

Dr. Shrawan Kumar Vs. State of Bihar

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Court : Patna

Decided On : Jan-22-1997

Judge : M.Y. Eqbal, J.

Appeal No. : Criminal Misc. No. 18423 of 1996

Appellant : Dr. Shrawan Kumar

Respondent : State of Bihar

Advocate for Pet/Ap. : Mr. S.D. Sanjay

Disposition : Application Allowed

Judgement :

M.Y. Eqbal, J.

1. This application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (hereinafter to be referred to as the Code') for quashing of the entire criminal proceeding, including the order dated 22nd August, 1996 passed by the learned Chief Judicial Magistrate, Patna in Kadamkuan P.S. Case No. 40 of 1995 registered under Section 304(4) of the Indian Penal Code. By the said order, the learned Chief Judicial Magistrate rejected the petition filed by the petitioner for acceptance of final form pursuant to the investigation made under Section 173(8) of the Code.

2. The petitioner who is a Doctor started a new born care centre with all modern technology and equipments. In the said centre, the petitioner also provided service of expert technicians and nurses. The aforesaid criminal case was instituted on the basis of the First Information Report lodged by one Dinesh Kumar on 28-1-1995 alleging inter alia that he had brought his child for treatment in the Nursing Home of the petitioner. At the time of admission, the child was fully healthy and from 23-1-1995 to 25-1-1995, the petitioner treated the child but after 25-1-1995 to 28-1-1995, the petitioner was not taking care and used to go out of his residence saying that there was some function in Boring Road at his father-in-law's place and he will not come in the night. On 27-1-1995, in the night when allegedly the petitioner was at his in-laws' place at Boring Road, Patna, the condition of the child deteriorated. On being informed by his staff, the petitioner came at 9 a.m. in the morning. By that time, the child became very serious. Thereafter the petitioner injected an injection but the child died. The informant, therefore, alleged that the petitioner had not taken proper care and had negligently treated the son of the informant as a result of which the child died. It appears that on the basis of the FIR, initially, the Police investigated the case and without taking evidence of competent witnesses, submitted a chargesheet under Section 304A, IPC on 31-7-1995 and on the basis of the aforesaid charge-sheet, cognizance was taken on 3-8-1995 by the Chief Judicial Magistrate, Patna against the petitioner. It is stated by the petitioner that in the mean time, the petitioner had represented before the High Police Officers about the perfunctory nature of investigation in the present case and the City Superintendent of Police consequently sought permission from the Judicial Magistrate, Patna that further investigation under Section 173(8) of the Code was required to be made in the case. On the basis of further Investigation, the Police reached the conclusion that it was a case of mistake of fact. The Police accordingly submitted the report, pursuant to the investigation made under Section 173(8) of the Code. After the report was submitted, a petition was filed by the petitioner in the court of Judicial Magistrate in whose file the case was transferred by the then learned Chief Judicial Magistrate for enquiry and trial. It is stated in the said petition that the learned Judicial Magistrate informed the Advocate of the petitioner that it was not a cognizance taking court and the course open to the petitioner was to move before the Chief

Judicial Magistrate for recalling the file and passing appropriate order in the light of final form submitted by the Police after cognizance under Section 173(8) of the Code. The petitioner accordingly filed a petition in the court of Chief Judicial Magistrate, Patna on 22-4-1996 with a prayer to recall the case from the court of Judicial Magistrate, 1st Class, Patna and to consider the final form submitted by the Police. The learned Chief Judicial Magistrate heard the matter and passed an order on 22-8-1996 whereby the learned Chief Judicial Magistrate, rejected the petition on the ground that since cognizance had been taken earlier, the petition filed by the petitioner was not maintainable. The order dated 22nd August, 1996 is impugned in the application.

3. I have heard Mr. S.D. Sanjay learned Counsel appearing for the petitioner and the learned A.P.P. Mr. Sanjay learned Counsel extraneously argued that the learned court below completely misconstrued the provisions of Section 173(8) of the Code. The learned Counsel submitted that Section 173(8) of the Code was introduced by the Legislature to meet the situation which was existing in the present case. The learned Counsel submitted that the learned court below committed serious illegality in holding that it has no Jurisdiction to drop the proceeding on the basis of subsequent report submitted by the Police. The learned Counsel put heavy reliance on the decision of the Supreme Court in Ram Lal Narang v. State : 1979 CriLJ1346 .

4. In order to answer the question raised by the petitioner it is necessary to look into the provisions of Section 173 of the Code, which is as under :-

Section 173 : Report of police officer on completion of investigation.- (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(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 information ;

- (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 ;
- (ii) 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.
- (3) where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.
- (4) whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
- (5) When such report is in respect of a case to which Section 170 applies the police officer shall forward to the Magistrate along with the report-
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation ;
 - (b) the statement recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
- (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the

accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) whether the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in Sub-section (5).

(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).

5. Sub-section (8) of Section 173 was inserted in the new Code on the recommendation of 41 's Report of the Law Commission. From bare reading of Sub-section (8) of Section 173 of the Code it appears that submission of Final Form by the Police does not debar it from making further investigation and submission of further report to 'the Magistrate concerned. From perusal of the impugned order passed by the learned Chief Judicial Magistrate, it appears that the petition filed by the petitioner was rejected on the sole ground that once the cognizance is taken, the court below has no jurisdiction to recall the order of cognizance and to discharge the petitioner from accusation.

6. The law is well settled that the Police has statutory right and duty to register every information relating to the commission of a cognizable offence. The Police also has the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence is suspected and to submit a report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a Police report. These statutory rights and duties of the Police are not circumscribed by any power of superintendence or

interference in the Magistrate nor is any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. Under the old Code of Criminal Procedure, there was no specific provision prescribing the procedure to be followed by the Police after the submission of the report under Section 173(8) of the Code and after the Magistrate had taken cognizance of the offence. The earlier view of some High Courts was that once the charge-sheet is submitted by the Police under Section 173 of the Code, their power of investigation comes to an end and the Magistrate's cognizance of offence started. Different views of the different High Courts have been ultimately set at rest by the Apex Court in the case of *Ram Lai Narang v. State* (supra), where the Apex Court, after considering the pros and cons of the provisions of the Code held as under :

Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police a possessing the power to make further investigation and submit 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 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 investigations 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 investigation. 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 of 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 direction of the Magistrate. The criticisms 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 direction in regard to further direction 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 interest of the independence of the Magistracy and Judiciary, in the interests of the purity of the administration of criminal justice and 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.

7. In the light of the law laid down by the Supreme Court, I have no hesitation in holding that it is well within the Jurisdiction of the Magistrate to pass appropriate order even after the cognizance was taken on the basis of the report submitted by the Police in further investigation. It is in the discretion of the Magistrate to pass appropriate order on the basis of subsequent report submitted by the police under Section 173(8) of the Code.

8. Having regard to the facts and circumstances of the case. I am of the opinion that the learned court below failed to exercise its jurisdiction by holding that it has no power to pass appropriate order on the basis of the report submitted after further investigation. The impugned order, therefore, cannot be sustained in law.

9. In the result, this application is allowed and the impugned order is quashed with a direction to the learned Chief Judicial Magistrate to consider the application of the petitioner afresh and pass appropriate order in accordance with law.