

Ram Adhar Vs. State

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Court : Allahabad

Decided On : May-07-1981

Reported in : 1981CriLJ1321

Judge : M.M. Gupta, J.

Appellant : Ram Adhar

Respondent : State

Judgement :

ORDER

M.M. Gupta, J.

1. This application has been moved on behalf of one Ram Adhar against whom a final report, after investigation by the police was submitted in a case under Sections 147, 328, 352, 342 and 302, I.P.C. After receipt of the final report the learned Magistrate perused the police papers and did not agree with the conclusion of the police and took cognizance of the case under Section 190, Cr.P.C. 1973.

2. It has been contended on behalf of the applicant that after the final report was submitted it was not open to the Magistrate to take cognizance of the case and summon the accused without any facts coming to his knowledge apart from what was contained in police papers.

3. I have heard the learned Counsel for the applicant as well as the learned Counsel for the State.

Section 190, Cr.P.C. lays down as below:-

190(1). Subject to the provisions of this Chapter, any Magistrate of first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2) may take cognizance of any offence.

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

(b) upon a police report of such facts;

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

4. The contention of the learned Counsel for the applicant is that the case does not fall under provision of Section 190(1)(a) or 190(1)(c), but it falls under Section 190(1)(b). Under this Sub-clause the Magistrate can take cognizance only if the police submits a charge-sheet and not if he submits a final report under Section 169, Cr.P.C. The police report referred to in Section 190(1)(b) is a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173, Cr.P.C. It means that the Magistrate can take cognizance only if a Challani report is submitted by the police and not when a final report is submitted. In support of his contention he relied on *Chhotan v. The State* 1981 Luck LJ 70. In that case the view taken was that a police report contemplated by Section 190(1)(b), Cr.P.C. is a report as defined by Section 2(r), Cr. P.C That definition makes it clear that it refers to the challani report envisaged by Section 173(2), Cr.P.C. and not to a final report which is submitted under Section 169, Cr.P.C. It was also held in *Shesh Nath Chaube v. State* 1978 Al1 WC 543 that in a case when police submitted a final report it was not open to the Magistrate to take cognizance on the basis of the information received from the police papers, although he could take cognizance on the basis of information received from other sources i.e., from the complaint or knowledge from any other source.

5. I have gone through the judgments of the aforementioned cases. I however, find myself unable to agree with the view taken in the aforementioned cases. In my view the police report made under Section 190(1)(b), Cr.P.C. cannot be restricted to the police report as mentioned in the definition clause, Section 2(r) i.e. to the challani report only and not to the final report. The functions of the Magistrate and the police are different. On the basis of papers found in the investigation the police may reach a conclusion that it would not be worthwhile to prosecute the case. Its consideration may not be entirely judicial. The police can be influenced by its own whims and caprice.... It can also be influenced by other consideration. Other consideration may be administrative, political or otherwise. The local conditions may also prompt the police in submitting the final report. On the other hand the functions of the Magistrate in taking cognizance of an offence under Section 190, Cr.P.C. are entirely judicial. They cannot be based on extra judicial considerations. The Magistrate in such cases after perusing the facts found in the course of the investigation from the case diary may reach a conclusion different from that of the investigating agency. Thus, I do not think that the legislature had at all intended to leave the matter entirely in the hands of the police to bind down the hands of the Magistrate. It is, therefore, clearly open to the Magistrate not to agree with the conclusion in the final report and to take cognizance of the case. The aforementioned rulings of our High Court are contrary to the view taken by the Supreme Court in *Abhinandan Jha v. Dinesh Mishra* : 1968 CriLJ97 wherein it was held that 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. A similar view was taken by the Supreme Court in *H. S. Bains v. The State (Union Territory of Chandigarh)* : 1980 CriLJ1308 . In that case it was held that on receiving the police report the Magistrate may take cognizance of the offences under Section 190(1)(b) and straightway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report under Section 17. will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusion drawn by the police and he may decide to issue process even if the

police recommends that there is no sufficient ground for proceeding further.

6. In this view of the matter the view taken by the Hon'ble High Court in the aforementioned cases is not good law. Thus, it was clearly open to the Magistrate to issue process against, the accused after perusing the papers received from the police without being bound down by the conclusions of the Investigating Authorities.

7. I, therefore, do not find any force in this application. The application is, therefore, dismissed.

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