

Ramchandra and ors. Vs. State of Uttar Pradesh and anr.

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Court : Allahabad

Decided On : Sep-14-1970

Reported in : AIR1971All155; 1971CriLJ578

Judge : G.C. Mathur and ;Hari Swarup, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190(1), 191 and 252

Appeal No. : Criminal Revn. No. 608 of 1968

Appellant : Ramchandra and ors.

Respondent : State of Uttar Pradesh and anr.

Advocate for Def. : Jitendra Kumar, Addl. Govt. Adv. for State and ;K.M. Singh, Adv. for Opposite Partly No. 2

Advocate for Pet/Ap. : R. Pandey, Adv.

Disposition : Revision allowed

Judgement :

G.C. Mathur, J.

1. A report under Sections 147 and 323, I. P. C. was lodged at P. S. Sahatwar against the five applicants in this revision. After investigation, the S. O. on August 27, 1967, wrote out a final report to the effect that no case was made out. Before

this final report was received by the Magistrate, Tarkeshwar Pathak O. P. No. 2 made an application on September 13, 1967, before the Magistrate concerned, praying that the final report be rejected and the accused be summoned. The Magistrate ordered this application to be put up with the final report when received. On September 19, 1967, the applicant made an application to the Magistrate to reject the application dated September 13, 1967. On this application also, the Magistrate passed an order directing it to be put up when the final report was received. After the final report was received, the two applications together with the final report were put up before the Magistrate. On September 26, 1967, he passed the following order:--

'There is evidence sufficient prima facie to summon the accused. Let accused be summoned- Register the case and issue summons to the accused. A.P.P. to prepare the copies.'

Against this order, the applicants filed a revision before the Sessions Judge, Ballia. The 1st Additional Sessions Judge, Ballia, dismissed the revision on February 29, 1968, holding that, in view of the decision of the Supreme Court in *Abhinandan Jha v. Dinesh Mishra*, 1968 Cri LJ 97 = AIR 1968 SC 117, it was open to the Magistrate to take cognizance under Section 190 (1) (b) Criminal P. C., even though the police had submitted a final report. The applicants then filed this revision. The revision came up for hearing before K. B. Asthana, J. who referred it for decision to a larger Bench as, in his opinion, the decision of the Supreme Court required to be interpreted, since there were two conflicting observations therein. That is how this case has come before us.

2. Sri R. Pandey, learned counsel for the applicants, has not disputed before us that the Magistrate could take cognizance of the case even though a final report had been submitted by the police. His contention is that the Magistrate could take cognizance either under Section 190 (1) (a) on the basis of the application of Tarkeshwar Pathak dated September 13, 1967, which amounted to a complaint, or he could take cognizance under Section 190 (1) (c), Criminal P. C. His contention is that, in no case, could the Magistrate take cognizance under Section 190 (1) (b). From the tenor of the order of the Magistrate dated September 26, 1967, it

appears that he had taken cognizance under Section 190 (1) (b), Criminal P. C.

3. Since the question raised in this case relates to the applicability of Clauses (a), (b) and (c) of Sub-section (1) of Section 190, it is desirable to quote Section 190 (1) of the Code of Criminal Procedure :

'190 (1). Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.'

Obviously, the Magistrate has not taken cognizance on the application of Tarkeshwar Pathak dated September 13. 1967, and, therefore, he cannot be said to have taken cognizance under Section 190 (1) (a), Criminal P. C. The question that remains for determination is whether, in the circumstances of this case, cognizance could be taken under Clause (b) or Clause (c). Sri Pandey contends that cognizance could not be taken under Clause (b) and could only be taken under Clause (c). For this contention, he relied upon the decision of the Supreme Court referred to above.

4. In the Supreme Court case as reported in AIR 1968 SC 117. and other reports, it is stated at the end of paragraph 15 :

'If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence under Section 190 (1) (b) notwithstanding the contrary opinion of the police expressed in the final report.'

The reference to Clause (b) in this paragraph is wrong as in the official reports. i.e., (1967) 3 SCR 668 = AIR 1968 SC 117, this sentence reads as follows :

'If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence under Section 190 (1) (c), notwithstanding the contrary opinion of the police expressed in the final report.'

Some confusion was created, which necessitated a reference to this Bench, on account of this wrong mention of Clause (b) instead of Clause (c) in the re-ports other than the official report. In the later part of the judgment of the Supreme Court as reported in all the journals, reference is made to Clause (c). From a perusal of the Supreme Court case it is clear that:--

(i) where cognizance is taken upon a complaint; it has to be taken under Section 190 (1) (a);

(ii) if cognizance is taken upon a charge-sheet submitted by the police, cognizance has to be taken under Section 190 (1) (b); and

(iii) if cognizance is taken on the basis of the final report submitted by the police or upon other information or upon the knowledge or suspicion of the Magistrate, cognizance has to be taken under Section 190 (1) (c).

If a charge-sheet is submitted by the police, it is open to the Magistrate either to take cognizance under Section 190 (1) (b) or to refuse to take cognizance. Likewise, if a final report is submitted by the police, it is open to the Magistrate to accept the final report and drop the matter or to take cognizance under Section 190 (1) (c). It is, therefore, clear that, in the present case, it was open to the Magistrate to take cognizance even though the police had submitted a final report. But cognizance could be taken only under Section 190 (1) (c) and not under Section 190 (1) (b). Criminal P. C. The result of taking cognizance under Section 190 (1) (c) is that the Magistrate should comply with the provisions of Section 191, Criminal P. C. and should proceed in accordance with the procedure laid down under Section 252. Criminal P. C. In the present case, since the Magistrate taking cognizance has already transferred the case to another Magistrate by his order dated October 19, 1967, it is no longer necessary to comply with the provisions of Section 191, Criminal P. C. but the trial must proceed in accordance with the

procedure laid down in Section 252, Criminal P. C. onwards.

5. To the extent indicated above, the revision is allowed. The Magistrate trying the case will proceed on the basis that cognizance has been taken under Section 190 (1) (c), Criminal P. C.

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