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Autar Singh Vs. State

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Court : Delhi

Decided On : Jul-28-1977

Reported in : ILR1978Delhi92; 1978RLR405

Judge : S. Rangarajan, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 269 of 1977

Appellant : Autar Singh

Respondent : State

Advocate for Pet/Ap. : S.M. Malik,; Vijay Kishan and; R.D. Mehra, Advs

Judgement :

S. Rangarajan, J.

(1) This case raises an interesting and important question of criminal procedure the uncommon factual backgrowid throws into sharp focus some legal cantours in this area, the visibility of which is likely to remain otherwise low. It seems necessary, thereforee, to set out the facts leading to the present petition at some length, to serve as the back drop against which a discussion of the legal question will become more meaningful.

(2) The petitioner (Autar Singh) has invoked the jurisdiction of this Court under S. 482 Criminal Procedure Code . to quash the order of the learned Metropolitan Magistrate (Shri Kuldip Singh) on 3-5-1977 as one can find from the order-sheet pertaining to this case, incorporating the orders passed by him from time to time this is handwritten by the learned Magistrate :

'HE(the learned counsel for Smt. Veena Mehta) has moved an application. Issue summons to Autar Singh also because documents on file also warrant the summoning of Autar Singh as an accused.'

It is stated by Shri S. M. Malik, learned counsel for the petitioner, that the file of the learned Magistrate was inspected by Shri Aggarwal with whom was present Shri Vijay Kishan who is now instructing Shri Malik, and that Annexure A to the present petition is the only order which he was able to inspect. It is urged for the present petitioner that the above order, ex fade, does not indicate that yet another order a more detailed one such as the more detailed and type-written on the file fuller in scope what we find in Annexure A, was passed by him. Shri R. D. Mehta, learned counsel for the State, on the other hand, states from the bar, that he was himself present when the learned Magistrate had dictated in open court the said (more detailed) order which is on the file. In the view I take it does not become necessary to even call for the remarks of the learned Magistrate on this aspect. I merely content myself, thereforee, with pointing out that while judicial officers draw up their proceedings briefly in the order-sheet mention should invariably be made of the more detailed order, if there is one ; such a course, if adopted, will surely save them from such comment.

(3) The present petitioner was cited in Police challan filed before the lower court as witness No. 32; it is important to notice that he was shown as an accused. To start with the same learned Magistrate, when he took cognizance of the case on 18-5-1976 summoned only the two persons, S.K.Das and Raj Khosia, who had been shown as the accused, for 20-7-76. S. K. Das, among them, has still not been served. What concerns us now is the impugned order passed nearly a year later, on 3-5-1977. On the same date Smt.. Veena Mehta filed a petition before the learned Magistrate through her counsel Shri R.D.Mehra requesting that the court

'be pleased to take cognizance against the aforesaid Autar Singh.........under section 190 Criminal Procedure Code . and that he be summoned as an accused to face trial along with S. K. Das and Raj Khosia (the other two accused in the case) in accordance with law'. It is in the light of this prayer one has to read the order as recorded in the order-sheet directing issue of summons 'to Atoar Singh also' on the ground that the documents on file warranted his being summoned as an accused. According to the Police challan S. K. Das and Raj Khosia had been responsible for cheating Smt. Veena Mehta and her husband Vijay Mehta by making her agree to acquire a property not belonging to the vendor, who had been introduced to them by Autar Singh. It was mentioned by counsel for Smt. Veena Mehta before me that that the name of the said person, Who had given his name as Ram Narain, turned out to be Raj Khosia, and the other accused in the case S. K. Das, who was a property dealer. Raj Khosia appeared before the lower court in answer to the summons but S. K. Das has not been served so far.

(4) It is necessary to mention a few other facts constituting the background to this controversy; they are matters of record on the file of this Court. They have been referred to in the present petition filed by Autar Singh.

(5) An application under sections 397 and 398 of the Companies Act had been filed jointly by Autar Singh and one Khurana against Clutch Auto Private Ltd. and some others including Smt.Veena, Mehta and her husband V.K.Mehta. One of the respondents in that case was M/s. Venus Trading Co. through Smt. Veena Mehta partner of the said firm. It was stated that the Directors of Clutch Auto Pvt. Ltd. were Autar Singh, R.P.Khurana, V.K.Mehta, Smt. Veena Mehta and one Jagat Singh.

(6) Both Shri Vijay Kishan and Shri Malik appeared in the said petition as counsel for Autar Singh and R. P. Khurana; the Clutch Auto Pvt. Ltd. was represented by its counsel Shri B. N. Kirpal, whe had entered appearance for all the respondents in that petition (C.P. 64 of 1974). During the hearing of the said petition before me, sitting as a Company Judge, an application (C.A. I of 1975) to compromise the dispute leading to and arising in the company petition, pleading the terms of the compromise between the parties (Annexures A to C in C.A. 1 of 1975) was filed.

C.P. 64 of 1974 was dismissed on 24-1-1975 as having been settled. On the same date V.K.Mehta bad also made a statement before me which recorded. In so far as the present criminal case is concerned what is material is the following statement made by him :

'WITHreference to the criminal complaint given by me to the Police against petitioner No- I (Autar Singh) and others I undertake to move the Police to withdraw my complaint against petitioner No. 1 and do my best to see that the complaint is not proceeded against the first petitioner.'

Autar Singh, a person of high standing in his community and who was connected with several businesses, was the managing partner of a business with an annual turnover of P.S. 3.2 crores became acquainted with V.K.Mehta in 1966, who had resigned his job in ESSO. Autar Singh had allowed Vijay Mehta to associate himself with some of the business ventures from 1966 onwards. It has been alleged (vide 5b) that Vijay Mehta had, as a result, earned huge sums by way of commission and (as alleged in 5 c) V.K.Mehta was allowed huge over-drawing facilities from a concern known as AutoPin (Regd.).Disputes, however, averse between them allegedly on account of Autar Singh raising certain objections concerning the management of Clutch Auto Pvt. Ltd. which led to the above company proceedings and resulting in the compromise dated 20-12-1971, which was recorded by me. It is needless for this purpose to refer to a still earlier compromise dated 10/17-7-1974 (para 5b of the present petition) before the proceedings on the company side of this Court. Some time later a contempt petition was filed in this Court (being Cr. Original 19 of 1975) in CP. 64 of 1974 complaining that V.K.Mehta had not honoured the above-said undertaking by taking steps contrary to the said undertaking. It was in answer to the said contempt application that it was disclosed by V- K. Mehta in his affidavit dated 21-4-75 that his wife Smt. Veena Mehta had lodged the complaint with the Police on 2-12-1974, relating to the sale of plot of land in New Friends colony in respect of which she had been cheated. On 17-10-1975 this Court (D. K. Kapur,. J.) observed in Cr. O. 19/74 that a letter bad been signed by V.K.Mehta for the purpose of giving effect to the undertaking and that the said letter was suitably addressed and posted. A case was thereupon adjourned to 21-10-75 when a letter

dated 21-10-75 had been shown to the Court for sending it to the Superintendent of Police, Crime Branch. Annexure D to the present petition is said to be a photostat copy of the said letter though the photostat copy does not bear any date. After the Court had perused the said letter dated 21-10-75 intended for being sent to the Superintendent of Police, Crime and Railways, Tis Hazari the petition was dismissed, on 23-10-1975, as withdrawn; a photostat copy of the letter with the postal receipt was directed to be placed on record. In that letter V. K. Mehta had stated that in view of the undertanding which he had given (also set out in that. letter) he would request that the proceedings against Autar Singh on the basis of the complaint registered as Fir 851/74 should be dropped but the proceedings against the other two accused may be continued. There is no dispute that .the Fir mentioned therein is the Fir which had been filed by the Police in the present case out of which this petition arises.

(7) It was in this background that Smt. Veena Mehta had made an application to the learned Magistrate (Sbri Kuldip Singh) on 3-5-1977 on the basis of which the learned Magistrate had ordered summons to be issued to the present petitioner (Autar Singh); Annexure E to this petition is a copy of the said application made by Smt. Veena Mehta under section 190 Criminal Procedure Code .

(8) It is sufficient to note that Hi the said applica.tiQn Smt. Veena Mehta had referred to the circumstances in which she had purchased a plot of land in the New Friends Colony, Delhi for a sum of Rs. 75,000.00 and that 'it was primarily because of the representations of Mr. Avtar Singh about the bonafides and reputation of S. K. Das and because of their assurance about fhp genuineness of the prpposed deal about the said plot that the comp.lainant and her husband were induced to buy the plot on the terms and conditions proposed by Shri Avtar Singh.' It is stated that a sum of Rs. 84,000.00 had been paid to cover stamp duty and registration expenses also and, in particular, Autar Singh bad also addressed a letter to V.K.Mehta on 3-12-1972 to the effect that S.K.Mehta (property dealer) was going to the house of V.K.Mehta and his wife with a letter from Autar Singh; the letter contained an assurance that necessary formalities regarding the plot that had been completed age that the documents would be completed the next day; Autgr Singh was also taking a general power of attorney and since everything had

been done the balance amount of Rs. 38.000.00 plus an additional amount of Rs. 2,000.00 for registration expenses may be paid to S. K. Das, the bearer of the letter. Regarding this letter it may be noted that' the same was denied by Autar Singh. The Police had also referred some documents including this to the Director of Forensic Science Laboratory, Delhi, who had stated that it: was not possible to fix the authorship of that letter. This fact had also been referred to in the challan filed by the Police under section 173 Criminal Procedure Code . which it may be recalled was filed by the Police only against S. K. Das and Raj Khoslaf and Autar Singh was shown as witness No. 32 in the charge-sheet.

(9) In short, the gravman of the complaint against Autar Singh is -that he had assured Smt. Veena Mehta and her husband that everything was well with the land transaction, a feature, even if true on the basis that the above said letter was written by Autar Singh, will still be consistent with his being under that bonafide impression. More important the question is whether when all the disputes between the parties were settled on 20-12-1974 and V. K. Mehta gave the above undertaking to court, there is any room for thinking that Autar Singh was being held responsible for anything being paid to either Smt. Veena Mehta or her husband. I am told that a civil suit has since been filed against Autar Singh.

(10) It hate been contended for the present petitioner before me a contention which bears on the merits of the above controversy that all outstanding disputes between Autar Singh on one side and V.K.Mehta and his associates in all the business concerns in which they were associated together they were expressly named in Annexure C to this petition including the land transaction, if at all, had been settled. It is needless for me for the purpose of this petition to express any view on the same and I refrain from doing so. I have, nonetheless, set out the minimum facts pertaining to these disputes. as a background, in the light of which the application made by Smt. Veena Mehta under section 190 Criminal Procedure Code . resulting in the impugned order (summoning of the petitioner by Shri Kuldip Singh, Metropolitan Magistrate as an accused) has to be appreciated.

(11) The entire scheme in this respect of the Code of Criminal Procedure, as it stood prior to the new Code (Act 2 of 1974), has been fully explained by

Vaidialingam, J speaking for the Supreme Court in Abhinandan Jha V. Dinesh Mishra : 1968 CriLJ97 . I shall, thereforee, content myself with setting out only the material changes that have been made, vis-a-vis the question that arises for consideration now. in the new Code as I shall hereafter briefly call Act 2 of 1974. Section 190 of the new Code reads as follows :

'190.(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 subsection (2), maty take cognizance of any offence (a) upon receiving a 'complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. (3) The Chief Judicial Magistrate may empower any magistrade of the second class to take cognizance under subsection (1) of such offence as are within his competence to inquire into or try.'

It has to be noticed that a significant change has been made in the present section 190 Criminal Procedure Code . by the dropping of the expression 'or suspicion' in section 190(l)(c). Yet another change, probably cosmetic in nature, concerns section 190(l)(b) where instead of 'upon a report in writing of such facts made by a Police officer' it now reads only as 'upon a Police report of such facts'. It is needless to notice the change in section 190(2) for the purpose of the present case. But it may be noticed that the language of section 191 both old and new, is the same, section 191 only requires the Magistrate taking cognizance of an offence under sub-section (1) of clause (c) of section 190 must inform the accused that he is entitled to be tried by another court, etc.

(12) Having regard to the somewhat peculiar factual situation in his case it seems to require a sharp and) pointed appreciation of the scope of the changes made by the new Code in this respect; much of the discussion in the older cases, valuable as it may be, may not be determinative. Occasions have arisen before several High Courts to deal with varying situations such as (1) some persons, noted in the Police challan (in column 2) not being sent before the court as afn accused; (2) cases where there has been dropping by the Police of fhe names of any person(s)

mentioned either in the F.I.R. or in the (later) statements made during the Police investigation without saying anything about them; (3) cases where the person(s) concerned having been mentioned only as witness (s) for the prosecution. In such situations the law as it stood prior to the new Code enabled the court to take cognizance of the offence under section 190(l)(c) and also issue summons to persons other than the persons mentioned as accused in the Police challan even on suspicion; these decisions ftie not helpful to appreciate the effect of dropping the expression 'or suspicion' in the old Code. The Supreme Court had, in the above decision, observed that the Magistrate had 'wide power'; the dropping of the expression 'or suspicion' has eliminated the power of the Magistrate to act 'on suspicion'.

(13) The genesis of the above was that the Law Commission of India, in its 41st Report, expressed its displeasure in the matter of criminal courts being enabled to act 'on suspicion' which was not in consonance with the strictly judicial approach which alone the courts could bring to bear on any controversy before them. It was in this view that they recommended that they did Hot consider it 'wise' to place such a responsibility, namely, of acting on suspicion, on a judicial officer; it was for this reason that the recommendation was made that a power on the part of a Magistrate to act on suspicion should be 'deleted' from the Code.

(14) It is essentially the consequences of such deletion that has been the subject matter of keen debate before me at the bar. I am grateful to both sides for placing a number of decided causes before me, though it does not appear necessary to burden this judgment by referring to all of them. The power of the Magistrate to take cognizance to offences has to be found within the four corners of S. 190 (new). Three sources, which enable the Magistrate to take cognizance of offences have been categorised : (a) upon receiving a complaint of facts which constitute an offence; (b) upon a Police report of such facts; (c) in the following two cases alone, namely, (1) upon information received from any person other than a Police officer that such offence has been committed or (2) upon his own knowledge. It is worth recalling that expression 'on suspicion' has been deleted.

(15) We are able to exclude here the first category because Smt. Veena Mehta had not told or even indicated to the Magistrate that she was filing a complaint of facts constituting any offence; in other words she did not tell the court that she was giving a private complaint which bad to be dealt with according to Ss. 200 to 204. The Magistrate also did not understand her application has having made request of that kind aad did not deal with it accordingly. A possible reason for her not doing so might well have been the undertaking given by her husband before this Court.

(16) The next question which I would like to take up for consi- deration (deviating from the carder mentioned above) is whether the Magistrate was proceeding under the finst part of S. 190(1)(c), namely, whether he was acting upon information received from any person other than a Police officer. I am unable to construe the order of the learned Magistrate in this case as one of that description because he had not only in the order-sheet but also in the longer order, of the same date, expressly referred to his adopting the course of issuing summons to Autar Singh as an accused because the documents on file also warranted his being so summoned. Though he had also referred to the application filed by Smt. Veena Mehta for issuing summons he had not specifically mentioned anything as having been mentioned in that application as warranting the issue of summons. I would expect that if he was relying on anything in that petition as prsuading him to adopt that course he would have said so; he has not mentioned any. I say so because the mere moving of an application by Smt. Veena Mehta to summon Autar Singh (as the above said statement in the order-sheet reads) would not by itself be sufficient order issuing of summons unless the Magistrate was able to see anything in that application as furnishing some thing extra which would enable him to act within the first part of section 190(l)(c). On this point, the perusal of even the more detailed order does not seem to lead to a contrary impression. The following part of the detailed order bearing on this question may be worth setting aside :

'IT is alleged that complainant husband S. Vijay Mehta had some business dealing with Autar Singh and they were directors of private limited company and on account of business jealously Avtar Singh harboured some ill will against the complainant and her husband and stated that he had arranged two plots in Maharani Bagh through accused'S. K. Dass and they represented to complainant

to get a plot at cheap rates the vendor was badly need of money. It is also alleged that Avtar Singh also assured about the deal.

It is further alleged that Avtar Singh and accused S. K. Dass introduced the vendor as Ram Narain to them. But the said Ram Narain was in fact one Raj Khosla and was not owner of the plots, and Avtar Singh inclusion with S.K.Das mis-representative the fact of complainant' (The whole extract, with all the errors, has been set out as it is). The facts mentioned herein are only those which were sufficiently clear even from the Police challan; they do not show that he was relying upon any other fact or even information other than what he was able to get by a reading of the Police challan. Then follow the FOLLOWINGobservation in the detailed order : 'I am (sic) also gone through the file and the report under section 173 Criminal Procedure Code . and statements under section 161 Cr.P.C recorded by the police.'

He was only referring to the report under section 173 and statements under section 164 Criminal Procedure Code . These facts/information were available to the learned Magistrate on the records before him.

(17) I have set out the reasons (if they could be so called) given by the learned Magistrate in its entirety in order to understand the learned Magistrate's mind and what persuaded him to issue summons to the petitioner Autar Singh. I am unable, thereforee, on perusing the said order and from anything that has been mentioned to me In the course of the submissions before me to come to a conclusion that the Magistrate did act under the first part of section 190(1)(c).

(18) The second part of section 190(1)(c) requires the Magistrate to act upon his 'Own Knowledge'. It will bear repetition, by way of emphasis to recall, that section 191 puts the Magistrate acting under section 190(1)(c) to give the option to the concerned accused of the fact that he could, if he chooses, be tried by yet another Magistrate. This, it seems to me, is on the footing that the Magistrate while acting on his own knowledge, has, in all fairness to the accused, to give him such an opportunity. It is not possible to speculate in the present case whether the learned Magistrate might have wished to disclose to the accused that he has the above option under section 191 since the present petition, had been filed even before the

petitioner appeared before the Magistrate. All that I am trying to point out at this stage is that the way in which the learned Magistrate has expressed himself, not merely once in the order sheet but in a more detailed order referred to above does not indicate that he was proceeding on his 'own knowledge' ; per contra he had only referred to the mere filing of the application by Smt. Veena Mehta and the file containing the records under section 173 warranting the issue of summons. The learned Magistrate has not even indicated that he was not acting on suspicion as he might have done under the old Code. I am now only concerned with the question whether the Magistrate was justified in ordering the issue of summons under the present section 190(1)(e) on the material before him. It seems to me that he had none ; nor am I able 'to find that he had any cogent reason for such action under section 190(1)(c) (new).

(19) My attention has been drawn to only three decisions, two of this Court and one by the Punjab & Haryana High Court, rendered under the new Code. V. D. Misra, J. had occasion to consider this question in Duli Chand v. State (Cr. M. (M) 352 of 1975, decided on 16-11-1976) (2). After referring to Abhinandan Jha the learned Judge explained, in terms of section 190(1)(e) of the new Code, that the Magistrate could take cognizance only in two situations mentioned above, namely, (1) upon receiving information from a person other than a Police Officer and (2) upon his 'own knowledge' (the emphasis is mine). The learned Judge observed that in the case before him the learned Magistrate did not have any 'information' (from any person) other than the report of the Police officer (which was before him) and that he had also no 'personal knowledge' about the facts constituting any offence. He also commented upon the fact that the learned Magistrate seemed to have forgotten that under the old Code his powers were so large that he could act 'on suspicion', an expression which has been omitted in the new Code. That was a case where the learned Magistrate did not act on the Police report under section 169 of the new Code, called in Delhi as the cancellation report, but issued summons to the accused. A similar criticism seems apt in the present case as well. It was a similar order which was set aside by V.D.Misra, J. for the reasons stated above.

(20) Prithvi Raj, J. had an occasion to consider the effect of 'section 190(1)(e) of the new Code in Surjit Singh v. State (Cr. Misc. (M) 131 of 1977 decided on 27-5-1977) (3). The factual situation in that case was that one Smt. Kulwant Kaur, daughter of Ujagar Singh, had died, due to burns, in the Wellington Hospital, with reference to which the father had made a written complaint to the Police; the Police reported under section 169 Criminal Procedure Code . staling that it was 'untraced'. The Police was probably of the view that it was a case of suicide, not homicide. An application was made by Ujagar Singh to the Magistrate opposing the cancellation report. The learned Magistrate, who heard not only his counsel but Ujagar Singh as well, felt that it was a fit case where the Court could take cognizance under section 190(1)(c) of an offence punishable under section 302 read with section 109 Indian Penal Code . and against a Sub-Inspector for having committed an offence under section 201 I.P.C. It is sufficient to note that, on the above facts (which have been taken from the above judgment) Prithvi Raj, J. construed the order of the learned Magistrate as being based upon the information which had been received through Ujagar Singh when he passed the order. The learned Judge, thereforee, considered that the above said judgment of V. D. Misra, J. in Cr. M. (M) 352 of 1976 was of no assistance to the petitioner before him. The learned Judge had also referred to the later application made by the father of the girl praying that an opportunity be granted to him to explain 'solid and true facts' in the interest of justice and the Magistrate had, before passing the impugned order, heard Ujagar Singh in addition to his' counsel. Prithvi Raj, J. held that the learned Magistrate had 'Ujagar Singh's version which would constitute information' within the meaning of section 190(1)(c). This was not the case before V.D. Misra, J., nor is it the case here on the facts which I have set out earlier. It is important to observe that Prithvi Raj, J. was not taking any view inconsistent with or different from that taken by V.D.Misra, J. It is needless to say that judicial discipline requires that a single Judge of a High Court would consider himself bound by the decision of another single Judge of the same High Court when it is brought to his notice; if he was differing from the said view on any question of law he would refer it to a larger bench. The decision of Prithvi Raj, J. was, thereforee, one on its facts; it was in no way inconsistent with the view, on the law, taken by V.D. Misra, J. - a view which is ads much binding upon me sitting singly as it was

on Prithvi Raj, J. I have referred to this aspect to point out that the decision of Prithvi Raj, J. has to be understood in that light.

(21) The third decision, under the new Code, which has been brought to my notice is of Pritam Singh Patter, J., of the Punjab & Haryana High Court in Garib Dass V. The State of Punjab 78 1976 Plr 71 With respect, it seems tome, that though the learned Judge had referred to the decision of the Supreme Court in Abhinandan Jha and .had also set out the contents of section 190(1)(c) on page 75 his attention does not appear to have been drawn pointly to the expression 'or suspicion' having been omitted in the new Code. In these circumstances I am unable to derive any assistance from the same, as a precedent or with respect follow it, both on account of the decision of V.D.Misra, J. of this Court (by which I said I am bound) and, with respect, my agreement with it.

(22) Having dealt with the only three decisions under new Code which we have been cited to me I shall now discuss the alternative contention of the learned counsel for Smt. Veena Mehta who invoked section 190(1)(b) in his favor; he contended that the action taken by the learned Magistrate in this case must be deemed to have been taken under section 190(1)(b). The first answer to this contention is that Smt. Veena Mehta herself had only requested the learned Magistrate to take 'cognizance' of the offence against Autar Singh. The manner in which the learned Magistrate had proceeded had been noticed at length. I have not been able to persuade myself that the learned Magistrate was thinking of section 190(1)(b) atall. A Magistrate has only to take 'cognizance of an offence' but not against 'offenders'. The meaning of the expression 'taken cognizance' was explained by Sikri, J. (as he then was) speaking for the Supreme Court in Raghubans Dubey v. State of Bihar : 1967 CriLJ1081 , which has been brought to my notice by Shri R.D. Mehra, who has drawn my attention to the said decision not only for the above purpose but also to show that when the Police did not include a person's name in the final report under section 173 Cr.P.C. (this was under the old Code, not new Code) the Magistrate acting under sections 207-A/251-A could issue summmons to a person not named by the Police as an accused if he was of the opinion that he was also an offender who had to be tried in the said proceedings. It seems to me that the factual situation in the said decision was

entirely different. The power to summon even persons not sent up by the Police if the circumstances warrant the same, an eventuality which has been taken care of by section 319 of the new Code; there appears to have been no change in this respect. Nothing said herein would at all affect such action being taken by the learned Magistrate at a latet stage if the facts so warrant. The above decision, thereforee, is of no assistance to Shri Mehra at this stage.

(23) The hesitancy of Smt. Veena Mehta, to herself actually figure as a private complainant in this case, may have to be appreciated in the light of the undertaking that had been given to this Court by her husband. It is needless for me to say more than on this question except merely to .content myself by pointing out that Smt. Veena Mehta had not professed to figure as a private complainant; she had asked for no relief on that footing.

(24) It remains for me only to deal two decisions relied upon by Shri R.D.Mehra, namely, Siddappa Gurappa Kopad and others v. State of Mysore, Air 1960 Mys. 237 (6) and Gopala Panikkar Thankappan and others v. State of Kerala, : AIR1969 Ker29 . Both these cases were under the old Code, which contained the expression 'or suspicion'. In the Mysore case Hedge, J. (as he then was) observed that a Magistrate could take cognizance of an offence on the report of a police officer although there was 'no evidence' to justify taking such action. Hegde, J. also quoted section 190(l)(c), as it then stood, containing the expression 'or suspicion'. This was no doubt the law then. In the Kerala case Raghavan, J. (as he then was) was in the rather unusual predicament of disagreeing with the Public Prosecutor, who had agreed with the petitioner before him. It seems to me, with respect, that on the facts as they appear in that decision, on the law as it then st5od, the action of the learned Magistrate could have been justified under section 190(l)(c) itself. The ground urged was that if action was so taken under section 190(1)(c) the learned Magistrate should have directed the trial before some other Magistrate. It was in this context that Raghavan, J. relied upon section 190(1)(b). Without going further into the said decision it is sufficient to recall what I have said already concerning how the learned Magistrate acted in this case; he did not purport to act under section 190(1)(b); the stage for so acting had not even arrived.

(25) I have found it necessary to exercise jurisdiction under section 482 Criminal Procedure Code . in the light of the background of facts I have mentioned. The law on this question has been explained by Chandrachud, J., speaking for the Supreme Court in State of Karnataka v. L. Muniswamy and others : 1977 CriLJ1125 as follows :

'INthe exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conelusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed' (p. 1492).

'CONSIDERATIONSjustifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by S. 482 ought not to be encased within the straitjacket of a rigid formula' (p. 1493).

(26) Allowing the proceedings to go on against the petitioner on the summons issued by the learned Magistrate would not, on the facts yet unknown to this Court, be in consonance with law, justice or even fairness. The impugned order passed by the learned Magistrate is, thereforee, quashed and this petition is accordingly accepted.

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