

Panney Singh and anr. Vs. State and anr.

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Court : Rajasthan

Decided On : May-04-1999

Reported in : 1999WLC(Raj)UC759; 1999(1)WLN621

Judge : G.L. Gupta, J.

Appeal No. : S.B. Cr. Misc. Petition No. 75 of 1999

Appellant : Panney Singh and anr.

Respondent : State and anr.

Judgement :

G.L. Gupta, J.

1. This petition under Section 482 Cr.P.C. is directed against the order dt. 12.11.1998 passed by the learned Additional Chief Judicial Magistrate, Balotra whereby, refusing to accept the Final Report, he ordered that the investigation be conducted by the C.I.D. (C.B.).

2. Mr. Headu, learned Counsel for the accused-petitioners contended that the Magistrate had no power to direct the police for investigation by a particular agency. Relying on the case of Tula Ram v. Kishore Singh 1977 SC-2401 he urged that the Magistrate on perusal of Final Report could issue the process against the accused but he had no power to direct further investigation by a

particular police agency.

3. Mr. Kumbhat, learned Counsel for the complainant-respondent tried to support the order of the Magistrate. He pointed out that there are serious allegations against the petitioner but the local police did not investigate the matter properly, and therefore, the magistrate was justified in passing the impugned order.

4. Learned P.P. submitted that though the Magistrate should not have given direction for investigation by a particular agency, yet this Court may pass appropriate order keeping in view the allegations against the petitioner.

5. The relevant facts of the case are these: A complaint was filed by Om Prakash, member of the Khadi Industrial Producers Cooperative Society, Balotra alleging that Panney Singh, Manager of the Society and one Chokha Ram had committed embezzlement of Rs. 7500. This complaint was forwarded by the Magistrate Under Section 156(3) Cr.P.C. to the Police Station, Balotra, where C.R. No. 56/97 was registered. The police after investigation gave Final Report. The complainant filed protest petition. The learned Magistrate having gone through the police papers, directed investigation into the matter by the Dy. S.P. The police on investigation again submitted Final Report. Thereupon, the learned Magistrate by the impugned order directed further investigation by C.I.D. (C.B.).

6. The police investigates a case of cognizable nature under Chapter XII of the Code, on the completion of the investigation, the police files a report Under Section 173 Cr.P.C. If on investigation the police comes to the conclusion that no offence was committed, it files negative report which commonly known as Final Report. On the consideration of the police report, the Magistrate may adopt any of three courses. First, he may take cognizance of the offence and issue process against the accused. Second, he may accept the Final Report as such. Third, he may direct further investigation in the matter if he finds that the investigation was not properly done.

7. In the instant case, the Magistrate adopted the third course. It cannot be said that the Magistrate has committed any illegality when he directed re-investigation of the case. It is not material that the Magistrate had earlier also directed re-

investigation. The Magistrate in exercise of power Under Section 156(3) Cr.P.C. may direct investigation more than once. Therefore, the impugned order cannot be set aside on the mere ground that the Magistrate had earlier also directed further investigation by the Dy. S.P.

8. In the case relied on by the learned Counsel by the petitioner, this matter has not been considered by the Apex Court as to whether the Magistrate may direct further investigation when the police files Final Report. This point was considered by the Apex Court in the case of Abhinandan Jha v. Dinesh Mishra 1968 SC 117 wherein it was clearly held that in cases where a Final Report is submitted by the police the Magistrate may make an order for further investigation. The order of investigation is given by a Magistrate Under Section 156(3) Cr.P.C. There is nothing in Section 156(3) Cr.P.C. to hold that order for further or re- investigation cannot be given more than once.

9. In the instant case the Magistrate has not acted upon the protest petition. He did not treat the protest petition as the complaint and did not proceed to hold inquiry under Chapter XV of the Code. Instead he directed further investigation. It is obvious that the direction of further investigation has not been made after taking cognizance of the offence Under Section 190 Cr.P.C. There is, thus, absolutely no illegality in the order passed by the learned Magistrate directing further investigation.

10. However, it has to be accepted that the Magistrate should not have directed the police for investigation by a particular agency. It is the statutory duty of the police to conduct investigation of a case faithfully. Ordinarily, the Magistrate should not distrust the police officers investigating a case. In case the Magistrate notices that the investigation is not being particularly done, he may bring this fact to the notice of the Supdt. of Police. It is not proper on the part of the Magistrate to direct investigation by this or that agency. However, it is obvious, in the instant case, the State did not feel aggrieved by the order directing investigation by the C.I.D. (C.B.) and has not challenged the order by filing misc. petition.

11. The question to be considered is whether the order passed by the Magistrate to transfer the case to the C.I.D. (C.B.) should be set aside. It seems that the

learned Magistrate noticed that the Dy. S.P. who had conducted the further investigation also did not investigate properly, hence he directed the investigation by the C.I.D. (C.B.). It is no denying the fact that the investigation is likely to be more effective and quick if it is conducted by the C.I.D. (C.B.) The allegations against the petitioner are that he had committed embezzlement of huge sum by making false entries. A thorough investigation is required in the mater.

12. Consequently, it is directed that the order of the learned Magistrate for investigation by C.I.D. (C.B.) may be treated as directory and not mandatory. It is for the Supdt. of Police of the district to consider as to by whom effective and proper investigation can be conducted. If the Supdt. of Police thinks that the effective and proper investigation is possible by the C.I.D. (C.B.) he may take steps for transferring the investigation to C.I.D. (C.B.).

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