

Jujhar Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-05-2002

Reported in : 2002(4)MPHT94; 2003(1)MPLJ49

Judge : S.L. Kochar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 156, 156(1) and 156(2); [Arms Act, 1959](#) - Sections 25(1A); [Constitution of India](#) - Article 141

Appeal No. : Criminal Revision No. 377/2002

Appellant : Jujhar

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. Adv. General

Advocate for Pet/Ap. : V.P. Saraf, Adv.

Disposition : Criminal revision partly allowed

Judgement :

ORDER

S.L. Kochar, J.

1. This revision has been filed by the applicant against the judgment dated 3-6-2002 passed by the First Addl. Sessions Judge, Mandsaur arising out of the

order dated 29-1-2002 passed in Cr. Case No. 194/95 by the Judicial Magistrate First Class, Bhanpura, thereby convicting the applicant for the offence under Section 25(1-A) of the Arms Act and sentencing him to R.I. for one year.

2. The facts of the case in brief are that on 22-6-95, Head Constable Chandrashekhar was on patrolling duty along with Head Constable Gan-gaprasad and Sohanlal. When they were on Bhanpura road, they saw the applicant with a rifle near Gordhanpura-culvert. On inquiry, it was found that the applicant was not having any licence for the said gun. Therefore, the Head Constable Chandrashekhar, in the presence of Chowkidar Ramlal and Panch witness Kanhaiyalal seized the loaded gun on 26-2-95 vide seizure memo Ex. P-1. In the seizure memo crime number was not mentioned because the offence was yet to be registered after reaching at the police station as per provisions of Section 154 of the Code of Criminal Procedure. By arrest memo Ex. P-2 the applicant was arrested and as a safety measure, the gun was made empty by firing in the air. Panchnama to this effect Ex. P-3 was also prepared. The statements of Ramlal and Kanhaiyalal were recorded as Exs. P-4 and P-5. Thereafter, they took the applicant to the police station and the Head Constable Chandrashekhar recorded the First Information, Registering Crime No. 122/95. After recording the First Information Report, sanction for prosecution as per requirement under Section 39 of the Arms Act was also obtained vide Ex. P-7. Ex. P-8 is the report about working condition of the gun. Charge-sheet was filed as per provisions under Section 173 of the Cr.PC. The applicant was tried and convicted by the Trial Court and the same has been affirmed by the Appellate Court.

3. The contention of the learned Counsel for the applicant is that in view of the judgment of the Supreme Court rendered in Megha Singh v. State of Haryana (1995 Cr.LJ 3988), the conviction of the applicant is not sustainable, because the investigation was conducted by the Head Constable Chandrashekhar (P.W. 3) being complainant, who had lodged the report (First Information Report) at the police station.

4. The word 'complainant' has not been defined in the Code of Criminal Procedure or any other law. The general meaning of the word 'complainant' as per Oxford

Advanced Learner's Dictionary as well as Chamber's Dictionary is 'One who complains, one who raises a suit, a plaintiff.

The complaint is defined under Section 2(d) of the Code of Criminal Procedure as under :--

' 'Complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.'

5. This shows that the complainant means a person who is aggrieved and not satisfied with the act of others or with any existing situation seeking redressal for taking action against the known or unknown person who has committed the offence, by the legally authorised person. In the present case, P.W. 3 Chandrashekhar H.C. had exercised his right as per power given by Section 156(1) and (2) of the Code of Criminal Procedure which reads as under :--

'156. Police Officer's power to investigate cognizable cases.--

(1) Any Officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limit of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.'

6. As per the provisions of this section, the investigation and thereafter, registration of the case by Head Constable P.W. 3 Chandrashekhar would not be illegal and contrary to the provisions of law, inasmuch as without jurisdiction. As a matter of fact, what he has done was as per provisions of Section 156 (1) and (2) of the Cr.PC.

7. It is not a case that he was aggrieved person and lodged the report for investigation. In this situation, the police officer who is lodging the complaint or

acting as informant cannot investigate the offence because, he is having personal interest or grievance into the matter, but, in the present case, P.W. 3 Chandrashekhar H.C. while on duty, arrested the applicant and effected seizure of unlicensed gun and cartridges. Thereafter, he came to the police station and registered the crime. Only by registering the crime, he cannot be defined as a complainant. Therefore, the investigation done by P.W. 3 Chandrashekhar H.C. is well within the purview of Section 156 (1) and (2) of the Cr.PC.

8. In the case of *Bhagwansingh v. State of M.P.* (AIR 1976 SC 985) the Supreme Court had an occasion to consider whether investigation conducted by Head Constable Ramsingh who was the person to whom the offer of bribe was alleged to have been made by the accused and he was the informant or complainant who lodged the First Information Report for taking action against the appellant was valid or not. The Supreme Court has held that the Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the First Information Report as informant or complainant, was a serious infirmity which is bound to reflect on the credibility of the prosecution case.

9. The facts of the case are clearly revealing the situation that the Head Constable Ramsingh was the aggrieved person to whom bribe was offered and who had lodged the report for taking action against the accused Bhagwansingh. In these circumstances and factual situation, the Supreme Court invalidated the investigation conducted by the aggrieved person, i.e., complainant/informant Head Constable Ramsingh. This is a judgment rendered by the Supreme Court under a factual situation that the Head Constable Ramsingh was aggrieved person and he should have not conducted the investigation. But such is not the situation in the judgment relied upon by the learned Counsel for the applicant in *Meghasingh v. State of Haryana* (supra). In this case, the Head Constable alongwith police party on suspicion, intercepted the accused and on search, a country-made pistol was recovered, and after affecting recovery and preparing recovery-memo, they took the accused to the police station and, recorded the First Information Report by the Sub-Inspector of Police. Therefore, the action taken by the Head Constable was fully covered under the provisions of Section 156 (1) and (2) of the Cr.PC. The Head Constable in the case in hand, cannot be regarded as aggrieved person as

shown in the case of Bhagwansingh (supra).

10. Therefore, the investigation done by the Head Constable could not be termed as illegal and unauthorised. It appears that while deciding the case of Meghasingh (supra), the judgment passed in Bhagwansingh (supra) was not brought to the notice of the Hon'ble Supreme Court. The judgment passed in Bhagwansingh's case (supra) is by the Bench comprising three Hon'ble Judges, whereas the judgment passed in the case of Meghasingh (supra) is by two Hon'ble Judges. In *Mattulal v. Radhelal* (AIR 1974 SC 1596) in para 11, the Supreme Court held that in two contrary decisions of the Supreme Court, the decision which is passed by the Larger Bench would prevail. On this point under Article 141 of the [Constitution of India](#), there are catina of judgments and this legal position is well settled upto now. Reference to the decisions of Supreme Court in the State of U.P. v. *Ramchandra* (AIR 1976 SC 2547) and *Commissioner of Income Tax v. Triloknath Mehrotra and Ors.*, [(1998) 2 SCC 189], can safely be made.

11. In criminal cases, at so many occasions, the offences are being detected by police personnel and party without having any FIR or complaint by any body in the Police Station as per provisions under Section 154 of the Cr.PC but, under that situation, the police party or personnel are required to take up the matter immediately and also investigate the same as per provisions of Section 156 (1) and (2) of the Cr. P.C. and after taking all steps required to be taken in investigation immediately at the spot, return to the police station and lodge or record the First Information Report for registering the offence and give crime number. In this situation, they are writing at the column of complainant their own name and if the analogy as drawn in the case of Meghasingh (supra) is applied in all such cases the police party/personnel would be the complainant and investigation done by them would become illegal. But this is not the correct interpretation keeping in view the factual situation about the meaning of complaint which is clear from the facts and legal position decided by the Supreme Court in Bhagwansingh's case (supra). The investigation conducted by the Police Officer who himself is the aggrieved person would not be regarded as a legal investigation, because one cannot be a judge of his own cause.

12. The Division Bench of Andhra Pradesh High Court had an occasion to decide the reference made by learned Single Judge of that Court for a decision on the following question :--

'Whether the investigation conducted by a Police Officer, in respect of a cognizable offence that occurred in his presence in which he is not a victim, and in respect of which he lodges a report, gets vitiated or not, and whether the decision of this Court in Maddu Lakshmana Rao v. State of A.P., 2000(2) ALD (Cr.) 147, lays down the correct proposition of law ?'

In a case of Asaduddin Owaise v. State of Andhra Pradesh (2001 Cr.LJ 3939). The reference has been answered in para 11 as follows :--

'If it is to be held that all such investigations conducted by the Officers in charge of police stations would get vitiated, the same maybe counter-productive, as by reason of the duties and functions attached to the officers-in-charge of police stations, they are also required to look after the maintenance of law and order. In a given case, they, as of necessity, on information, may have also to register a case even under Sections 399 and 402, IPC. Thus, the question as to whether a trial would get vitiated by reason of unfair investigation would depend upon the facts and circumstances of each case. No inflexible rule thus can be laid down therefor.'

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13. In view of the foregoing factual and legal analysis, the investigation done by Head Constable Chandrashekhar (P.W. 3) cannot be held void and illegal.

14. In the alternative, learned Counsel for the applicant submits that the lenient view should be taken in the matter of imposing sentence, because the applicant at the time of his arrest was shown to be 45 years of age. It is an incident of June, 1995. Now the applicant is aged about 52 years. He has suffered one month's jail sentence after the judgment passed by the Appellate Court. He also remained in jail for some days during the course of trial. Apart from this, there is no other case pending against him during the period of prosecution of this case for seven years. There is no report against him for any other unwanted illegal activities. He is a

simple agriculturist. Therefore, no useful purpose would be served to the State in keeping him in jail for one year.

15. Learned Deputy Advocate General Shri Desai has no serious objection on the question of sentence.

16. Having heard learned Counsel for the parties and having perused the entire record, this Court is of the opinion that in view of the special reason that the applicant is now aged 52 years and already suffered more than one month's jail sentence, he is a simple agriculturist and has no criminal antecedents, deserves to be dealt with leniently.

17. Therefore, the revision is partly allowed. The conviction of the applicant for the offence under Section 25(1) of the Arms Act is maintained, but instead of his sentence of one year, it is reduced to the period already undergone by the applicant with fine Rs. 3,000/- (Rupees Three thousand). He is in jail. He is directed to be released forthwith if not required in any other case, in case he deposits the amount of fine before the Trial Court.

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