

The State of Mysore Vs. Gurappa and ors.

The State of Mysore Vs. Gurappa and ors.

SooperKanoon Citation : sooperkanoon.com/378678

Court : Karnataka

Decided On : Jul-24-1973

Reported in : 1974CriLJ213; (1973)2MysLJ238

Judge : C. Honniah, J.

Appellant : The State of Mysore

Respondent : Gurappa and ors.

Judgement :

ORDER

C. Honniah, J.

1. This is a reference by the learned Second Additional Sessions Judge, Gulbarga, to quash the order dated 14th September, 1972 by which the learned Magistrate, Shorapur, directed the Sub-Inspector of Police, Kembhavi to submit a charge-sheet against the accused.

2. The facts are these : One Bandappa of Kanhalli in Shorapur Taluk, Gulbarga District, filed a complaint in the Court of the J. M. F. C., Shorapur against the accused alleging that he had committed an offence punishable under Section 323, I.P.C. The learned Magistrate referred the complaint to the police under Section 156 (3), Cr. P, C. The Sub-Inspector of Police, after investigation, submitted a 'B' report. The learned Magistrate, it appears, rejected the 'B' report and directed the

Sub-Inspector of Police to file a charge-sheet against the accused.

3. The question that arises for consideration is whether a Magistrate can direct the police to submit a charge-sheet when the police, after investigation, have submitted a final report.

4. The scheme of Chapter XIV, Cr. P, C. shows that the formation of an opinion as to whether or not there is a case to place the accused on trial, is left to the Officer-in-charge of the police station. When once the Officer-in-charge of the police station, after investigation, submits a final report, it is open to the Magistrate to accept the report or reject the same. If the Magistrate, rejects the report of the Police Officer, he can take cognizance of an offence and proceed with the trial of the case. But he has to act judicially and the order passed by him on such report is a judicial order,

5. A matter similar to the one in question, came up for decision before the Supreme Court, in *Abhinandan Jha v. Dinesh Mishra* : 1968 CriLJ97 . The Supreme Court pointed out that : 'There is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the Magistracy and the police are entirely different, and though, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot impinge upon the Jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.' It is, therefore, clear that the learned Magistrate had no power to ask the Sub-Inspector of Police to send a charge-sheet against the accused.

6. The reference, therefore, is accepted and the order of the learned Magistrate dated 14th September, 1972, is quashed.