

Subal Mondal Alias Bapi Mondal and ors. Vs. State and anr.

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Court : Kolkata

Decided On : Jul-03-2000

Reported in : (2001)2CALLT438(HC)

Judge : Basudeva Panigrahi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2(0), 190(1), 192, 192(1), 202, 202(1), 397, 401 and 482;; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 420

Appeal No. : C.R.R. No. 2522A of 1999

Appellant : Subal Mondal Alias Bapi Mondal and ors.

Respondent : State and anr.

Advocate for Def. : Mr. Milan Mukherjee and ;Mr. Sanjay Pal, Advs.

Advocate for Pet/Ap. : Mr. A.K. Dutta, Adv.

Disposition : Application dismissed

Judgement :

B. Panigrahi. J.

1. This is an application under section 482 of the Code of Criminal Procedure for quashing the criminal case being No. C-3073/ 98 corresponding to T.R. No. 296 of

98 under sections 406/420 of the Indian Penal Code pending in the Court of the Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

2. The factual matrix of the prosecution case is as follows:

The opposite party No. 2 is an employee of M/s. Homendia Constructions Private Limited having its registered office at 49A, Ramdulal Sarkar Street, Calcutta. On 11th September, 1998 the opposite party No. 2 lodged a complaint before the learned Chief Judicial Magistrate, Alipore and the learned Magistrate was pleased to take cognizance under section 190(1)(a) of the Criminal Procedure Code and transferred the case to the Court of the learned Additional Chief Judicial Magistrate, Alipore and for enquiry and trial under section 192(1) of the Criminal Procedure Code, 1973. After the case was transferred to the learned Additional Chief Judicial Magistrate, he directed the opposite party No. 2 to appear in Court along with his witnesses. On 11.9.98 the learned Additional Chief Judicial Magistrate, Alipore recorded the statement of the opposite party No. 1 alone, but he did not record any other witness of the prosecution and directed the Officer-in-Charge, Tiljala Police Station for further investigation under section 202 of the Criminal Procedure.

3. Upon receipt of such direction, the Officer-in-Charge, Tiljala Police Station entrusted the matter to one of the sub-Inspectors of Tiljala Police Station for enquiry and investigation and the said sub-Inspector, after causing an enquiry and investigation into the case, submitted a report to the Officer-in-charge, who sent it to the learned Additional Chief Judicial Magistrate. Upon receipt of such enquiry report from the Officer-in-Charge, Tiljala, the learned Additional Chief Judicial Magistrate after taking cognizance issued process to the petitioners. Therefore, being aggrieved by such order of the learned Additional Chief Judicial Magistrate, the petitioners have preferred this revision.

4. Mr. Roy, learned advocate appearing for the petitioners has strongly contended that since the learned Additional Chief Judicial Magistrate had sent the case for further investigation and enquiry to the officer-in-charge, Tiljala Police Station, he was legally incompetent to entrust the matter to any of the subordinate staff including sub-Inspector to cause an enquiry and submit report. Therefore, such

report being held by one of the sub-Inspectors working under him is illegal and the learned Additional Chief Judicial Magistrate could not have taken cognizance on the basis of such report. Therefore, the order of taking cognizance appears to be illegal vis-a-vis it has to be struck down by invoking inherent power of this Court. In support of his contention he has relied upon a Judgment passed by D.P. Sengupta J of this Court reported in 1999(2) CLJ page 86 in the case of Krishna Ch. Paul v. Md. Nantu Sk., wherein It has held that:

'unless the complainant and the witnesses present are duly examined on enquiry and report under section 202(1) cannot be called for and it is done the same would be without Jurisdiction and cannot form the basis of further action. An omission to comply with the provision of the proviso (b) to sub-section (1) of section 202 of Cr. PC amounts to serious illegality'.

5. Mr. Mukherjee, learned advocate appearing for the defacto complainant has submitted that under section 202 of Cr. PC It has not been enjoined upon the Officer-in-charge of a particular police station to hold enquiry. What all section speaks, is that such investigation of enquiry is to be conducted by the police. In this case, the learned Additional Chief Judicial Magistrate since sent the matter to the Officer-in-Charge of Tiljala Police Station being the head of the said police station, that by Itself does not constitute that such direction is only Issued to the Officer-in-charge, but not to any other officer. It has been further submitted that the Officer-in-charge of Tiljala Police Station includes Sub-Inspector and the Assistant Sub-Inspector as enumerated in section 2(o) of Cr. PC. Therefore, in this case, since the investigation was being carried out by one of the Sub-Inspectors under the direction of the Officer-in-charge, it cannot be said that such investigation was irregular and illegal.

6. While examining the rival contention of the learned advocates appearing for the parties, I carefully have gone through the definition of the Officer-in-charge stated in section 2(o) of the Code of Criminal Procedure which reads as follows:

2(o). '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

7. On careful reading of section 2(o) it appears that in the absence of Officer-in-charge of Police Station any other Officer next in the rank is present at the station-house and he shall act in such capacity, who should be above the rank of constable. Therefore, in this case, the investigation or enquiry was caused by one Sub-Inspector of police station under the direction of the Officer-in-charge.

8. The learned Additional Chief Judicial Magistrate directed to cause an enquiry under section 202 of the Code of Criminal Procedure. Section 202(1) is quoted hereunder:

'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.'

9. Therefore, the learned Magistrate is competent to direct an investigation to be made by the Officer-in-Charge or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. It does not, however, speak that such investigation should be done alone by the Officer-in-Charge. Such investigation or enquiry is to be done by a police officer under the order of the Magistrate. In this case, the learned Additional Chief Judicial Magistrate directed the Officer-in-charge for an enquiry not be himself, but he can do it by one of his subordinate officers. Since he is the head of the police station, such letter must be addressed to the Officer-in-Charge, but not to any other subordinate police officer. Accordingly, the letter was addressed to the Officer-in-Charge for compliance. It has not been stated that it is to be done by the Officer-in-Charge alone. Accordingly, I do not find any irregularity or illegality if such investigation was carried out by one of his subordinate officer working as Sub-Inspector in the said Police Station. I have carefully gone through the judgment reported in (1999)2 CLJ page 86. I find that the principle decided in that

case is not applicable in this case. No other point has been canvassed by the learned advocate in this case.

Therefore, in the above situation, I do not find any merit to Interfere with the order of taking cognizance against the petitioner and accordingly, the application is dismissed but without costs.

10. Application dismissed

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