

**Ranjan Das and Others Vs. State of Orissa**

**Ranjan Das and Others Vs. State of Orissa**

**SooperKanoon Citation :** [sooperkanoon.com/527731](http://sooperkanoon.com/527731)

**Court :** Orissa

**Decided On :** Dec-19-2000

**Reported in :** 91(2001)CLT475

**Judge :** A.S. Naidu, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 161, 173, 173(2), 190, 190(1), 190(2), 200, 202, 319 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 302, 324 and 448; Arms Act - Sections 27

**Appeal No. :** Criminal Misc. Case No. 4178 of 2000

**Appellant :** Ranjan Das and Others

**Respondent :** State of Orissa

**Advocate for Def. :** Addl. Standing Counsel

**Advocate for Pet/Ap. :** Sri. Nayak

**Disposition :** Criminal misc. case dismissed

**Judgement :**

**A.S. Naidu, J.**

1. The petitioners have filed the present application Under section 482 of the Code of Criminal Procedure praying to quash the order dated 31-3-2000 passed by the

learned J. M. F. C. (P), Kujanga, in G. R. case No. 510 of 1998 taking cognizance of the offence under sections 147, 148, 302, 149, I.P.C., By the said order, the learned Magistrate has also held that as materials are available to proceed against the accused persons (petitioners), N. B. W. be issued for their production.

2. On the basis of an F. I. R. lodged at Ersama police station on 27-11-98. G.R. case No 510 of 1998 was instituted against the petitioners who are named in the F. I. R. . It is alleged that the aforesaid accused persons assaulted the brother of the informant by means of sticks and Bhujalis, as a result of such assault, the brother of the informant sustained grievous injuries. He was taken to Cuttack for treatment where he was declared dead.

In course of investigation, the Investigating Officer went to the spot, examined the witnesses and Collected post mortem report. However, ultimately submitted Final Report with a note that there was insufficient evidence.

3. The learned Magistrate in the impugned order, on the basis of the contents of the F. I. R. the statement of the informant under section 161, Cr. P. C , the injury report and the post mortem report held that there was prime facie case under sections 147, 148, 302, 149, I. P. C. against the accused persons and accordingly, he took cognizance of the said offences and also directed to proceed against the accused persons.

4. Sri Nayak, learned counsel for the petitioner relying upon a decision reported in the case of Kishore Singh and others v. State of Bihar and another, 2000 (19) O.C.R. (S. C.) 647 submitted that as the police did not submit charge sheet, the learned Magistrate acted illegally and with material irregularity in issuing processes against the petitioners.

On the basis of the submissions advanced by the learned counsel for the petitioners, the point of law which needs to be determined in the present case is as to whether the Magistrate has jurisdiction to take cognizance of an offence and proceed against the accused persons who are named in the F. I. R., against whom materials are available on record, but the police did not submit charge sheet.

5. The power of the Magistrate to take cognizance flows from section 190, Cr. P. C. which is quoted herein below .

'190. Cognizance of offences by Magistrate :

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

(a) upon receiving a complaint of facts which constitutesuch offence ;

(b) upon a police report of such facts ;

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

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.'

The Apex Court in the case of Raghubans Dubey v. State of Bthar. A. I. R. 1967 S. C. 1167 held as follows :

"In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders ; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.'

6. The duty of the Magistrate under section 190, Cr.P.C. was also considered by the Apex Court in the case of Abhinanda Jha and others v. Dinesh Mishra, A. I. R. 1968 S. C. 117. The Apex Court in paragraph-15 of the judgment held as follows :

'Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under section 173, that no case is made out for

sending up an accused for trial, which report as we have already indicated, is called, in the area in question, as a 'final report' Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under section 156(3) to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under section. 156(3). The police, after such further investigation, may submit a charge-sheet, or. again submit a final report, depending upon the further investigation made by them. 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.'

The Apex Court further held that there is certainly no obligation on the Magistrate to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is empowered, notwithstanding the opinion of the police, to take cognizance under section 190(1)(c) of the Code. This interpretation is obviously intended to secure that offences may not go unpunished and justice may be invoked even where the police, either want only or through bona fide error, fails to submit a charge sheet.

The Supreme Court further observed that the entire scheme of Chapter XIV of the Code clearly indicates that formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the Officer-in-charge of the police station and that opinion determines whether the report is to be under section 170, being a 'charge-sheet' or under section 169, a 'final report'. It is no doubt open to the Magistrate to accept or disagree with the opinion of the police.

A similar question was before the Apex Court in the case of (Hareram Satpathy v. Tiharam Agarwala & others), A.I.R. 1978 S. C. 1568. The Apex Court relying upon the decision reported in A. I. R. 1967 S. C. 1167 (supra) answered the point of law in the affirmative.

In the case of H. S. Bains v. The State, A. I. R. 1980 S. C. 1883 while dealing with a complaint case, it was observed by the Apex Court that on receiving the police report the Magistrate may take cognizance of the offence under section 190(l)(b) and straightway issue process. This he may do irrespective of the view expressed by the police in their report as to whether an offence has been made out or not. The police report under section 173 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 is to decide to issue or not to issue process even if the police recommend that there is no sufficient ground for proceeding further.

In the case of Messers India Carat Pvt. Ltd. v. State of Karnataka and another, 1989 (2) Crimes 483 (S. C.), the Hon'ble Supreme Court categorically held as follows :

"The position is, therefore, now well settled that upon receipt of a police report under section 173(2), a Magistrate is entitled to take cognizance of an offence under section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused.....'

According to the aforesaid decision, the Magistrate has authority to take into account the statements and other materials collected by the police during the investigation and take cognizance of the offence and order issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that a case is made out against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the offence, if he thinks fit, in exercise of his powers under section 190(l)(b) and direct issue of process to the accused, the Magistrate is not bound in such a situation to follow the procedure

laid down under sections 200 and 202 of the Code though it is open to him to act under section 200 or section 202 also.

This Court in the case of *Dhruba Charan Rout v. State of Orissa*, 61 (1986) C. L. T, 570 relying upon the decision in the case of *Sanjay Gandhi v. Union of India & others*, A. I. R. 1978 S. C. 514 held as follows :

'A combined reading of all the aforesaid provisions, in my opinion, nowhere shows that the Magistrate's power under section 190 of the Code is taken away to take cognizance of an offence in respect of a person whose name does not find place in the charge sheet submitted by the police. The Magistrate takes cognizance against an offence and not against an offender.....'

Explaining the true meaning of the phrase 'taking cognizance of an offence', this Court observed that the same connotes to take notice of an offence and includes the intention of initiating judicial proceedings against the offenders in respect of that offence. When a Magistrate takes cognizance of an offence, it means, having applied his judicial mind to the papers submitted before him he decides to proceed in a particular way as indicated in the provisions of the Code. No restriction is imposed on the power of the Magistrate to proceed against the accused against whom he finds prima facie material in respect of the commission of the offence merely because the police has not submitted charge sheet against the said accused person.

7. On the basis of the discussions made in preceding paragraphs, I am satisfied that the Magistrate acts within his jurisdiction to differ and/or not to accept the final report submitted by the police if he finds sufficient materials on record to arrive at a conclusion that there is prima facie evidence against the accused persons named in the F. I. R.

However, in a case where the police submits charge sheet in respect of some of the accused named in the F. I. R. and submits Final Report in respect of others and the Magistrate after due application of his judicial mind accepts the report and takes cognizance in respect of only those accused persons against whom charge sheet has been submitted, he lacks the jurisdiction to take cognizance in respect

of the others subsequently without resorting to the powers conferred under section 319, Cr. P.C. The case relied upon by Sri Nayak, learned counsel for the petitioners reported in 2000 (1) O. C. R. 647 (supra) is one where, as would be evident from the narration of facts of the said case, the police after investigation had filed charge sheet under section 173, Cr. P.C. only in respect of some of the accused persons and did not submit charge sheet in respect of appellants of the said case though they were named as accused in the F. I. R. The Magistrate by order dated 10-6-1997 in consonance with the report, came to the conclusion that there appears sufficient ground to proceed against accused persons and cognizance was taken under sections 302/34, 324, and 448, I. P. C. and section 27 of the Arms Act. Subsequently on the basis of a prayer made by the prosecution, the Magistrate issued non-bailable warrant of arrest against the appellants of the said case against whom no charge sheet was submitted by the police and against whom no process was initially issued. The said action of the Magistrate was found to be not in consonance with law. The Hon'ble Supreme Court in paragraph 10 of the said judgment has clearly observed that those persons, against whom charge sheet has not been filed, can be arrayed as accused persons in exercise of powers under section 319, Cr. P. C. when some evidence or material is brought on record in course of the trial.

8. The present case is of a different nature and is clearly distinguishable, inasmuch as in the case at hand, F. I. R. was lodged against all the petitioners assigning overt acts. The statement of the informant recorded under section 161, Cr. P. C. reveals the names of the accused persons. The post-mortem report as well as injury report clearly reveals the death occurred due to the injuries and is homicidal in nature. The police, however, submitted 'Final Report'. The learned Magistrate, on the basis of the material available which reveal prima facie case took cognizance of the offence under sections 147/148/302/149, I. P. C. and proceeded against the accused persons. The said order of the learned Magistrate, in my opinion, is within his jurisdiction as would be apparent from the ratio decidendi of the decisions of the Apex Court quoted supra.

It is not a case where the police has submitted charge sheet against some of the accused persons and final report against others, as was done in the case referred

by Sri Nayak (2000 (19) O. C. R. 647). In such cases, the trial proceeds against the persons against whom process has commenced in accordance with the charge sheet submitted by police and in course of trial, if further evidence reveals that any other person is involved in the case, the court can invoke the jurisdiction vested upon it under section 319, Cr. P. C. and take cognizance against those persons who were not initially named in the charge sheet. However, the said principle cannot be stretched to a case where police, for the reasons best known, has submitted Final Report against all the accused persons named in the F. I. R. In such an eventuality, if it is held that the Magistrate has no power to differ with the report of the police and take cognizance of the offence, the only course open for him is to drop the proceeding and intimate the said fact to the informant, which would be not in accordance with the scheme of the Code or legal jurisprudence.

9. On the basis of the discussions made in the preceding paragraphs, in my opinion, the contention advanced by Sri Nayak, learned counsel for the petitioners, praying to quash the proceeding, is not sustainable. After an elaborate discussion on the point, referring to divergent views of different High Courts and on analysis of the provisions of the Code of Criminal Procedure, I am of the view that the power of the Magistrate to take cognizance under section 190, Cr. P. C. is not controlled or circumvented by the submission of charge sheet or Final Report by the police as provided under section 173 of the Code. Therefore, if the Magistrate is satisfied on the basis of the material available on record that prima facie case has been established, then the Magistrate can ignore the conclusion arrived at by the police and would be free to take cognizance of the offence notwithstanding submission of Final Report by the police under section 173 of the Code. However, if the Magistrate after application of mind accepts the police report and issues process only against some, he cannot subsequently issue process against others as has been held by the Apex Court in the decision reported in 2000 (19) O. C. R. (S. C.) 647 (supra), This conclusion of mine is supported by the decisions of the Apex Court referred to supra as well as the decision of this Court in the case of Bhabani Kinkar Mohapatra and 4 others v. State, 67 (1989) C. L. T. 25, which is identical in facts to the present case. The question framed if answered accordingly.

10. In the result, I find no infirmity in the impugned order and accordingly, the Criminal Misc. Case is dismissed. As the G. R. case, is of the year 1998. the Magistrate will do well to proceed with the same expeditiously in accordance with law.

11. Criminal Misc. Case dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**