

Pushparaj Vs. Subbanna and ors.

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Court : Karnataka

Decided On : Apr-18-2001

Reported in : 2001CriLJ3601; ILR2001KAR4569; 2002(3)KarLJ293

Judge : K. Sreedhar Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 36, 156(2), 156(3), 200, 203, 204, 244 and 398

Appeal No. : Criminal Revision Petition No. 930 of 1999

Appellant : Pushparaj

Respondent : Subbanna and ors.

Advocate for Def. : S.G. Bhagawan, Adv. for ;Ajay Kumar Patil, Adv.

Advocate for Pet/Ap. : C.V. Nagesh, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

K. Sreedhar Rao, J.

1. The awful tale of police torture and wrongful confinement in the police station of the petitioner by the Kengerigate Police is the grievance made out in the private

complaint filed.

2. The petitioner contends that on 9-10-1998 at 11 a.m. the respondents 3 to 5 came to his house and whisked him to the police station, he was partially undressed put in lockup, beaten black and blue with hockey sticks; the respondents 1 and 2 also said to have participated in illegal action against the petitioner. One Dr. Raveendra who has a clinic nearby Kengerigate Police Station was summoned, he found that the condition of the petitioner was very critical, treated the petitioner and advised the respondents to immediately shift him to a hospital for treatment suspecting some grave and dangerous consequences. Smt. Ku-muda, Subramani, the brother and the friends of the petitioner Nagaraj and Satyanarayan are said to be witnesses to the ghastly acts committed by the respondents. The wife of the complainant made attempts to lodge the complaint with the Senior Police Officers. On finding the petitioner in hopeless condition, was released from the custody and was admitted in the Victoria Hospital by the family members where he was treated for the fracture, injuries he had sustained. The doctors who have treated the petitioner in the Victoria Hospital are also cited as witnesses in the private complaint.

3. The materials placed on record also reveal that the matter was complained to the National Human Rights Commission, an enquiry was held into the matter and it was found that the respondents to be guilty of the alleged actions, the compensation was also said to have been ordered to be paid. Besides, it, was also recommended to initiate proper legal action against the respondents.

4. On filing of the private complaint, the Magistrate on 16-10-1998, referred the case for investigation by Commissioner of Police. However, the Assistant Commissioner of Police conducted the investigation and filed a 'B' report into the matter. The complainant filed a protest memo, examined himself and the witnesses, in support of his case. The Magistrate after considering the material placed, passed the impugned order accepting the 'B' report and dismissed the complaint. Being aggrieved by the said order, the present revision is filed.

5. The propriety of the Magistrate in referring the complaint for investigation to Commissioner of Police does not appear to be res integra in view of the ruling of

the Supreme Court in Central Bureau of Investigation through S.P., Jaipur v. State of Rajasthan and Another, : 2001 CriLJ968 it is held thus:

'6. If the power of a Magistrate to order investigation by the CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. What is contained in Sub-section (3) of Section 156 is the power to order the investigation referred to in Sub-section (1), because the words 'order such an investigation as above-mentioned' in Sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an 'officer-in-charge of a police station' to conduct investigation.

10. This means any other police officer, who is superior in rank to an officer-in-charge of a police station, can exercise the same powers of the officer-in-charge of a police station, and when he so exercises the power he would do it in his capacity as officer-in-charge of the police station. But when a Magistrate orders investigation under Section 156(3) he can only direct an officer-in-charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless when such an order is passed, any police officer, superior in rank of such officer, can as well exercise the power to conduct investigation, and all such investigations would then be deemed to be the investigations conducted by the officer-in-charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer-in-charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer-in-charge of the police station either suo motu or on the direction of the superior officer or even that of the Government'.

6. In view of the law laid down by the Supreme Court, the order of reference for investigation by Commissioner of Police is bad in law. An offshoot question would arise whether all the consequent proceedings that have taken place pursuant to illegal reference would be nullity and bad in law. Since consequent upon such reference, the Assistant Commissioner of Police who had no manner of right to conduct investigation however conducted the investigation and filed 'B' report

which came to be challenged by a protest memo and the procedure in the case of private complaint under Section 200 of the Cr. P.C. is followed. Although the reference to Commissioner of Police in the first instance is bad in law but nonetheless the proceedings were already launched by way of private complaint and after filing of protest petition, the complainant has examined himself and witnesses. Therefore, the part of the proceedings onwards from taking cognizance and recording sworn statement would not however get vitiated by any illegality and the proceedings conducted and continued from that stage would have valid basis in law. Even otherwise this question would be only of academic importance since the ultimate consequence by the result of the present proceedings may not be different for the following discussions of merits and the reasons thereof.

7. After going through the impugned order, the Magistrate appears to have committed error while appreciating the material placed on record. It is however open to the Magistrate to dismiss the complaint under Section 203 of the Cr. P.C. if he finds that the sworn statement and the other material placed in support of the complaint are contradictory and intrinsically unbelievable. The measure and the yardstick for evaluation of the material at the stage of issue of process under Section 204 of the Cr. P.C. should not be equated with the standards required in evaluation of evidence at a trial. At the stage of issuance of process, the Magistrate is obliged to look into the material to find out *prima facie* whether reasonable grounds are made out to proceed further in the matter. The legal test perhaps to be applied by the Magistrate should be the one akin to the test that is contemplated while evaluating the evidence and material under Section 244 of the Cr. P.C. In the said provisions, the reasonable test to be applied by the Magistrate is to see whether on the basis of material so produced if unrebutted would it result in conviction. Perhaps the same amount of liberal approach is to be adopted while considering the case under Sections 200 and 204 of the Cr. P.C. In the given background of the legal proposition if the impugned order of the Magistrate is scrutinised it palpably discloses that the Magistrate has adopted the standard of proof applicable for evaluating the evidence adduced in a full-fledged trial.

8. The Magistrate was totally in error in considering the minute discrepancies while rejecting the sworn statement of the witnesses examined by the complainant. C.W.

1 is the complainant, C.W. 2 is Na-garaj, C.W. 3-Narayan, C.W. 4-Satyanarayan, C.W. 7-Lingaraj, C.W. 9-Shiva and statements of Subramani and Kumuda who are close relatives and friends clearly corroborate the complaint version and their sworn statements indicate respondents 3 to 5 taking away C.W. 1 to the police station, the participation of respondents 1 and 2 in the aforesaid criminal acts is also testified by them. The Magistrate takes a very parochial view that these witnesses were outside the police station and they are not witnesses to the incident of beating. The approach adopted by the Magistrate appears to be untenable although the said witnesses might not be eye-witnesses to the actual beating, nonetheless they were outside the police station and their version has a *res gestae* connotation which is a validly admissible piece of evidence because they speak to the immediate pre and post-events to the incident of beating. The evidence of C.W. 5-Dr. Raveendra also categorically implicates the respondents 1 and 2 and the other respondents and he is the doctor who treated C.W. 1 when he was in a dangerous condition in police lockup. He also advises the respondents 1 and 2 to bear a human outlook and to be considerate to the people who come to police station, further advises them to shift C.W. 1 to some hospital for treatment. The medical evidence of the doctors who treated the petitioner at the Victoria Hospital also has a corroborative value, the material relating to the directions of National Human Rights Commission also have the corroborative value. In the face of so much of *prima facie* material available, it was not proper for the Magistrate to have set down himself in microscopic examination of the minor discrepancies in rejecting the private complaint.

9. As observed above, the validity of the proceedings onwards the stage of the protest memo would be only of academic importance since when it is found that the order of the Magistrate in dismissing the complaint is unsustainable. The legal consequences that should follow, under Section 398 is to remit the matter to the Magistrate for further enquiry and to proceed with the case in accordance with law.

10. In that view of the matter, the impugned order of the Magistrate is set aside and the matter is remitted to the Trial Court for further enquiry in accordance with law.