

In Re: Deepak Agrawal

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Court : Madhya Pradesh

Decided On : Sep-16-2008

Reported in : 2008(5)MPHT106

Judge : R.C. Mishra, J.

Appellant : In Re: Deepak Agrawal

Judgement :

ORDER

R.C. Mishra, J.

1. This is a suo motu revision under Section 397 read with Section 401 of the Code of Criminal Procedure (for short 'the Code').
2. The orders in question are passed by Shri P.L. Dinkar, Judicial Magistrate First Class, Itarsi, Distt. Hoshangabad with regard to the complaint made by the noticee Deepak Agrawal against Smt. Soniya Gandhi, President, Sanyukta Pragatisheel Gathbandhan, Shri Manmohan Singh, Prime Minister, Govt. of India, Shri Hansraj Bhardwaj, Minister, Ministry of Law & Justice, Govt. of India, Sushri Ambika Soni, Minister, Culture and Tourism Ministry, Govt. of India, Shri S.T. Raghwan, Additional Secretary to Ministry of Road, Transport Rajmarg & Shipping Corporation and C. Dor. Ji, Director, Indian Archaeological Survey, New Delhi, in respect of the offences punishable under Sections 120-B, 124-A, 295 and 295-A of the IPC. According to the complainant/noticee, all the six accused persons were

involved in a conspiracy in pursuance of which, they had managed to submit affidavits sworn in by the accused Nos. 5 and 6 before the Supreme Court in respect of the Sethusamudram Project, with intent to outrage religious feelings of Hindus who believe that Sethusamudram, popularly known as Ramsethu or Rama's Bridge was built by Lord Rama.

3. The facts giving rise to this revision may be summed up as under:

(a) The complaint was presented on 6-10-2007. However, instead of examining the complainant at once as per the mandate of Section 200 of the Code, the learned Magistrate proceeded to fix 6-11-2007 as the date for recording of the preliminary evidence. The matter was further adjourned for the purpose to 27-12-2007 and 28-1-2008 respectively.

(b) On 28-1-2008, the learned Magistrate, upon the request made by the complainant, forwarded the complaint to the SHO, Itarsi for investigation under Section 156(3) of the Code with a direction to submit report on 18-3-2008.

(c) On 6-2-2008, in view of the fact that the consequent registration of case by the police had received wide publicity through media, the learned Magistrate recorded an explanation that he had neither taken cognizance of the offence, under Section 190 of the Code nor instructed the SHO to register a case. He also directed the SHO to submit report.

(d) On 7-2-2008, the SHO reported that he had not received any order to conduct investigation into the matter.

4. Taking note of the palpable jurisdictional errors committed by the Magistrate, this revision was entertained and notice was issued to the complainant to show cause as to why the order dated 6-10-2007 and subsequent proceedings initiated upon his complaint should not be quashed. In response, the complainant/noticee, instead of filing a reply, has preferred to submit written arguments. With reference to these arguments, I have also heard learned Panel Lawyer at length.

5. The declaration made by the learned Magistrate, in the order dated 6-2-2008, that he had not taken cognizance of the offences, is apparently misconceived as

he had taken cognizance of the offences on 6-10-2007 only by applying his mind and fixing a date for recording of the preliminary evidence of the complainant Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy : 1976 CriLJ1361 , referred to. Further, in CREF Finance Ltd. v. Shree Shanthi Homes Pvt. Ltd. : 2005 CriLJ4524 and again in Chief Enforcement Officer v. Videocon International Ltd. : 2008 CriLJ1636 , while reaffirming the view taken in Ajit Kumar Palit v. State of W.B. : AIR 1963 SC765 , that the words 'cognizance taken' need not be mentioned in the corresponding order, the Supreme Court proceeded to quote the following illuminating observations:

The word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. It merely means become aware of and when used with reference to a Court or Judge, to take notice of judicially. It was stated in Gopal Marwari v. Emperor AIR 1943 Pat 245 by the learned Judges of the Patna High Court in a passage quoted with approval by this Court in R.R. Chart v. State of Uttar Pradesh 1951 SCR 312, 320 that the word, 'cognizance' was used in the Code to indicate the point when the Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense. As observed in Emperor v. Sourindra Mohan Chuckerbutty 1910 ILR 37 Cal 412, 416, 'taking cognizance does not involve any formal action; or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence'.

6. As explained in Gopal Das Sindhi v. State of Assam AIR 1961 SC 986, the provisions of Section 190 do not mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. However, a Magistrate can order investigation under Section 156(3) of the Code only at the pre-cognizance stage even if the offence complained of is exclusively triable by Court of Session. This point has been elucidated in his inimitable style by S. Murtaza Fazal Ali, J., in the following terms:

While Chapter 14 (under which Section 190 falls) deals with post-cognizance stage, Chapter 12 (under which Section 156 falls), so far as the Magistrate is concerned, deals with pre-cognizance stage. Sections 190 and 156(3) are

mutually exclusive and work in totally different spheres. A Magistrate can order investigation under Section 156(3) only before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code See: Tula Ram v. Kishore Singh : 1978 CriLJ8 .

7. Accordingly, in the factual scenario of the present case, the learned Magistrate committed a serious error of jurisdiction by ordering investigation under Section 156(3) of the Code. The corresponding order passed on 28-1-2008, therefore, deserves to be set aside.

8. There are some other aspects of the matter. The offences were allegedly committed at New Delhi. The offence under Section 124-A of the IPC is exclusively triable by the Court of Session whereas, by virtue of Section 196(1) of the Code, cognizance of the offence punishable under Section 295-A of the IPC cannot be taken except with the previous sanction of the Central Government or of the State Government. But, copies of corresponding order-sheets reflect that the matter could not be viewed from these angles as even the complainant has not been examined by the Magistrate before taking cognizance of the offences. In the words of Termes delaley, 'Jurisdiction is a Dignity which a man hath by a power to do justice in causes of complaint made before him' quoted with approval in Brij Kishore Singh v. Nutan Singh 1995 Cr.LJ 1486. Nevertheless, under Section 201 of the Code, a Magistrate, who is not competent to take cognizance of the offence for want of territorial jurisdiction or for any other reason, may return the complaint for presentation to the proper Court. However, even this can only be done because the Court has competence to deal with the matter State of M.P. v. Bhooraji : 2001 CriLJ4228 relied on.

9. For the foregoing reasons, the order dated 28-1-2008 deserves to be interfered with. However, a wrong procedure adopted by the Magistrate for directing investigation under Section 156(3) of the Code would not be sufficient to quash the

entire proceedings initiated on the complaint. This view is fortified by the decision of the Apex Court in Narmada Prasad Sonkar @ Ramu v. Sardar Avtar Singh Chabara (2006) 9 SCC 601.

10. Consequently, the order dated 28-1-2008 is set aside and all subsequent proceedings pertaining to the complaint are hereby quashed. However, the Magistrate shall be at liberty to proceed with the complaint in accordance with law from the stage that was in existence prior to passing of the order directing investigation under Section 156(3) of the Code. Needless to say that while doing so, he would take into account all the material aspects of the matter as highlighted hereinabove.

Record of the complaint case be returned forthwith.

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