

Amod Laul Vs. State and B.N. Kumar

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Court : Delhi

Decided On : Apr-02-1986

Reported in : 29(1986)DLT464

Judge : Charanjit Talwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 202(1)

Appeal No. : Criminal Revision Appeal No. 166 of 1985

Appellant : Amod Laul

Respondent : State and B.N. Kumar

Advocate for Def. : Mr. Mehta

Advocate for Pet/Ap. : D.C. Mathur and; Baldev Mehta, Advs

Judgement :

Charanjit Talwar, J.

(1) By this revision petition the petitioner Amod Laul who was originally the complainant in the trial court and on whose complaint B.N. Kumar, respondent No. 2 herein, was summoned for an offence under section 45 read with section 48(4) of Delhi Rent Control Act, seeks reversal of the impugned judgment of the Additional Sessions Judge, New Delhi, passed on 3rd May, 1985, whereby the

revision petition of respondent no. 2 was allowed and the case was remanded to the learned Magistrate for further action in accordance with law.

(2) From a reading of the order of the learned magistrate and also of the impugned judgment a few facts which are not being rebutted emerge. They are: (1) that on filing of the complaint the learned magistrate recorded the statement of the complainant under section 200 of the Code of Criminal Procedure; (2) thereafter while acting under section 202 of the Code the learned magistrate directed the Station House Officer of police station Kalkaji to investigate into the allegations contained in the complaint and make bids report ; (3) that after the receipt of the report of the investigation officer, the learned magistrate recorded the statement of another witness. It was stated by My. Mathur, learned counsel for the petitioner, at the bar that that witness happened to be the bi other of the complainant-tenant; and (4) that a process was issued to B.N. Kumar, respondent no. 2 herein, after the learned magistrate had taken into consideration the statements recorded by him, i.e., the statement of the complainant recorded before directing investigation and the statement of the brother of the complainant together with the report submitted by the investigation officer. It was that order of the learned magistrate which was impugned before the learned Additional Sessions Judge.

(3) The ground of attack was that after directing the Station House Officer of police station Kalkaji to investigate and report, the learned magistrate was incompetent to record the evidence of other witness and as such the statement recorded of the brother of the complainant could not have been kept in view for summoning the accused. This argument on behalf of B.N. Kumar, respondent no. 2 herein, prevailed. The learned Additional Sessions Judge was of the view that under section 202 of the Code a magistrate has only two options; either to enquire into the case himself or to direct an investigation. Relying on a judgment of the Calcutta High Court, the learned Judge has held that once the option is exercised, the other alternative cannot be adopted. Thus, it has been held that after directing investigation by the police the magist'ate's decision to record further evidence was illegal and as such that evidence ought not be kept in view. The judgment relied upon is of a Division Bench in sankar Chandra Chose v. Roopraj S- Bhansally, 1981 CrL.J. 2. Their Lordships therein have referred to and agreed with an earlier

unreported Division Bench judgment of that Court in Cr. R. 157 (Netai Sen v. J. B. Ghosh). In conclusion it has been held : "On going through the provision of section 202 of the Code, we are of the opinion that in a particular case if a Magistrate postpones the issue of summons then two courses are open to him. He can either make an enquiry into the case himself or direct that an investigation be made. The Magistrate can direct an investigation to be made either by a Police Officer or by such other person as he thinks fit. If he makes an enquiry himself, he cannot direct investigation. Again, when he directs an investigation, he cannot enquire into the matter himself. This is exactly what has been found by their Lordships in the Bench decision referred to above in interpreting the provisions of section 202 of the Code.'

(4) I may note here that it is not very clear from the reported judgment as to whether the provision of section 202 of the Code of Criminal Procedure, 1898 (hereinafter called 'the old Code') was being discussed or the provision of section 202 of the Code of Criminal Procedure, 1973 (hereinafter called 'the new Code') was being interpreted. From a reading of paragraph 10 of the said judgment, however, it does appear that the contention raised before their Lordships was that the expression, 'either direct an enquiry or investigation' related to the provision of the old Code. Under that Code a magistrate other than a magistrate of third class was empowered to direct another magistrate subordinate to him to hold an enquiry. The magistrate could also direct an investigation to be made by a police officer or by such other person as he thought fit. That alternative still exists in the new Code but the magistrate is no longer authorised to direct an enquiry under section 202 by another magistrate. From a reading of paragraph 10 onwards of the said judgment it appears that the facts in the unreported decision with which their Lordships had agreed were that the magistrate after directing an enquiry by another magistrate under the provisions of section 202 of the old Code, and after receiving the report of that magistrate, asked that very magistrate to hold a fresh enquiry. The second order directing the enquiry by that magistrate has been referred to in the said judgment as a second enquiry (*Italics added*). The learned Judges of the Calcutta High Court in the unreported decision have held that the second enquiry under section 202 of the Code is without jurisdiction.

(5) The question which arises for my consideration in the present case is whether the decision of the magistrate to record the statement of a witness on behalf of the complainant after receipt of a report of the investigation officer amounts to second enquiry.

(6) Mr. Mehta, learned counsel for respondent no. 2, has referred to the judgment of a learned Single Judge of this Court reported in Smt. Prem Hazrav.Sh.S.S.Grewal etc.,1985 Rajdhani Law Reported 163, decided on 20th December, 1984, in support of his contention that it was not open to the magistrate in the present case to have recorded the statement of the second witness after the receipt of the report of the investigation officer as that option was no longer open to him. According to Mr. Mehta, the use of the expression ' either'-or' in section 202 makes it abundantly clear that the magistrate could either enquire himself into the allegations or direct investigation. 467

(7) J.D. Jain, J. who decided Smt. Prem Hazra's case (supia) after referring to the observations of the Calcutta High Court, which observations have been quoted by me above, held as under : 'I am in respectful agreement with this view having regard to the plain language of section 202(1) which expressly uses the disjunctive words 'either or' thus making it abundantly clear that the Magistrate has the option to adopt any of the courses for satisfying himself whether there is sufficient ground for proceeding but he cannot take recourse to all those alternatives one after the other. In other words, he cannot employ two or more alternatives for arriving at a decision whether to proceed further or not on the complaint. Hence, the procedure adopted in the instant case is certainly not warranted by section 202 and the impugned order is liable to be set aside on this ground alone.'

(8) Mr. Mathur submits that the law laid down in the decision of the Calcutta High Court has not been correctly appreciated by this Court in Smt. Prem Hazra's case. It is his plea that the magistrate on directing investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, does not become functus officio for the purpose of an enquiry under section 202. That provision only enables him to postpone the issue of process. He submits that investigation contemplated in

section 202 does not culminate in a report as provided in section 173 of the Code. The investigation referred to in this provision could be made not only by a police officer but by any such person whom the magistrate thinks fit to investigate. Prima facie I agree with Mr. Mathur. The investigation referred to in this provision may relate to a part of an investigation. An occasion may arise when that part of investigation has to be carried out by a person other than a police officer. It may even be by a specialist whose report the magistrate thinks is essential to be obtained for the purpose of deciding whether or not there is sufficient ground for proceeding (*Italics added*), which is the object of section 202 of the Cods. After receiving that report, in my view, to achieve the object the magistrate in a fit case may have to enquire into the case further.

(9) As at present advised, I am unable to agree with the view expressed by J.D. Jain J. in Smt. Prem Hazra's case. I, therefore, direct that the papers of this case be placed before my Lord the Chief Justice for referring the matter to a Division Bench.

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