

Sunil Majhi Vs. the State

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Court : Kolkata

Decided On : Jan-24-1967

Reported in : AIR1968Cal238,1968CriLJ618

Judge : T.P. Mukherjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 200 and 202

Appeal No. : Criminal Revn. No. 963 of 1965

Appellant : Sunil Majhi

Respondent : The State

Advocate for Def. : Bimal Chandra Chatterjee, Adv.

Advocate for Pet/Ap. : N.C. Banerjee and ;Arun Kumar Mukherjee, Adv.

Judgement :

ORDER

T.P. Mukherjee, J.

1. This Rule directed against the conviction of the petitioner under Section 323/294 I.P.C. Involves an interesting legal point revolving round the question of the status of Naraji petition in law and the duty of the court in relation thereto.

2. One Kasinath Saha filed before the Magistrate a complaint against the petitioner making allegation of offence? under Sections 325/355, T.P.C. The Magistrate after examining the complainant under Section 200 sent the complaint to the local Anchal Prodhan for enquiry and report The enquiring officer duly submitted his report and the complainant apprehending an adverse report filed a petition before the Magistrate making certain allegations against the enquiring officer and praying for a judicial enquiry. The learned Magistrate on a consideration of the report and the petition above, which he took to be a naraji, directed a judicial enquiry as prayed for. On the basis of the report of that enquiry, the petitioner was summoned and tried and convicted and sentenced to pay a fine of Rs. 25/- each under Sections 323/294 I. P. C. In default to suffer rigorous imprisonment for two weeks on each count.

3. Mr. Banerji appearing in support of the Rule argued that more than one enquiry in connection with a complaint is not contemplated by Section 202 Cr. P Code and that its beyond the Magistrate's jurisdiction to direct successive enquiries on the same complaint through different agencies. The naraji petition filed in the case should, according to Mr. Banerjee have been treated as a petition of complaint and the complainant should have been examined that complaint under Section 200 Cr. P. C. and thereafter it was open to the Magistrate to direct a Judicial enquiry as he has done and that is the procedure with the seal of judicial approval in a long chain of decisions which, it was urged, is required to be followed such cases. Reference was made in this connection to the cases Lachmi Shaw v. Emperor : AIR1932 Cal383 , Satkari Ghose v. Ramlak-shman Dutta : AIR1947 Cal439 , Akshoy Kumar v Jogesh Chandra. : AIR1956 Cal76 , and Sushil Kumar v. Banka Mahto : AIR1957 Cal393 .

4. Two questions are involved in the argument advanced by Mr. Banerji and they are (1) whether more than one enquiry is contemplated in Section 202 Cr. P. C. and (2) whether every naraji petition filed against the report of an enquiring officer is required to be treated as a petition of complaint.

5. Taking the second point first. We may start with the fact that naraji petitions are unknown to the Cr. P. Code and the Code contains no provision for filing of naraji

petitions in circumstances where they are filed. A[^] was- observed by Chakravarti, C.J. In : AIR1956 Cal76 (supra).

'.....Section 202 does not contain any express provision that such petitions can be filed but they are always filed and entertain presumably on the basis that since the magistrate has taken cognisance upon examination of the complainant on oath, he is in seisin of the case and an application to a court which is in seision of a case can always be done.'

Naraji petitions though not sanctioned by the Code have the sanction of a long standing practice and the imprimature of judicial approval. I may mention in this connection that the Criminal Procedure Code is not exhaustive and anything not prohibited by the Code would be permissible if it is not in conflict with any provision therein and if it is thought conducive to justice any argument thus that naraji petitions are not contemplated by the Code and cannot thus have any legal existence is no argument against the same being entertained.

6. The term naraji means 'disapproval' and in the context of things it signifies disapproval of the report in relation to which it is filed. It may simply challenge the report on grounds stated and pray for its rejection: it may while praying for rejection of the report also reiterate the allegations made in the petition of complaint and pray for further action by the court and in that view of the matter it would be a fresh complaint. In the case Jamini Kanta v Bhabanath. ATR 1939 Cal 273. It was observed:

'The word 'naraji' is often loosely used and it is necessary to examine the petition which is filed in a particular case 'to determine its true import. In that case on an examination of the petition it was found that it was not a complaint. The reports of the cases cited by Mr. Banerji do not contain any discussion about the nature of the statements made in the naraji petitions in those cases, but from the fact that the naraji petitions were treated as complaints it would appear that they did satisfy the requirements of a complaint as defined in Section 4(h) of the Code in order to be a complaint the petition must contain allegations of an offence and also a prayer for judicial action thereon. If. therefore, the protest petition filed against an enquiry report filed or to be filed, while lodeine a protest recites also the

allegations already made and prays for action of the court thereon there is no difficulty in treating it as a complaint and taking action thereon under Sections 202, 203 or 204 Cr P Code in the cases of Lachmi Shaw : AIR1932 Cal383 and Satkari Ghose. : AIR1947 Cal439 there were complaints to the police which were found on investigation to be false and the police submitted final reports and at the same time prayed for prosecuting the complainant under Section 211 I.P.C. Naraji petitions were filed against the police reports but prosecutions were launched without considering them and it was held that the procedure followed was irregular and that the naraji petitions should be treated as complaints and treated and disposed of as such before the prayer for prosecuting the complainant could be entertained.

7. In the cases of Akshoy Kumar. : AIR1956 Cal76 (Supra) and Sushil Kumar : AIR1957 Cal393 (supra) complaints received by the magistrate and sent to the police for investigation under Section 156(3) Cr. P Code ended in final reports against which naraji petitions were filed and judicial enquires were ordered. It was held that the narajis should have been treated as complaints and the complainant should have been examined under Section 200 Cr P Code and that not having been done, all that followed the order for judicial enquiry was irregular and was quashed as such Obviously, in these cases, the naraji did satisfy the requirements of a complaint, whereon fresh cognizance could be taken on examination of the complainant after dismissing the first complaint under Section 203 Cr P Code.

8. What happens however if the naraji does not contain allegations of any offence and is simply a protest petition whereby the report of the enquiring officer is challenged? it is true that when the enquiry report under Section 202 Cr P Code comes in for consideration by the Magistrate the complainant does not come into the picture and the matter is one entirely between the Magistrate and the enquiring officer but should on that ground alone the protest petition be ignored and summarily rejected? WE may well conceive of a case where the complainant before or after the enquiry report is received by the Magistrate files an affidavit making allegations against the enquiring officer or the manner in which the enquiry was conducted which should induce any court not to accept the report; and can it still be said that because naraji petitions are not contemplated by the Code and

because under the Code the complainant has no locus standi at that stage, the Magistrate must reject the naraji and consider the report on its own merits? That would be making a mockery of the enquiry Undoubtedly the court would be within its jurisdiction to take note of the contents of the affidavit and take action thereon in the interest of justice and in that case a second enquiry through any other agency as contemplated in Section 202 of the Code would be in order I am testing the legal position with reference to an extreme case of a protest on affidavit but the question really is one of the Magistrate's satisfaction that the enquiry ordered was properly conducted and the manner in which a doubt may be instilled in his mind is a matter of form and cannot be circumscribed or limited. Section 202 of the Code speaks of postponement of the issue of process for the purpose of ascertaining the truth or falsehood of the complaint and on principle when in search of truth, the action contemplated by the section cannot be restricted to one enquiry if the result thereof be found unsatisfactory. The section itself says nothing which can be construed as limiting its scope to only one enquiry. This seems to be the logical answer to the first point raised in the discussion and that is whether more than one enquiry is contemplated in Section 202 at the Code.

9. In support of his argument that more than one enquiry is not permissible under section 202 Cr. P. C., Mr. Banerjee refers to an unreported Bench decision of this Court in Criminal Revn. 157 of 1961 (Cal). *Netai Chandra Sen v. J. B. Ghose*, decided on 2-5-1961. In that case an accused in a police case complained to the magistrate orally of assault and grievous hurt caused by some police personnel and the magistrate after obtaining a report from an Assistant Commissioner of Police from whom a report on the verbal complaint was called for, directed a judicial enquiry by another magistrate. The enquiring magistrate submitted a report recommending process and the magistrate who had taken cognizance of the offence alleged, heard lawyers of both parties and directed a further enquiry by the same magistrate who was also asked to consider certain materials specified by him in the order. The enquiring magistrate held a further enquiry as directed examining in course thereof certain persons who were witnesses in the case started against the complainant and looking into the records of that case he submitted a report recommending dismissal of the complaint under Section 203 of the Code and the magistrate who had taken cognizance of the offence, on receipt

of the report did dismiss the complaint under Section 203. It is the propriety of the order directing the further enquiry as also the manner of that enquiry which was canvassed in the case. It was held that the order was illegal being without jurisdiction as Section 202 of the Code prohibits a second enquiry.

10. In the above case, the legal aspect of a naraji was not required to be considered. What fell for consideration was the legality of the further enquiry and the manner of that enquiry in the case. It was certainly not the intention of their Lordships in that case to hold that even if the report of the enquiry ordered by a magistrate be perfunctory or unsatisfactory and unhelpful, even then he will have no right to direct a further or a fresh enquiry by some other agency. What they deprecated was successive enquiries till a report acceptable to the magistrate is obtained. That is exactly what had happened in that case and the finding in that case must be considered in the background of the facts of that case.

11. The further enquiry in the above case is also hit by the principle behind Section 202 of the Code as enunciated by the Supreme Court in the case Chandra Deo Singh T. Prokash Chandra : [1964]1SCR639 . What the enquiry is directed to find out is whether there is sufficient ground for proceeding to a trial and not whether there is sufficient ground for a conviction in the case. The enquiring magistrate is not permitted in such an enquiry to examine at the instance of the defence, as was apparently done in the above case, witnesses who will disprove the complainant's allegations. That is what was done in the unreported Division Bench case referred to above and the report of the further enquiry was in any event liable to be rejected. I should not be justified in accepting the decision in that case. Mr. M. Laxmiah laying down a general principle that Section 202 of the Code does not permit more than one enquiry. Das J., in the case Manohardas Babaji v. Khandu Dutta : AIR1966 Cal633 also has on an examination of the decision come to the same conclusion.

12. Mr. Banerjee next argued that a naraji can be filed only in police cases started on a first information report and never in complaint cases and this argument is advanced on an examination of Section 203 of the Code according to which the complainant does not come into the picture at all at the time the magistrate is called upon to consider the report of an enquiry held under Section 202. I have

dealt with this aspect of the matter. It is true that the complainant has no right to intervene at that stage but that need not prevent the magistrate from taking note of the statements made in a petition which may nevertheless be filed. I have pointed out how even without the intervention of the complainant nothing need prevent the magistrate from directing a fresh enquiry if the report submitted be found unsatisfactory, unhelpful or perfunctory. I am not convinced by the argument that naraji can have no place in complaint cases.

13. In the present case, before the report of the enquiry was received, the complainant filed a naraji making allegations against the enquiring officer as also against the manner of the enquiry and stating that he apprehended an adverse report, prayed for a judicial enquiry it is on that petition that the magistrate after considering the report directed a judicial enquiry.

The naraji filed could not be treated M a complaint and there was no question of examining the complainant thereon and taking fresh cognizance of any offence. It was pure and simple a protest petition whereom the magistrate took action and directed another enquiry in view of what I have stated above, I find nothing wrong or illegal in the procedure that was followed.

14. The position thus is that a naraji filed against the report of an enquiry under Section 202 Cr. P. Code if it satisfies the requirements of a 'complaint' as defined in section 4(h) of the Code may after dismissal of the petition of complaint, be treated as a fresh complaint and disposed of as such after the magistrate has taken cognizance of the offence under Section 200. Similarly, a naraji against a final report submitted in a case investigated by the police on a first information report should be treated as a complaint, if the same satisfies its requirement in law. In the case of a naraji filed in a complaint case, which may be treated as a second petition of complaint, the same must however be maintainable as such under the law as laid down in that regard by the Supreme Court in the case of *Pramathanath v. Saroj Ranjan* : AIR 1962 SC876 . As a simple protest petition against a report under Section 202 of the Code, the naraji can never be a complaint and it has to be dealt with by the magistrate on its own merits while considering the enquiry report and if the report be unacceptable either in view of

the statements and allegations in the narali or for any other reason nothing in Section 202 of the Code would stand in the way of the magistrate directing a further enquiry or a fresh enquiry by any other agency for the purpose of satisfying himself as to whether process should issue in the case. A simple protest petition against a final report submitted by the police is of no avail, the proper course to be taken by the petitioner being to file a naraji stating the facts of the case and praying for action by the Court so that the same may be treated as a complaint and disposed of as such.

15. The ground pressed at the hearing having failed, the Rule stands discharged.

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