

Soney Lal Vs. the State

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Court : Allahabad

Decided On : Mar-13-1970

Reported in : 1971CriLJ292

Judge : D.D. Seth, J.

Appellant : Soney Lal

Respondent : The State

Judgement :

ORDER

D.D. Seth, J.

1. The facts of this reference, which has been made to this Court by the learned II Temporary Civil and Sessions Judge, Kanpur, are that one Bachchan Lal Avasthi filed a report against Soney Lal and a case against the applicant under Sa. 452/323, Penal Code was registered by the police authorities of police station Nawabganj, Kanpur. The police authorities of that police station carried on the investigation against the applicant and on 29th December 1968 the investigating officer submitted a final report to the learned Magistrate 1st Class, Kanpur, and on that report, on 27th January 1969, the learned Magistrate passed the following order :

I. O. has given the report Under Section 169 of the Criminal P.C. So the accused be released.'

2. Before the learned Magistrate passed this order Bachchan Lai, on 6th January 1969, had filed an application before the learned Magistrate that the police authorities of police station Nawabganj were colluding with the applicant and that is why a final report had been submitted. Some affidavits were also filed supporting the application of Bachchan Lai. Thereupon, the learned Magistrate obtained a report from the police authorities and passed the following order :

I. O. has given a report Under Section 169 of the Criminal P.C. but the witnesses have given affidavits. So. A. P. P. should bring the case diary for further consideration on 14-2-69.

3. On 15th January 1969 Bachchan Lai filed yet another application before the learned Magistrate and on that application the learned Magistrate ordered that the application of Bachchan Lai be placed before him along with the charge-sheet or the final report. On 22nd February 1969 the learned Magistrate passed the following order :

Final report is not accepted. I. O. should submit the charge-sheet.

4. Against the order dated 22nd February 1969 the applicant preferred a revision which was accepted by the referring court, which has made the present reference to this Court recommending that the order passed by the learned Magistrate be quashed and the learned Magistrate be directed to proceed with the case according to law.

5. Notice of this reference has been served on applicant, Soney Lal, but he is not represented but the State is represented by Sri Roop Kishore Srivastava, whom I have heard.

6. The order passed by the learned Magistrate was clearly illegal as the learned Magistrate had no jurisdiction to call upon the police authorities to submit a charge-sheet against the applicant. There is no provision in the Criminal Procedure Code which empowers the learned Magistrate to direct the police to

submit the charge-sheet. It was open to the learned Magistrate, when the final report had been submitted by the police authorities, to direct the police to carry on further investigation or he could ignore the police report and could take cognizance suo motu but he could not compel the police authorities to submit a charge-sheet against the applicant.

7. In *Abhinandan Jha v. Dinesh Mishra* : 1968 CriLJ97 it was held as follows:

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.

8. The observations of the Supreme Court in the case mentioned above are fully applicable to the facts of the instant case and for the reasons mentioned above I accept this reference and set aside the order of the learned Magistrate 1st Class, Kanpur, dated 22nd February 1969 and direct the Magistrate to proceed in accordance with law and in the light of the observations made above.

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