

Surjith Vs. State of Kerala

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Court : Kerala

Decided On : Apr-04-2002

Reported in : 2003CriLJ983

Judge : G. Sasidharan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173 and 173(2)

Appeal No. : Crl. M.C. Nos. 5772, 5774 and 5781 of 2001

Appellant : Surjith

Respondent : State of Kerala

Advocate for Def. : Noorji Noushad, Public Prosecutor

Advocate for Pet/Ap. : Rajit, Adv.

Disposition : Petitions dismissed

Judgement :

ORDER

G. Sasidharan, J.

1. The petitioners in these petitions are accused in three different crimes of Kunnamkulam Police Station. These petitions are filed for quashing the final report filed by the police in the Court of the Judicial Magistrate of the First Class,

Kunnamkulam. The Additional Sub Inspector of Police, Kunnamkulam is the Officer who filed final report in these cases. According to the petitioners, the final report can be filed only by an officer in charge of the police station. The submission is that the Additional Sub Inspector of Police, Kunnamkulam was not the officer in charge of the police station and hence he had no authority to file final report in Court.

2. Section 173(2) of the Criminal Procedure Code says that after completing the investigation of the crime the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. It is on pointing out the above provision in the Criminal Procedure Code that it is maintained that an officer in charge of a police station alone can file final report after completing the investigation in a crime. Section 154 of the Criminal Procedure Code says what an officer in charge of a police station has to do on getting information relating to the commission of a cognizable offence. The section says that if the information relating to the commission of a cognizable offence is given orally to an officer in charge of a police station he shall reduce it to writing. Such an information obtained can be taken down in writing by the officer in charge of the police station or by somebody else under his direction. After taking down the information it has to be read over to the informant and every such information whether given in writing or reduced to writing shall be signed by the person giving the information. A copy of the information recorded under the above section has to be given forthwith to the informant.

3. Section 156 of the Criminal Procedure Code says that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. It is clear from Section 168 of the Criminal Procedure Code that an officer subordinate to the officer in charge of a police station can also conduct investigation of the crime. That section says that when any subordinate police officer has made any investigation, he shall report the result of such investigation to the officer in charge of the police station. The investigation of a crime starts on

receiving information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Criminal Procedure Code. When information is so received if there is reason to suspect commission of an offence the police officer who is in charge of the police station or some other subordinate officer deputed by him has to proceed to the spot to investigate the facts and circumstances of the case.

4. Section 2(o) of the Criminal Procedure Code defines 'officer in charge of a police officer'. The above sub-clause of Section 2 says that 'officer in charge of a police station' includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to, such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present. It is clear from the above definition that when the officer in charge of a police station is absent from the station house the officer next in rank to him will be the officer in charge of the police station.

5. In the present case the Additional Sub Inspector of Police filed the final report in Court. Additional Sub Inspector of Police, even if he is not the officer in charge of the police station, is competent to conduct investigation of the crime. Section 173(2) of the Criminal Procedure Code says that it is the officer in charge of the police station who has to give final report to the Court after completing the investigation of the crime. The mere fact that the final report is submitted by the Additional Sub Inspector of Police will not indicate that the final report was not filed by an officer in charge of a police station. If, at the time of sending the final report, the officer in charge of the police station was absent from the station house, then the officer next in rank to him becomes the officer in charge of the police station and in that capacity such officer can send a final report to Court. It is not known whether at the time when the final reports in these cases were sent to Court the Additional Sub Inspector of Police was the Officer in charge of the Police Station.

6. The question whether an officer subordinate to the officer in charge of the police station can file final report in Court, was considered in the decision in *S.N. Singh v. State of Bihar* (1977 CrL. L.J. 1597). In that decision, the High Court of Patna held

that cognizance taken on the charge-sheet submitted by the Assistant Sub Inspector at the direction of the officer in charge of the police station is not illegal. It was also observed that the Magistrate can take cognizance under Section 190 of the Criminal Procedure Code on the basis of the final report filed by the Assistant Sub Inspector of Police. In the above decision, reference is made to the decision of the Supreme Court in *H.N. Rishbud v. State of Delhi* (AIR 1955 SC 196). The Patna High Court said that the decision of the Supreme Court in the above decision is not applicable to the case which came up before the Patna High Court. In the case which came up for consideration before the Supreme Court the question which was considered was whether the violation of mandatory provision of Section 5A of the Prevention of Corruption Act was fatal to the case taken on file on the basis of a final report filed by an officer who, as per the above section, was not competent to file final report. Under Section 5A of the Prevention of Corruption Act, no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under Sections 161, 165 or 165A of the Indian Penal Code or under Section 5(2) of the Act without the order of the Magistrate of the First Class. In the above decision the Supreme Court was considering the question whether the above provision requiring that no police officer below the rank of Deputy Superintendent of Police shall investigate the offence without the order of the Magistrate of the First Class was mandatory or not. After referring to the different provisions of the Criminal Procedure Code, the Supreme Court held that Section 5(4) and proviso to Section 3 of the Act and the corresponding Section 5A of Act 59 of 1952 are mandatory and not directory and that the investigation conducted in violation thereof bears the stamp of illegality. After holding so, the Court proceeded to consider the question what would be the effect of such an illegality in the matter of taking cognizance of the offence and subsequent trial. The Supreme Court said that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. The Supreme Court was of the view that if cognizance is in fact taken on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice.

7. In the case which came up for consideration before the Supreme Court the investigation was started by the Inspector of Police. During the course of investigation it was found that the accused are liable to be prosecuted under Section 5(2) of the Prevention of Corruption Act. Then application was made to the Magistrate for sanction being accorded to him under Section 5(4) of the Act and sanction was given. After completing investigation the Inspector of Police gave the final report. The Inspector of Police conducted investigation of the crime without getting sanction of the Magistrate. The Supreme Court said that since the investigation prior to the sanction was with reference to a case registered under Section 420 IPC and Section 6 of the Essential Supplies (Temporary) Powers Act, the investigation was perfectly valid. Only when the materials collected by the Inspector of Police disclosed the commission of an offence under Section 5(2) of the Prevention of Corruption Act by public servants, that the question of getting sanction of the Magistrate for investigation arose. Then the sanction of the Magistrate was obtained by the Inspector of Police and he filed the final report. The Supreme Court said that in the light of the above fact, there was no defect in the investigation of the crime. A reading of the judgment of the Supreme Court would go to show that there the question considered was whether the violation of mandatory provision in Section 5(4) of the Prevention of Corruption Act by the investigating officer would vitiate taking cognizance of the offence and trial of the case. There also what the Supreme Court held was that even if there is defect in the investigation conducted for the reason that there is violation of mandatory provision, that will not in any way affect the taking cognizance of the offence and the subsequent trial of the case unless it is shown that there is failure of justice.

8. In the present case the Additional Sub Inspector of Police is also a person who is competent to file final report, if he were the officer in charge of the police station at the time when the final report was sent to Court. The learned Public Prosecutor pointed out an order issued by the Government declaring the Assistant Sub Inspectors of Police as officers in charge of police station for the limited purpose of writing the case diary under Section 169 of the Criminal Procedure Code and filing charge-sheets/final reports under Section 173 of the Criminal Procedure Code in respect of the case entrusted to them for investigation. The purpose of the Government Order is to give powers to the Assistant Sub Inspector of Police, who

conducts the investigation of the crime, to file final report in Court. From the statements in the petition it is seen that on the basis of the final report filed by the Additional Sub Inspector of Police the Court had already taken cognizance of the offence. As held by the Supreme Court, merely for thereason that there is defect in the investigation, that will not in any way affect taking cognizance of the offence by the Court. In the light of the Government Order, it cannot be said that there was violation of any mandatory provision of the Criminal Procedure Code in the matter of filing final report in Court. Hence there is no merit in these petitions and the petitions are dismissed.

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