

V.C. Shukla and Vs. State

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Court : Delhi

Decided On : Aug-25-1977

Reported in : 1978RLR75

Judge : Yogeshwar Dayal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204

Appeal No. : Criminal Miscellaneous (Main) Appeal Nos. 429 and 462 of 1977

Appellant : V.C. Shukla and ;sanjay Gandhi

Respondent : State

Advocate for Pet/Ap. : P.R. Mridul,; K.L. Arora,; K.G. Bhagat,;

Judgement :

Yogeshwar Dayal, J.

(1) An Fir was registered against petitioners etc. about offences relating to film 'Kissa Kursi Ka', on 13.4.77. During investigations M/s Khedkar and Yadav applied for recording their confessions and Chief Metropolitan Magistrate (C.M.M.) sent these to an M.M. The latter recorded these u/s 164, Cr. Pc on 3/4.6.77. Then on 14.7.77, charge sheet was was filed against petitioners before C.M.M. The same day C.M.M. granted pardon to M/S Khedkar and Yadav u/s 306, Cr PC. C.M.M. also ordered that charge-sheet be registered and accused be summoned for

5.8.77. Petitioners challenged this order on the ground that S. 204, Cr Pc applied to initiation of proceedings on police report u/s 190(1)(b) as much it applies to complaint u/s 190(1)(a); that C.M.M. had no material for forming opinion and he had only police allegations: that C. M. M. acted mechanically on the allegations without applying his mind; that order about issue of process u/s 204 Cr Pc is not a speaking order; that by tendering pardon to Khedkar & Yadav, C.M M. had become a witness and was incompetent to issue process.

(2) The heading of chapter Xiv, Cr. P.C. in which section 190 occurs is 'CONDITIONS Requisite For Initiation Of PROCEEDINGS'. Thus, the Magistrate takes cognizance of the offence upon a police report as prescribed under sub-section (2) of 173 Cr. P.C. At that stage, the police report is as contemplated by section 173(2). It need not be accompanied by such documents as are mentioned in section 173(5). It is merely on a police report as contemplated by Section 173(2) that the Magistrate taking cognizance of an offence, in the absence of the accused, summons him or issues a warrant depending on (he nature of the case, if in the opinion of the Magistrate there is sufficient ground for proceeding. It is true that if cognizance is taken u/s 190(1)(a) upon receiving a complaint, then proceedings have to be held in accordance with Chapter Xv of the Code, but even incases of complaint, if the complaint is made by a public servant acting or purporting to act in the discharge of his officing duties or if the court has made a complaint, the Magistrate need not go through the provisions of Section 200 and 202 Cr. PC.

(3) Again, where cognizence of the offence is taken on the basis of a complaint, the Magistrate can, if there is no sufficient ground for proceeding, dismiss the complaint, and he is explicitly required to briefly record his reasons for doing so. But if, in the opinion of the Magistrate taking cognizance of an offence, whether on the basis of a complaint or a police report, there is sufficient ground for proceeding, as he is not required by the Code to record any reasons for summoning the accused.

(4) If the case is based on a police report, no reasons at all are required to be recorded. The Magistrate has merely to form an opinion. He need not record the

opinion.

(5) Learned counsel for the petitioners relied on the decision of Safeer, J. in the case reported as Udey Bir Singh V. Smt. Shakuntala Devi and others : 1974 CrL. L.J. 187, particularly the observations of the learned Judge in paragraph 5 of the judgment requiring the necessity of recording reasons before issuing process. It may be stated that Safeer, J. was dealing with a case where cognizance was taken of complaint as opposed to a police report. However, the decision of Safeer, J. was not approved by a Division Bench of this Court in the case reported as Amrik Singh v. State etc; . In this case, the Division Bench had an occasion to consider the scheme of chapters Xiv and Xv as well as Chapter Xvi of the Code in the light of a case where cognizance is taken on a complaint and even there, the Division Bench in paragraphs 31 and 32 of the report observed :-There is no requirement of law for a speaking order-If challenged before a high Court it can find out if order is passed after due deliberation.....

(6) Not only I am bound by the aforesaid pronouncement, I am in respectful agreement with the same. In the case of a police report also, while issuing process u/s 204 Cr. Pc there is no necessity for recording reasons. All that is necessary is that the Magistrate should not mechanically issue the summons but apply his mind and the application of mind is limited only to finding out whether there is 'sufficient ground for proceeding'. 'Sufficient ground for proceeding' in the circumstances where proceedings commence on a police report merely require that the Magistrate should satisfy that the police report is in consonance with the requirement of section 173(2)(i) Cr. PC. and makes out an offence against the accused.

(7) Mr. Mridul, learned counsel for petitioner, however, submitted that the reasoning of the learned Judges in the aforesaid decision is in conflict with the decision of the Supreme Court in Amar Nath and v. State of Haryana (Criminal Appeal No 123 of 1977 decided on July 29, 1977) inasmuch as the Supreme Court took the view that while issuing process under section 204 Cr. P.C. the magistrate passes 'final order' and not interlocutory order whereas the reasoning of the Division Bench is based on the assumption that order U/S 204 Cr. P.C. is in the

nature of interlocutory order. I am afraid, I do not agree with this submission. The Supreme Court was considering the question whether an order issuing process, in the circumstances of the case, was revisable under section 397 of the Code and whether it was barred in view of the provisions of sub-section (2) of Section 397. It was only in that context that the Supreme Court took the view, on the facts of that case, that the order issuing process by the magistrate in a complaint case was a 'final order' and a revision there from was not barred under section 397(2) of the Code. The Supreme Court in that case was dealing with a complaint case. It was not dealing with a case as to the nature of an order which is required to be passed before summoning accused under section 204 Cr. P.C. In the context of a trial, the order passed under section 204 Cr. P.C. is a interlocutory order. It is a different matter that on the facts of that case before the Supreme Court, the Supreme Court considered the impugned order as 'not an interlocutory order' for purposes of Section 397(2) of the Code,

(8) It was next submitted by Mr. Mridul that the charge-sheet does not contain material evidence. It also does not show that any persons have been examined by the police. It also does not state that what is stated in the charge-sheet is the result of the investigation. The charge sheet is merely 'information' of the investigating agency.

(9) It will be noticed that in the present case, there is not even an averment in the applications filed by both the accused that the charge-sheet is in any way contrary to section 173(2)(i) Cr. PC. There is further no averment that the charge-sheet does not disclose the offence, or that it did not disclose any offence against the petitioners. The lack of this averment is very significant, The charge-sheet, in the present case, not only is strictly in compliance with section 173(2)(i) Cr. PC. it is also accompanied by a list of 138 witnesses. It is also accompanied by a list of as many as 257 documents as well as a list of articles/properties. Even during the hearing of the applications, no such argument was advanced that the charge-sheet or the police report does not disclose an offence.

(10) Even if it be assumed for the sake of argument that section 204 Cr. Pc requires a reasoned order or an express statement of the formation of the

necessary opinion of them by magistrate, no relief can be granted to the petitioners unless in the opinion of this Court, failure of justice has in fact been occasioned thereby. As observed earlier, since the petitioners have not even averred or challenged in the applications that the charge-sheet did not disclose any offence against them, it cannot even be said that there is failure of justice and, therefore, the order cannot be interfered with either in exercise of revisional jurisdiction or in exercise of inherent powers of this court.

(11) In fact, a perusal of the impugned order would show that the learned C.M.M. chose to issue summons instead of warrants in the present case. This also shows the application of mind by the learned Chief Metropolitan Magistrate with respect to both the accused.

(12) So far as the petitioner, Sanjay Gandhi, is concerned, there is further inbuilt guarantee of bestowal of thought by the Chief Metropolitan Magistrate in as much as on the same day, the learned C.M.M. had also recorded the statements of sarvshri R.B. Khedkar and K.S. Yadav for the purpose of granting pardon under Section 306 Cr.PC.

(13) It is true that on construction, of scheme intendment and purposes and the Setting of section 204 of the Code, the section applies equally to a proceeding initiated by a police report as it applies to a complaint. It is also true that it predicates the existence of a material leading to the averment of such opinion. Since the cognizance can be taken on a police report, which in turn means police report as contemplated under section 173(2)(i) Cr. P.C. the formation of opinion has to be on the police report. At that stage, the magistrate is not required to form his opinion on anything other than the police report. The statements of the witnesses recorded during investigation & the documents collected during investigation are all required by the Code to be supplied to the accused appears before the court. The duty for ensuring that the documents mentioned under section 207 Cr. P.C. are supplied to the accused is fixed on the court but it is not necessary that these documents should be before the magistrate apart from the police report before he can form the necessary opinion as contemplated by section 204 of the Code. It is also true that the order under section 204 Cr. P.C. is judicial

order, but since the formation of the opinion by the magistrate, in the circumstances of the present case, can only be on the police report, it cannot be said that the magistrate merely 'mechanically accepted the allegations contained in the charge-sheet.' All that is required of the magistrate at that stage is to form an opinion whether 'there is sufficient ground for proceeding' and not sufficient ground or grounds for accepting the allegations contained in the charge sheet.

(14) On the facts and circumstances of the present case, it cannot be said that the order suffers from either the non-application of mind or that it is liable to be quashed being non-speaking order.

(15) Coming to the fifth submission, Mr. P.R. Mridul relied on the provisions of section 479 Cr. P.C. as well as the decisions reported as Achhar Singh v. Dsondha Singh: A.I.R. 1947 Lah 238, Nga Chit so v. The King : A.I.R. 1937 Ran 467, Mangilal Marwari v. Emperor : A.I.R. 1919 Pat 373 and Mohd. Hussain v. Sheik Mohd. Hussain : (1947) 48 CrL. L.J. 428.

(16) The argument of the learned counsel for the petitioners is that inasmuch as the learned C.M.M. had recorded the aforesaid questions while dealing with the applications of Shri Khedkar and Shri Yadav, the magistrate has lent his aid to the investigating agency and therefore, he will be a witness during trial and, in any case, because he lent his aid to the investigating agency he becomes a person 'personally interested' within the meaning of Section 479 Cr. P.C. It is submitted that the questions and answers recorded by the learned C.M.M. are in the nature of statements under section 164 Cr. P.C. and, therefore, being a person who acted in aid of the investigating agency, he incapacitated himself to take cognizance of the offence.

(17) It will be noticed that while dealing with the applications of Sarvshri R.B. Khedkar and K.S. Yadav, the learned C.M.M. was performing a statutory duty under section 306 of the Code, It is also axiomatic that before tendering pardon, the magistrate must satisfy himself that the person concerned is making full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. The Magistrate concerned in such a situation is not recording any statement under section 164 Cr. P.C. but is merely putting such questions for the

satisfaction required for tendering pardon.

(18) The next question is whether a magistrate who conducts proceedings under section 306 Cr. P.C. can be said to be 'a party to the case or personally innerested' within the meaning of section 479 Cr. P.C. so as to be debarred from taking cognizance or to try or commit for trial. If the arguments of the learned counsel for the petitioners be taken to its logical cognizance it will mean that when Magistrate take cognisance on the basis of a complaint and records preliminary evidence under Chapter Xv, he will be accused being 'a party' to the case or being 'personally interested' and would incapacitate himself to order the issue of process under section 204 of the Code. Again, a magistrate who grants remand during investigation would also be incapacitated from taking cognizance of the offence. This certainly is not the intention of the legislature. By merely pardon under section 306 of the Code, the magistrate can neither be described as 'a party to the case', nor 'personally interested' in the matter. The learned magistrate while acting under section 306 Cr. P.C., was merely performing his statutory duty and can, in no case, be accused of either being a party or 'personally interested' in the case. Petition dismissed.