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**Amar Premanand Vs. the State**

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**Court** : Madhya Pradesh

**Decided On :** May-15-1959

**Reported in** : AIR1960MP12; 1960CriLJ79

**Judge** : Shiv Dayal Shrivastava, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 173, 190 and 190(1); Code of Civil Procedure (CPC) , 1908

**Appeal No.** : Criminal Rev. No. 129 of 1958

**Appellant** : Amar Premanand

**Respondent** : The State

**Advocate for Def.** : Govt. Adv.

**Advocate for Pet/Ap.** : J.M. Anand, Adv.

**Judgement** :
ORDER

**Shiv Dayal Shrivastava, J.**

1. This revision is directed against the order passed by the Magistrate First Class, Pachhar, requiring the Police to put up a charge-sheet against the petitioner and also to arrest him.

2. The material facts are that a report was made by one Musammat Tudia in the Police Station, Ashoknagar alleging that the petitioner Naraindas alias Premanand committed rape on her. After investigation the Police made a final report to the Magistrate First Class, Pachhar for cancellation of the case because it found no substance in the report lodged by her. However, the complainant filed a protest petition alleging that the police was taking sides with the accused. Her application dated June 11, 1958 is in detail. It was on this that the Magistrate passed the impugned order.

3. The petitioner made an application in revision to the Sessions Judge, Guna, who has dismissed it and upheld the order of the Magistrate. In doing so he has discussed a number of decided cases and has relied on a decision of this Court which is reported in Piyarji Mangilalji v. The State, AIR 1958 Madh Pra 234.

4. The contention of Shri Anand before me is that although the Magistrate was empowered to take cognizance of the case, and he also had jurisdiction to direct the arrest of the petitioner, he had no jurisdiction under the law to order the Police to challan the accused. After hearing the learned Government Advocate I am of the opinion that this contention must be accepted. Under Section 190 of the Code of Criminal Procedure it is certainly open to a Magistrate to take cognizance of a case even where the Police is of opinion that there is no case against the accused.

But I do not find anywhere in this section the power being vested in a Magistrate to order the Police to submit a charge-sheet against the accused even though it may be contrary to the conclusion reached by it. There is no doubt that in a suspected case a Magistrate may direct the Police to investigate and arrive at a conclusion one way or the other. That is not the case here. The Police having already investigated into the alleged crime came to a definite conclusion.

5. The learned Government Advocate strongly re-lies on the decision of AIR 1958 Madh Pra 234. I have gone through that decision very carefully. In that case some buffaloes had been entrusted toa Supurdgidar, who eventually reported that they had died. The Magistrate disbelieved the Supurdgidar's report and ordered the Police to charge-sheet him under Section 406 I. P. C. This action of the Magistrate was challenged as without jurisdiction. This Court came to the conclusion :

(1) 'If a Magistrate suspects that an offence has been committed, then in the interest of justice, he has been empowered by the Criminal Procedure Code to take cognizance himself.'

(2) But there is no provision as to how the Court will proceed in a matter like this. The duty of the Police is to help the Court in the interest of justice, peace and order to bring to book the persons alleged to have committed an offence.' It was for these two reasons that this Court held:

'In view of the matter in a suspected case, a Magistrate can direct the Police under Section 190(1)(c) Criminal Procedure Code to charge-sheet an accused to enable it to enquire and find out the truth.'

6. It appears that the above view had to be taken in order to resolve the procedural difficulty which was felt in the way of administration of justice in the peculiar circumstances of the case. The peculiarities were :

(a) An agency was required to help the Magistrate 'in the interest of justice, peace and order to bring to book' the Supurdgidar, who was suspected to have committed an offence under Section 406 J. P. C.; and

(b) The Police had not already investigated into the matter so as to arrive at a certain conclusion.

7. The case in hand presents no such difficulties and the situation here is quite different.

(a) The complainant is there to produce evidence in support of her accusation against the petitioner.

(b) The police has already investigated into the matter and has reached a conclusion not favourable to the prosecution.

8. In the present case the learned Magistrate has not directed the Police to further investigate into the mutter but has straightway ordered that the Police must file a formal report against the accused, disregarding the fact that after investigation the Police could see no case made out against the accused. It is elementary that a

person in authority should not be directed to file a report in a particular manner and against the conclusion reached by him.

His conclusion may be erroneous, mischievous and mala fide but a Magistrate cannot direct the Police to say what he thinks it should say, for the Court has not judicial control over the investigating Officer to report under Section 173 of the Code of Criminal Procedure in a particular manner. It cannot be forgotten that in compelling the Police to file a charge-sheet as directed in this case, the ends of justice might suffer because on the date of hearing it may come forward to say that it has no witness to produce as none is reliable or truthful.

Then it will be difficult for the Magistrate to make his own selection of possible witnesses and further direct the Police to produce them. I am certain that in the decision in Piyarji's case AIR 1958 Madh Pra 234, this Court has not taken a view which will run counter to the elementary principle set out above. That decision is, therefore, clearly distinguishable on facts from the present case.

9. Here I would recall some observations as to the application of precedents. In the leadingcase of Quinn v. Leathem, (1901) AC 495 Earl of Halsbury L. C., has observed:

'Now, before discussing the case of Alien v. Flood, (1898-AC 1), and what was decided therein, there are two observations of a general character which I wish to make and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.'

10. These observations were relied on in the Punjab Co-operative Bank v. Commissioner of Income-tax, AIR 1940 PC 230.

11. In Knatchbull v. Hallett, (1879) 13 Ch D 696 (712), Jessel M. R. stated:

'First of all, what is the proper use of authority? this is almost elementary but I am bound to state it ..... The only use of authoritiesor decided case, is the establishment of some principle which the Judge can follow out in deciding the case before him.'

12. Again in G and C Kreglinger v. New Patagonia Meat and Cold Storage Co. Ltd., 1914 AC 25 (40), Viscount Haldane L. C. observed:

'To follow previous authorities, so far as they lay down principles, is essential if the law is to be preserved from becoming unsettled and vague. In this respect the previous decisions of a Court of co-ordinate jurisdiction are more binding in a system of jurisprudence such as ours than in systems where the paramount authority is that of a code. But when a previous case has not laid down any new principle but has merely decided that a particular set of facts illustrates an existing rule there are few more fertile sources of fallacy than to search in it for what is simply resemblance in circumstances, and to erect a previous decision into a governing precedent merely on this account. To look for anything except the principle established or recognised by previous decisions is really to weaken and not to strengthen the importance of precedent.

13. A Full Bench of the Nagpur High Court, following the observations of Halsbury L. C. in Quinn's case, 1901 AC 495 (cited above), observed further.

'The ratio decidendi of a case alone is a binding authority as a precedent. The statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that is unnecessary for the purpose in hand, have no binding authority on another Court though they may have some merely persuasive efficacy.'

(D.D. Billimoria v. Central Bank of India, Bombay, ILR 1944 Nag 1 : (AIR 1943 Nag 340)).

(13a) In Jivaji Annaji v. Hanmat Ramchandra, ILR 1950 Bom 510 : (AIR 1950 Bom 360) (FB), Chagla C. J. observed :

'It is not always safe logically to expend a ratio, to be deduced from a particular case decided by a particular tribunal. A decision is good with regard to the facts found in a particular case and the principle that emerges on a consideration of those facts. Different facts may lead to a different decision and it is not proper to apply a principle based on the facts of one case to the facts; of another case merely because relentless logic may so require.' (at page 361).

14. In Piyarji's case, AIR 1958 Madh Pra 234, there is a reference to Uma Singh v. Emperor, AIR 1933 Pat 242 (that is the correct citation). There it was alleged that some persons deceived others by making them to believe that they knew how to double Currency Notes. The complainant, having been thus cheated, delivered some Currency Notes to the Doublers. Later, the deception being unearthed, one of the accused confessed his guilt and offered the complainant a gold necklace which also when tested turned out to be gilt.

A complaint was then lodged to the Police, but on a report made by the Police, the case was cancelled by an order of the Magistrate. Subsequently the case was reopened and the main question for consideration was whether the principle of autrefois acquit was attracted and whether the case could be reopened. It was held that the trial was valid and the convictions were upheld.

15. In Abdul Rahim v. Abdul Muktadin, AIR 1953 Assam 112, it is held that an order directing the Police to send a charge-sheet without ordering a preliminary enquiry or issuing summons to the accused person is illegal.

16. In this case there can be no quarrel with the order of the Magistrate in directing the accused to be arrested and produced before him, because he was fully empowered to take cognizance of the case or in issuing the process. I do not see any substantial injustice in the order of the Magistrate directing the Police to arrest the accused and produce him before that Court.

17. The prayer before me in this petition is that the said order of the Magistrate dated July 22, 1958 be set aside. I do not see any error in the learned Magistrate taking cognizance of the case but the error committed by him lies, in the form of his order. In essence the order is for commencing a trial against the accused.

18. The result, therefore, is that this revisionis partly allowed and the order of the Magistrate,First Class, Pachhar is modified to this extent thathe shall try this as a complaint case, on the basisof the petition filed by Musammat Tudia beforehim on June 11, 1958 and other material alreadyon the record as also such other material as maybe produced by the complainant. The case shallnow go back to the said Magistrate for that purpose. In view of the fact, that the offence isalleged to have been committed as back as in 1957this case shall be given a high priority in its disposal.

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