64 and it cannot be said that in doing so, he was taking cognizance of the offence under Section 190(1)(c). The stage had not arrived then for taking cognizance of the offence. Even after such arrest the procedure under Section 167, Cr.P.C. has to be followed and the person arrested has to be forwarded to a magistrate by the police, as the arrest was made by the police.

Taking cognizance of the offence by a magistrate will come in only subsequently whether on complaint under Section 190(1)(a) or on police report under Section 190(1)(b) or upon the magistrate's own knowledge under Section 190(1)(c). In the case before us, Shri K.P. Chakraborty, before whom the offence was committed, was, a magistrate empowered under Section 190 to take cognizance of the offence and he had, therefore, every right before taking cognizance of the case to order police investigation under Section 156(3). Thus his report sent on 21.5.1960 directing the O/C, Kotwali police station to start the case and to investigate it was

perfectly in order, as it was done before he took cognizance of the offence.

11. It was next contended for the petitioner that when, on the same date, Shri K.P. Chakraborty passed the order on receipt of the F.I.R., along with which was enclosed his own report to the O/C, Kotwali police station, remanding the accused to jail *hajat*, he must be deemed to have taken cognizance of the case on his own knowledge under Section 190(1)(c) and that he should, thereafter have proceeded under Section 204 of the Code and as the accused had already been brought before him under arrest, the proper procedure to be followed was under Section 252, Cr.P.C. and that he should not have waited for the charge-sheet to be filed by the police after investigation. I am not prepared to accept this argument either. Even at the stage, Shri K.P. Chakraborty cannot be said to have taken cognizance of the case under Section 190(1)(c). He was only at the stage of remanding the accused under Section 167 of the Code. Taking cognizance requires something more than remand, for order to take cognizance, a magistrate must have before him either a complaint stating the facts which constitute the offence or a police report in writing of such facts or he must have information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed.

It was pointed out that Shri K.P. Chakraborty, as disclosed from his report to the O/C, Kotwali police station, had personal knowledge that such offences had been committed. That is, of course, true. But taking cognizance as a magistrate requires something more. The magistrate must apply his mind to the facts of the case and decide on a course of action in furtherance of such application of mind for the purpose of further proceeding with the matter in accordance with the subsequent provisions of the Criminal Procedure Code. Thus if he should be said to have taken cognizance under Section 190(1)(a), he should have proceeded under Chapter XVI of the Code and examined the complainant on oath under Section 200. Or if it was under Section 190(1)(b) or (c) if the magistrate found that there was sufficient ground for proceeding, he should have issued process under Chapter XVII, Section 204 of the Code if the accused was not before him and if the accused was already before him, he should have proceeded further under Chapter XVIII or XXI of the Code. Until then he cannot be said to have taken cognizance of

a case.

12. This matter has now been set at rest by the decision of the Supreme Court 'Gopal Das Sindhi v. Stats of Assam AIR 1961 SC 986 in which it has been laid down that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, e.g. ordering investigation under Section 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. That was a case arising on a complaint filed before the Additional District Magistrate, Assam and the Additional District Magistrate sent it to a first class Magistrate Mr. Thomas for disposal and the first class Magistrate on receipt of the complaint directed the officer-in-charge of Gauhati Police Station to register a case, investigate and if warranted, submit charge-sheet, Thereafter the police submitted a charge-sheet to the Additional District Magistrate and the Additional District Magistrate sent it to another magistrate for disposal. Their Lordships held that neither the Additional District Magistrate nor Mr. Thomas can be said to have taken cognizance of the case and that Mr. Thomas had the power to send it for investigation to the police under Section 156(3).

13. Another decision of the Supreme Court namely, Narayandas Bhagwandas Madhavdas v. State of West Bengal : 1959 CriLJ1368 has held that it is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Chapter XVI of the Code or under Section 204 of Chapter XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance. That was a case arising out of the Foreign Exchange Regulation Act and the appellant before the Supreme Court had been arrested and a search warrant was issued against him long before the Reserve Bank of India authorised the filing of a complaint and the actual complaint was filed and it was argued that cognizance of the case was taken when the appellant was arrested and a search warrant was issued and that it was in contravention of the provisions of Section 23(3) of the Foreign Exchange Regulation Act, which provides that a Court cannot take cognizance of an offence without a complaint in writing by an officer authorised in that behalf by the Central Government or the Reserve Bank of India by a general or special order and that

as the cognizance was taken long before the authorisation by the Reserve Bank and the actual filing of the complaint, the entire proceedings were illegal. The Supreme Court held that the cognizance cannot be said to have been taken either by the arrest or by the issue of the search warrant.

14. The above two decisions will apply to the present case also. Shri K.P. Chakraborty cannot be said to have taken cognizance of the case either by ordering the arrest of the petitioner or by sending the report to the O/C, Kotwali Police Station or by remanding the petitioner.

15. The next contention was that when Shri K.P. Chakraborty, on receipt of the charge-sheet on 11.7.60 passed an order on 12.7.60, that the case should not be tried by him as he was the informant in the case and that the case was, therefore, transferred to the file of Shri K.P. Dutt for favour of disposal, he must be said to have taken cognizance of the case and transferred it under Section 191 Cr.P.C. and that it clearly showed that Shri K.P. Chakraborty had taken cognizance of the case under Section 190(1)(c). But it seems to me that the transfer was made not under Section 191 Cr.P.C. but under Section 556 Cr.P.C. which provided that no Judge or magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party or personally interested. In this case, Shri Chakraborty is going to be one of the main witnesses in the case, as he was an eye-witness to the occurrences and as such, he cannot try the case.

Hence, even before taking cognizance of the case on the police report, he transferred the case to Shri K.P. Dutt and it was only Shri K.P. Dutt who actually took cognizance of the case under Section 190(1)(b). A mere order stating that the case cannot be tried by him as he was the informant cannot be stated to show that Shri Chakraborty had applied his mind for proceeding with the case under Chapter XVII of the Code and hence, he cannot be said to have taken cognizance of the case. I hold, therefore, that this case has been taken cognizance of only by Shri K.P. Dutt under Section 190(1)(b) on the police report submitted to him after investigation. Shri K.P. Dutt is, therefore, entitled to proceed under Chapter XVIII or XXI of the Code.

16. Regarding the second point, it is not possible for me to decide in this revision whether a charge can be framed under Section 11 of the West Bengal Security Act on a police report stating the facts constituting the offence. That is a matter which the petitioner may urge before the Magistrate before the Magistrate decides to frame such a charge.

17. The revision, therefore, fails and it is accordingly dismissed.

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