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Court : Rajasthan

Decided On : Mar-27-1962

Reported in : AIR1963Raj48; 1963CriLJ318

Judge : C.B. Bhargava, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 190(1), 156, 156(2), 190 and 251A

Appeal No. : Criminal Revn. No. 204 of 1961

Appellant : The State

Respondent : Pukhia and ors.

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : B.C. Chatterji, Deputy Government Adv.

Disposition : Revision allowed

Judgement :
ORDER

C.B. Bhargava, J.

1. This is an application in revision by the state and arises under the following circumstances:

2. On 23rd August, 1960, Station House Officer, Abu Road, apprehended the respondents while they were gaming at 3 public place, that is, in the verandah of the office of A. W. L. I. S. which is outside the railway platform. On 20th September, 1960, Station House Officer submitted a police report before the Judicial Magistrate First Class, Abu Road. The learned Magistrate ordered the case to be registered and directed the party to bring witnesses on the date of hearing which was fixed on 22nd September, 1960. There appears to be a rubber stamp in the court of the learned Magistrate containing the aforesaid order and that rubber stamp was also affixed on the order sheet of this case, but the order is duly signed by the learned Magistrate.

On the next date, that is, 22nd September, 1960, all the accused were present before him and the learned Magistrate, in compliance with the provisions of Section 251-A Criminal Procedure Code, delivered copies of investigation papers to the accused and adjourned the case for hearing arguments with regard to the framing of cnarge. The accused were bound down to appear in his court on subsequent dates. For one reason or the other, arguments could not be heard and eventually the matter came up Tor hearing on 16th November, 1960.

The learned Magistrate after hearing arguments on that date discharged the accused on these grounds (1) that the District Police was not authorised to investigate the case when the offence was committed within the jurisdiction of the Railway police; and (2) that the charge sheet was not submitted to the Railway Magistrate but to the First Class Judicial Magistrate. The State filed a revision before the Additional Sessions Judge, Sirohi, who by a very short order rejected the application on the ground that the place of occurrence lay within the jurisdiction of the Railway Police and so the District police officers had no jurisdiction to challan the case. Now, the State has come in revision to this Court.

3. It is urged on behalf of the State that the order of discharge could have been passed only when the Magistrate considered the charge to be groundless. It is urged that the learned Magistrate had taken cognizance of the case and thereafter the accused could be discharged only under Section 251A(2) of the Criminal Procedure Code on the aforesaid ground.

It is further contended that in view of the provisions of Section 156(2), Cr. P. C., it was not open to the accused to question the investigation on the ground that it was done in contravention of Section 156(1) of the Code of Criminal Procedure. It is urged that even if the offence was committed within the jurisdiction of the Railway Police and investigation was made by the District Police, still the report submitted before the learned Magistrate disclosing facts which constituted an offence, was such on which the Magistrate was bound to take cognizance of the offence and could not throw out the case merely on the ground of the incompetency of the District Police to make investigation.

On behalf of the respondents, it is urged that there was an irregularity with regard to investigation and the learned Magistrate could not be said to have acted megally if he directed the police to rectify the irregularity when it was brought to his notice at the initial stage, it is urged that no interference should be made with the order of the learned Magistrate which he was within his jurisdiction to pass. It is also urged that the Magistrate had not taken cognizance of the case because it does not appear that he applied his mind to the facts of the case with a view to take further proceedings in the matter.

4. It may be observed that the Munsiff-Magistrate, before whom this charge sheet was submitted, is also a Judicial Magistrate for the Abu area and has jurisdiction to try cases pertaining to the Railway Police Station of Abu Road. This fact has not been disputed before me by the learned counsel for the respondents. If the Munsiff Magistrate had also jurisdiction to try cases arising within the jurisdiction of Railway Station of Abu Road, then I fail to understand how the police report could be thrown cut on the ground that it was not submitted before the Railway Magistrate. The learned counsel for the-respondents has also not been able to support the order of the learned Magistrate on this point.

5. The next question is whether the order of the learned Magistrate was Justified on the other ground. Assuming that the offence was committed within the jurisdiction of the Railway Police Station and the officers of the District Police Station could not make investigation Into the offence, was the learned Magistrate right in throwing out the case and discharge the accused?

It cannot be denied that there was a report in writing of facts constituting an offence made by a police Officer before the learned Magistrate. Under Section 190(1)(b), Criminal Procedure Code the Magistrate was competent to take cognizance upon such report. Under Section 190(1)(b), the report need not be made by the police officer who is authorised to make investigation, but may be made by any police officer. The words 'by any police officer' used in Section 190(1)(b) are of wide import and include a police officer, even though he may have made the investigation in the case.

The question is whether such a report could be challenged on the ground that the investigation was made by a police officer into an offence which was committed outside the local area of his Police Station. Under Section 156(1) Cr. P. C. any officer in charge of a ponce station may, without the order of the 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 XV relating to the place of inquiry or trial. This sub-section empowers an officer in charge of the Police Station to make investigation in cognizable cases without the order of the Magistrate within the local area of his Police Station. Sub-section (2) says that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. This sub-section, therefore, lays down that if 'investigation has been made by an officer in-charge of the Police Station in contravention of subsection (1) of Section 156, Cr. P. C. then those proceedings will not be called in question at any stage on the ground that he was not empowered under this section to investigate.

In view of the provisions of Section 156(2) Cr. F. C., It was not open to the accused to question the investigation proceedings on the ground that the District Police Officer was not empowered to make investigation into an offence which was committed outside the local area of his Police Station. The learned Magistrate was not right in entertaining this objection and discharging the accused on this ground. The purpose of investigation is to ascertain facts, and to collect evidence. No question of prejudice to the accused arises when investigation has been made by an officer in charge of the Police Station even in contravention of provisions of

Sub-section (1) of Section 156 Cr. P. C. It is for this reason that under Sub-section (2) such proceedings cannot be called in question.

6. Learned counsel for the accused drew my attention to the observations of the Supreme Court in para (10) in H N. Rishbud v. State of Delhi, (S) AIR 1955 SC 196. in my opinion that case is quite distinguishable because pro-Visions of Section 156(2), Cr. P. C. were not applicable to that case as pointed out by their Lordships in para (8) of the judgment. In that case, there was a violation of mandatory provision of Section 4 of Act Mo. 59 of 1952 and it was in that context that it was pointed out In para (10) of the Judgment:

'When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an, individual case may call for.'

No useful purpose could have been served even if the learned Magistrate was justified in law in adopting such a course, that is, of ordering the investigation into this offence by Railway Police.

In cases of gambling at public places, the accused are arrested on the spot, a search is made then and there and it is only the examination of the witnesses in some cases that takes place subsequently. Asking the Railway Police to hold investigation into the offence again would, in my opinion, have been absolutely futile. Apart from the question of futility, it was not open to the accused to take such objection in view of the provisions of Section 156(2), Criminal Procedure Code. The learned Magistrate was, therefore, not right In discharging the accused on the ground that the investigation was made in contravention of provisions of Section 156(1), Cr. P. C.

7. There is yet another ground for holding that the impugned order is bad in law and that is that the learned Magistrate had taken cognizance of the offence and once that is done, he could only discharge the accused it he found that the charge against them was groundless, me learned Magistrate has not said in his order that

the charge against the accused is groundless. As stated earlier, there is an order of the Court dated 20th September 1960, about registering the case and directing the parties to bring evidence on the next date of hearing. Granting that the order passed on 20th September, I960, was merely by fixing of rubber stamp without the Magistrate having applied his mind to the facts of the case, but no such objection can be made with regard to the order dated 20th September, 1960.

It appears from this order that the learned Magistrate had in view the procedure prescribed under Section 251A of the Code of Criminal Procedure. He has noted in the order that the investigation papers have been supplied to the accused and arguments would be heard for framing charges. He also directed the accused to execute bonds for their appearance before him. A Magistrate can be said to have taken cognizance of the case under Section 190, Cr. P. C. when he applies his mind for the purpose of proceeding with the case. As observed by the Supreme Court in Narayandas Bhagwandas v. State of West Bengal, AIR 1959 SC 1118 that as to when the cognizance is taken of an offence will depend upon the facts and circumstances of each case.

8. In the present case, the learned Magistrate not only registered the case and called upon the party to bring evidence but he took further proceedings according to Section 251-A Cr. P. C., i.e., that he supplied copies of the investigation papers to the accused who were present in his Court on 22nd September, 1960, and adjourn-: ed the case for hearing arguments with regard to the framing of charges. He also bound them down for appearing in his court. These facts clearly indicate that the learned Magistrate had applied his mind to the facts of the case with a view to take further proceedings In it and thus took cognizance of the case. Having taken cognizance of the case, he was bound to proceed with the trial according to the procedure laid down in Section 251-A, Cr. P. C.

Two courses were open to the learned Magistrate which are provided in Sub-sections (2) and (3) of that section. If after hearing the prosecution and the accused, he considered that the charge against the accused to be groundless he could discharge them. On the other hand, if he was of opinion that there was ground for presuming that they had committed an offence which he was

competent to try and which could be adequately punished by him he should have framed charges against them.

The learned Magistrate did not adopt either course, On the other hand, he discharged the accused on the ground that the Investigation was held by an officer whocould not make investigation into the offences. That, in my opinion, did not afford a valid ground in law for discharging the accused. Such an objection was neither tenable in law in view of the provisions of Section 156(2) Cr. P. C. nor could the accused be discharged after cognizance of the offence had been taken by the learned Magistrate on a report of the police officer. The order of discharge passed by the learned Magistrate cannot, therefore, be sustained and is set aside,

9. This revision is, therefore, allowed, order of the learned Magistrate dated 16th November, 1960, is set aside and the case is sent back to him for taking further proceedings in accordance with law.

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