

Nathu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-20-1994

Reported in : 1996CriLJ919; 1994(2)WLN440

Judge : N.L. Tibrewal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154, 156, 156(1), 156(3), 173, 190, 190(1), 192, 200, 202, 202(1) and 482; Indian Penal Code (IPC) - Sections 406 and 420

Appeal No. : Criminal Misc. Petn. No. 1560 of 1993

Appellant : Nathu

Respondent : State of Rajasthan

Advocate for Def. : K.A. Khan, P.P. and; N.C. Goyal, Adv. for Non-Petitioner No. 2

Advocate for Pet/Ap. : Narendra Jain, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.L. Tibrewal, J.

1. Two short, but, important questions of law are involved in this petition. The questions are:

(i) When Magistrate can be said to have taken the cognizance ?

(ii) Whether after taking cognizance of a cognizable offence, the power under Section 156 (3), Cr. P. C. can be invoked by the Magistrate. In other words, at what stage a complaint can be forwarded to the concerned police station for an investigation in exercise of powers under Section 156(3) ?

2. The above questions have arisen in the following circumstances :

Non-petitioner No. 2 herein, made a complaint on July 14, 1993 before the Court of Additional Munsiff and Judicial Magistrate, No. 6, Jaipur City against the petitioner and other co-accused persons alleging that the petitioner and other accused-persons came to his shop to purchase a tractor was sold to them after demonstration and trial and delivery was handed over on the assurance that the price shall be paid on the sanction of the loan from Aravali Land Development Bank, where they have applied for grant of loan. According to the complainant right from (he very beginning, the accused had no intention to pay the price of the tractor and on a false representation they deceived him and as such committed offences under Sections 406 and 420 I.P.C.

3. On receipt of the complaint, the learned Magistrate obtained a report from the office. The office reported on 15-7-93 that the complaint was triable and was within territorial jurisdiction of the Court. Thereafter, the learned Magistrate passed the following order:

(English Translation)

'15-7-93 - Complainant along with his counsel present. Office report perused. The complaint is of the jurisdiction of the Court. It may be registered for recording the statement of the complainant. The case be listed on 29-7-93.

Sd/

Additional Munsiff &

Judicial Magistrate. No. 6. Jaipur City'

4. Thereafter, on 29-7-93 the learned Magistrate forwarded the complaint to the SHO Police Station Adarsh Nagar Jaipur under Section 156 (3), Cr. P. C. for investigation. After receipt of the complaint, Crime FIR No. 160/93 has been registered at police station Adarsh Nagar, Jaipur for offences under Sections 406 and 420, I.P.C.

5. The petitioner has moved this Court by a petition under Section 482 Cr. P. C of the Criminal PC 1973 (hereinafter referred to as 'the Code') praying that the order passed by the Magistrate forwarding the complaint to the police under Section 156(3), Cr. P. C. be quashed, as it was illegal and without jurisdiction.

6. Mr. Narendra Jain, the learned counsel appearing for the petitioner, contended that the learned Magistrate did not properly appreciate the relevant provisions of the Code. According to the counsel, the Magistrate had taken cognizance in the matter on 15-7-93 when the complaint was registered after perusal and next date was fixed for recording the evidence of the complainant. It was also contended by the learned counsel that the power under Section 156(3), Cr. P. C. could be exercised only before the cognizance was taken and not thereafter, as such, the learned Magistrate acted without jurisdiction in forwarding the complaint to the police for investigation. It was also submitted that powers conferred on the Magistrate under Section 156(3) of the Code are independent of his power to send the case for investigation under Section 202 of the Code and that the power under Section 156(3), Cr. P. C. can be involved at a stage when the Magistrate has not taken cognizance of the case, while Section 202 Cr. P. C. comes into operation after the Magistrate starts dealing with the complaint in accordance with the provisions of Chapter-XV.

7. Section 156(3) of the Code reads as under:-

'156 (3). Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.'

8. Sections 200 and 202 of the Code are also reproduced, for the sake of convenience, hereunder:-

'200. Examination of complainant- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made, the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."202- Postponement of issue of process-

(1) Any Magistrate, on, receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an 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 :

Provided that no such direction for investigation shall be made:

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under Sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses, on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under Sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant.'

Section 190 of the Code states 'Cognizance of offence by Magistrate'. This section, so far as it is material for our purpose, provides as under:

' 190. Cognizance of offences by Magistrate (1) Subject to the provisions of this Chapter any Magistrate of the first class, any Magistrate of the second class specially empowered in this behalf under subsection (2), may 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;'

9. There is no dispute that when a Magistrate receives a complaint, he is not bound to take cognizance, even if the facts alleged in the complaint, disclosed the commission of an offence. The words 'may take cognizance' gives a discretion to the Magistrate in the matter. Two options are open to him. The first option that, he may forward the complaint under Section 156(3), Cr. P. C, if on a reading of the complaint, he finds that the allegations disclosed a cognizable offence and forwarding of the complaint to the police for investigation will be conducive to justice and save valuable time of the Court. The second option is that he himself takes cognizance and proceeds with the matter.

10. This raises an important question, 'what is meant by taking cognizance of an offence' by a Magistrate within the contemplation of Section 190. The expression 'taking cognizance of an offence' has not been defined in the Code. The ways, in which, such cognizance can be taken are set out in Clauses (a), (b) and (c) of Section 190(1), Cr. P. C. Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode, in which, the case is instituted and the nature of the preliminary action, if any taken by the Magistrate. The Magistrate can be said to have taken cognizance on a complaint, when on receiving a complaint, he applies his mind for the purpose of proceeding under Section 200 and succeeding Sections in Chapter XV of the Code of 1973. If instead of proceeding under Chapter XV, he exercises his discretion, otherwise ordering investigation by the police under Section 156(3), Cr. P. C. he cannot be said to have taken cognizance of any offence.

11. In other words, if the Magistrate, applies his mind and orders to proceed under Sections 200 and 202, Cr. P. C. he can be said to have taken cognizance. In *Nirmaljit Singh Hoon v. State of West Bengal*, : [1973]2SCR66 and *D.L. Reddy v. Narayan Reddy*, : 1976 CriLJ1361, the proposition of law has been explained as stated above. Chapter XII of the Code provides 'information to the police and their power to investigate'. Section 154 provides registration of a case by the police on receiving information relating to the commission of a cognizable offence, which is popularly known as 'first information report.' Then, Section 156 empowers police officers to investigate cognizable case under Section 156 are independent and not subject to any order of a Magistrate. Sub-section (3) provides that 'any Magistrate empowered under Section 190, may order any such investigation as mentioned above' i.e. mentioned under Sub-section (1) of Section 156, Cr. P. C. This power under Sub-section (3) can be exercised by the Magistrate before taking cognizance under Section 190 of the Code and instead of taking cognizance he may direct an investigation or re-investigation under Sub-section (3) of Section 156, Cr. P. C. Section 202 is contained in Chapter XII under caption 'Complaints to Magistrate'. The power to order investigation under Section 156 (3) is different from the power to direct investigation, conferred by Section 202(1) of the Code. Both operate in distinct spheres and at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the

Magistrate is seized of the case. In other words, in case of a complaint of a cognizable offence, the power under Section 156(3) can be utilised by the Magistrate before he takes cognizance of the offence under Section 190(1) (a), but if he once takes such cognizance and embarks upon the procedure embodied under Chapter XV, he is not, competent to switch back to the pre-cognizance stage forwarding the case under Section 156(3). As stated earlier, the powers of investigation of the police under Section 156(1) are independent, an order of a Magistrate under Sub-section (3) is only a reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1), Cr. P. C. Such investigation embraces the entire continuous process, which begins with the collection of evidence under Section 156(3) and ends a report or chargesheet under Section 173. On the other hand, Section 202 comes in operation at a stage when some evidence has been collected in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. The object of an investigation under Section 202 is not to initiate a fresh case on a report, but to assist the Magistrate in a case already instituted upon a complaint before him.

12. In the background of the proposition of law as aforesaid, the question for determination is whether the order of the Magistrate forwarding the complaint under Section 156(3), Cr. P. C. is sustainable. The answer depends on the solution of a further question - whether the Magistrate had taken cognizance prior to passing an order under Sub-section (3) of Section 156, Cr. P. C.? If the answer is in the affirmative, i.e. the order forwarding the complaint is passed after taking cognizance, the same is not sustainable in law. If the order, forwarding the complaint, is passed before taking cognizance it is within the competence of the Magistrate under Sub-section (3) of Section 156, Cr. P. C. In the instant case, I have no doubt in my mind that the Magistrate had taken cognizance on 15-7-1993 when he registered the case after going through the complaint and passed an order to proceed under Section 200, Cr. P. C. to record the statement of the complainant. In that situation, the Magistrate has no jurisdiction to forward the complaint exercising powers of Sub-section (3) of Section 156, Cr. P. C. and the said order is not sustainable in the eye of law.

13. Consequently, the criminal petition is allowed. The impugned order forwarding the complaint under Section 156 (3), Cr. P. C. to Police Station Adarsh Nagar, Jaipur for investigation is set aside. The consequential registration of Crime/FIR No. 160/93 by the Station House Officer, Police Station, Adarsh Nagar, Jaipur on the aforesaid complaint is also quashed. The learned Magistrate is directed to proceed with the complaint in accordance with the provisions contained in Chapter XV of the Code of Criminal Procedure.

14. A copy of this order be sent to the concerned Magistrate, as well as, the Station House Officer, Police Station, Adarsh Nagar, Jaipur for doing the needful.

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