

**Suggi and ors. Vs. Civil Judge (Junior Division) and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/489816](http://sooperkanoon.com/489816)**

**Court : Allahabad**

**Decided On : Jan-17-2003**

**Reported in : 2003CriLJ3164**

**Judge : U.S. Tripathi, J.**

**Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 190, 190(1), 200 and 202**

**Appeal No. : Criminal Misc. Writ Petn. No. 5701 of 2002**

**Appellant : Suggi and ors.**

**Respondent : Civil Judge (Junior Division) and ors.**

**Advocate for Def. : A.G.A.**

**Advocate for Pet/Ap. : Rajiv Sharma, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

ORDER

**U.S. Tripathi, J.**

1. This petition under Article 226 of the Constitution of India has been filed for issuance of a writ of certiorari quashing the orders dated 9-11-2000 and 7-9-2001

passed by respondent No. 1 and the order dated 9-7-2002 passed by respondent No. 2.

2. Respondent No. 3, Kunj Bihari lodged a report on 7-1-1999 at 10.45 a.m. at P.S. Khakhreroo, district Fatehpur alleging that his cane crusher was installed in his field in Korla Har, His brother Avadh Bihari Singh had gone on the said crusher for crushing sugarcane in the evening of 6-1-1999. On 6-1-1999 at about 10.00 pm. the complainant was going to the above crusher along with Ramesh Singh, Gulab Singh and Niranjana Singh. When he reached near the crusher he heard cries of his brother Avadh Bihar Singh 'Khagendra Sahoo was killing,' Hearing the above cries the complainant and the persons with him rushed towards the spot flashing their torches. The complainant also heard sound of fire and on reaching the spot he saw. Khagendra Sahoo armed with country made pistol and his three associates were running towards west after killing his brother. On the above report a case at crime No. 2 of 1999 under Sections 302 and 506, IPC was registered at the police station. After investigation the police submitted final report in the case on the ground that accused Khagendra Sahoo was kidnapped and murdered on 8-1-1999 and a case at crime No. 3 of 1999, under Section 364, 324, 506, 302 and 201, IPC was registered against respondent No. 3. That since the main accused was murdered and the remaining unknown accused could not be traced, nor there was any possibility of their being traced out, the investigation was closed by submission of final report.

3. On receipt of the above final report notices were issued to the complainant, respondent No. 3 who filed protest petition on 3-9-1999. It further appears that the complainant also examined himself as P.W. 1, Niranjana Singh, P.W. 2, Ramesh Singh, P.W. 3. Ranjeet Singh, P.W. 4. Lal Singh, P.W. 6 as witnesses of fact, besides Dr. S.S. Kulkarni, P.W. 5 and Constable Laik Ahamad. P.W. 7. In their evidence the complainant and other witnesses of fact stated that Suggi, Teetoo and Dalbhanjan Singh petitioners 1, 2 and 3 were, also involved in the offence. Considering the above evidence the learned Magistrate was of the view that a prima facie case under Sections 302 and 506, IPC was made out against the petitioners. Accordingly, he rejected the final report and summoned the petitioners for trial under Sections 302 and 506, IPC, vide order dated 9-11-2000.

4. The petitioners thereafter filed protest petition for recalling the summoning order dated 9-11-2000. The learned Magistrate rejected the above petition vide order dated 7-9-2001 on the ground that there was evidence of as many as seven witnesses which revealed that prima facie case is made out against the petitioners and there was no ground for recalling the said order.

5. Aggrieved with the above order dated 7-9-2001 the petitioners filed Criminal Revision No. 331 of 2001 before the Sessions Judge. The above revision was also rejected vide order dated 9-7-2002. The above orders have been challenged in this petition.

6. I have heard Sri Rajiv Sharma, learned counsel for the petitioners and the learned AGA and have perused the record.

7. It was contended by the learned counsel for the petitioner that the procedure adopted by the Magistrate was totally illegal and unjustified, that he rejected the final report and simultaneously recorded the statement of the complainant and his witnesses and then summoned the petitioners. The learned Magistrate would have summoned the petitioners by rejecting the final report and once he adopted the procedure of complaint case by examining the complainant under Section 200 and his witnesses under Section 202, Cr.P.C. he would have examined all the prosecution witnesses as required by proviso to Section 202, Cr.P.C. and that the Magistrate also failed to consider that in the FIR only person Khakhendra was named who died and there was no allegations in the FIR against the petitioners.

8. Perusal of the impugned order of the Magistrate shows that on submission of final report the complainant besides filing protest petition also examined himself and other witnesses seven in number and the learned Magistrate on considering the above evidence was of the view that a prima facie case under Sections 302 and 506, IPC was made out against the petitioners. Accordingly he summoned them to face trial under the said Sections.

9. The Apex Court in the case of Abhinandan Jha v. Dinesh Mishra, 1967 ACC 306 : (AIR 1968 SC 117 : 1968 Cri LJ 97) held that on receiving final report it was not within the powers of a Magistrate to direct the police to submit a charge sheet

but it is open to him to agree or disagree with the report. If he agrees that there is no case made out for issuing process, he may accept the report and drop the proceedings. He may come to the conclusion that further investigation is necessary in that event he may pass order to that effect. If ultimately the Magistrate is of the opinion that the facts set out in the police report constitute an offence he may take cognizance of the offence, notwithstanding contrary opinion expressed, in the police report. It was observed therein that the Magistrate in that event should take cognizance under Section 190(1)(c), Cr.P.C.

10. In the subsequent case of H.S. Bains v. State (Union Territory of Chandigarh), 1981 (18) ACC 146 : (AIR 1980 SC 1883 : 1980 Cri LJ 1308), the Apex Court clarified the above observation in Abhinandan Jha's case as below :

'In Abhinandan Jha v. Dinesh Mishra (AIR 1968 SC 117 : 1968 Cri LJ 97) (supra), the question arose whether a Magistrate to whom a report under Section 173(1) had been submitted to the effect that no case had been made out against the accused, could direct the police to file charge sheet, on his disagreeing with the report submitted by the Police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge sheet. It was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary, he might make an order to that effect, under Section 156(3) . If ultimately, the Magistrate was of the opinion that the facts set out in the police report constitute an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police, the Court observed that the Magistrate could take cognizance under Section 190(1)(c)'. We do not have any doubt that reference to 'Section 190(1)(c)' was a mistake for Section 190(1)(b).

11. The observation of Apex Court in Tula Ram v. Kishore Singh, (1978) 1 SCR 615 : (AIR 1977 SC 2401 : 1978 Cri LJ 18) were also relied on in which the

Magistrate on receiving a complaint, ordered an investigation under Section 156(3), The police submitted a report indicating that no case had been made out against the accused, the Court however, recorded the statement of the complainant and the witnesses and issued processes against the accused. It was contended that the Magistrate acted without jurisdiction in taking cognizance of the case as if upon a complaint when the police had submitted a report that no case had been made out against the accused. The Apex Court held that the Magistrate acted within his powers.

12. Thus, it is clear from the above decisions that the Magistrate on receipt of final report submitted by the police, besides rejecting the final report and taking cognizance under Section 190(1)(b) had also jurisdiction to take cognizance under Section 190(1)(a) upon original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202, Cr.P.C. and thereafter decide whether the complaint should be dismissed or the process should be issued.

13. In the instant case as it appears from the order of the Magistrate he had relied on the statement of complainant and his witnesses under Sections 200 and 202, Cr.P.C. and on being satisfied that a prima facie case was made out against the petitioners, he issued processes against them. Thus, it is clear that the Magistrate had taken cognizance against the petitioner under Section 190(1)(a), Cr.P.C. to which he was empowered even on submission of final report by the police.

14. The next contention of the learned counsel for the petitioner was that if the Magistrate had adopted procedure of complaint case by examining the complainant under Section 200 and his witnesses under Section 202, Cr.P.C. he should have examined all the prosecution witnesses before summoning the petitioners.

15. The proviso to Section 202, Cr.P.C. says as below :--

'Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.'

16. There is no dispute that the offence complained against the petitioners was punishable under Sections 302 and 506, IPC and that offence punishable under Section 302, IPC is exclusively triable by the Court of Session. In these circumstances the Magistrate had to call upon the complainant to produce his all witnesses and examine them on oath. But the perusal of the order of the Magistrate shows that he had complied with the above provision. The order dated 9-11-2000 as well as 7-9-2001 discloses that the complainant had examined himself (Kunj Bihari Singh) P.W. 1, and Lal Singh, P.W. 2 under Section 200, Cr.P.C. and Niranjana Singh, P.W. 2. Ramesh Singh, P.W. 3, Ranjeet Singh, P.W. 4, Dr. S.S. Kulkarni, P.W. 5, Lal Singh, P.W. 6 and constable Laik Ahmad. P.W. 7, P.Ws. 1 to 4 and 6 were witnesses of fact. Dr. S.S. Kulkarni, P.W. 5 conducted post mortem of the dead body of the deceased and constable Laik Ahmad P.W. 7 had proved the chick FIR and GD report. In this way the complainant had examined all his witnesses. It is true that the Investigation Officer was not examined but his non examination was not material as he had submitted final report in the case . It was not pointed out as to which of the particular witness was left to be examined. Therefore, the proviso to Section 202, Cr.P.C. was fully complied with.

17. No doubt the petitioners were not named in the FIR lodged by the complainant but the correctness of the allegations of the complainant and his witnesses shall be considered at the appropriate stage by the trial Court and not by this Court.

18. In view of above discussions and observation, I find that there is no ground to interfere with the impugned orders in exercise of jurisdiction under Article 226 of the Constitution of India. The petition has thus no force and is liable to be dismissed.

19. The petition is accordingly dismissed.