

Dilip Kumar Roy Vs. the State and anr.

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Court : Kolkata

Decided On : Jul-05-1994

Reported in : 1994CriLJ3489

Judge : N.K. Bhattacharyya, J.

Acts : West Bengal Code of Criminal Procedure (CrPC) (Amendment) Act, 1988; ;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 173, 173(2), 173(8),
187(5), 190(1) and 482; ;Indian Penal Code (IPC) - Sections 120B, 409 and 420; ;
[Constitution of India](#) - Articles 13, 14, 19 and 21

Appeal No. : Criminal Revn. Nos. 1971 and 2139 of 1991

Appellant : Dilip Kumar Roy

Respondent : The State and anr.

Advocate for Def. : Manash Ranjan Chakraborty, Adv.

Advocate for Pet/Ap. : Subrata Bose, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

N.K. Bhattacharyya, J.

1. In Criminal Revision No. 1971 the accused petitioner Sri Dilip Kumar Roy prayed for quashing of the proceeding in GR Case No. 134 of 1985 pending in the Court of Sub-Divisional Judicial Magistrate, Purulia arising out of Santaldih P.S. Case No. 8 dated 27th January, 1985 under Sections 420/409/120B of the Indian Penal Code.

2. In Criminal Case No. 2139 the said petitioner prayed for setting aside order dated 12-8-88 passed in the said case as aforementioned by the S.D.J.M., Purulia.

3. This Court by its order dated 4-12-1992 in Criminal Revision No. 2139 directed that the Criminal Revision Case No. 2139 of 1991 to be heard along with Criminal Case No. 1971 of 1991. Accordingly, both the cases are taken up together and disposed of by this judgment.

4. In both the cases the facts are the same and it involves the same question of law.

5. The accused petitioner was the General Superintendent and Chief Engineer of Santaldih Thermal Power Station during the relevant time. The Secretary, West Bengal State Electricity Board, Calcutta, filed a complaint to the Deputy Inspector General of Police, Criminal Investigation Department, West Bengal, Bhabani Bhaban, Alipore, for irregularity in purchase/works of contract at Santaldih Thermal Power Station and the Deputy Inspector General of Police, Criminal Investigation Department, forwarded the same to the Officer-in-Charge, Santaldih Police Station for registering a case. On that First Information Report Santaldih P.S. Case No. 8 dated 27th January, 1985 was started against the petitioner and others under section 420/409/120B of the Indian Penal Code and investigation was entrusted to the officer on duty of the said Police Station. In that F.I.R. the present petitioner figured as accused No. 2 along with 7 other accused persons. AGR Case was registered, being GR Case No. 134 of 1985, in the Court of Sub-Divisional Judicial Magistrate, Purulia. The allegation, inter alia, made against the petitioner was that he initiated certain orders and placed them on some firm without observing the formalities for tender or without taking any sanction from higher authorities and the order was placed at a rate much higher than the ordinary rate. It has further been alleged that the materials supplied are inferior in quality and in that process along

with others the petitioner misappropriated the public fund.

6. After completion of the investigation the Investigating Officer submitted report in the final form wherein he opined that the allegations are in the nature of departmental irregularities and does not invite criminal prosecution.

7. The petitioner was on anticipatory bail all along.

8. The final report was submitted on 10-6-88 before the S.D.J.M., Purulia and the learned Sub-Divisional Judicial Magistrate ordered issuance of notice upon the defacto complainant and also called for the case diary. On 19-7-88 the record was put up before the S.D.J.M., Purulia upon an application by the defacto complainant expressing dissatisfaction with the investigation. On 12-8-88 the learned S.D.J.M. upon perusal of the CD. and after hearing the learned A.P.P. held that there is sufficient scope for further investigation of the case and directed further investigation by another investigating machinery. He did not accept the report in final form and directed the S.P. Purulia to investigate the case further through a competent Police Officer not below the rank of Inspector of Police to be selected by him. In passing such order the learned S.D.J.M. observed as follows :-

It further appears from the petition of the defacto complainant represented by Account Officer (Vigilance) Santaldih Thermal Power Project that valuable documents which are lying in their custody have not been seized and vericied (sic) (verified - supplied) by the I.O. and those documents are very much relevant for the purpose of investigation.

9. Thereafter the petitioner moved the revisional application being Criminal Revision No. 1971 of 1991 for quashing of. the entire proceeding in QR Case No. 134 of 1985 arising out of Santaldih P.S. Case No. 8 dated 27th January, 1985 under section 420/409/120B of the Indian Penal Code. As there was no prayer in that revision for setting aside order dated 12th August, 1988 a subsequent petition has been filed on the same fact with the prayer for setting aside the order passed by the learned S.D.J.M., Purulia dated 12-8-1988 passed in GR Case No. 134 of 1985.

10. It will be apposite at this stage to point out that till 7-3-1991 no report has been submitted by the LO. in terms of the order dated 12-8-88.
11. Mr. Bose learned advocate for the petitioner, contended that Article 21 of the Constitution envisages speedy disposal of the cases and the case being started in 1988 before the learned S.D.J.M. and the investigation has been started since 1985 and as the police report has not been submitted till March 7th, 1991, the proceeding should be quashed on the ground of delay.
12. In the next place the learned counsel contended that the Sub-Divisional Judicial Magistrate has no power to direct the investigating agency for further investigation and he has no power to choose an agency. In support of his contention strong reliance was placed by him upon two Supreme Court cases, namely, S.N. Sharma v. Bipen Kumar Tiwari reported in : 1970 CriLJ764 and the case of Abhinandan Jha v. Dinesh Mishra reported in : 1968 CriLJ97 .
13. Lastly Mr. Bose contended that there was no material before the learned S.D.J.M, for going to trial against the accused, as such direction for further investigation is unwarranted by law. Incidentally, he referred to two Calcutta decisions one of the Special Bench in the case of Shaktisadhan Majhi v. The State reported in (1993) 2 Cal HN 154 and a Division Bench judgment in case of Anup Kumar v. State of West Bengal reported in 1992 Cal Cri LR 1.
14. The Special Bench case deals with the scope of Section 187(5) of the Code of Criminal Procedure as substituted by the Code of Criminal Procedure (W.B. Amendment) Act, 1988. This case relates to stopping of investigation and has no bearing on the present case, The Division Bench judgment as aforesaid relates to prosecution for non-payment of contribution to provident fund. Payment was made belated but prior to prosecution. This case also has no bearing on the present case. So I refrain from discussing the said case laws. The same argument was advanced by Mr. Bose in relation to Criminal Case No. 2139 of 1991.
15. Mr. Chakraborty, learned advocate for the opposite parties, on the other hand, contended that as the investigating officer did not investigate the case more diligently and carefully, as observed by the learned S.D.J.M. in the impugned

order, and as there were materials before the learned S.D.J.M. for directing further investigation, there is no error of law and jurisdiction warranting setting aside such an order for further investigation by the learned S.D.J.M. According to him the learned Magistrate is empowered to do so under the law. In support of his contention he relied on two Supreme Court decisions, to wit, State of Bihar v. J. A. C. Saldana reported in : 1980 CriLJ98 and also on the case of M / s. India Carat Pvt. Ltd. v. State of Karnataka reported in : [1989]1SCR718 .

16. Having heard the learned advocates for the parties and perusing the record J cannot agree with the submission of Mr. Bose for the following reasons.

17. I have already mentioned that Mr. Bose placed strong reliance upon the case of Abhinandan Jha (1968 Cri LJ 97) (SC) (supra) for the proposition that Magistrate has no power to direct reinvestigation of the case and to select a machinery for further investigation of the case. He relied mainly on paragraphs 15, 19 and 20 of the said judgment. In the instant case the investigating officer submitted a report in the final form under section 173. The Supreme Court in the case of Abhinandan Jha (1968 Cri LJ 97) (supra) observed in para 15 as follows :-
.what is the position, when the Magistrate is dealing with a report submitted by the police, Under section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a 'final report'? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instance when the Magistrate may take the view, on a consideration of a final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give direction to the police, Under section 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation Under Section 156(3).

18. Mr. S. N. Sharma's case (1968 Cri LJ 97) (SC) (supra) deals with the power of investigation by police. In that case the Supreme Court has held that the power of

the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case.

19. So this case is not an authority on the proposition that the Magistrate has the power to direct further investigation upon submission of the final report by the investigating authority Under section 173 of the Criminal Procedure Code. Rather the case of Abhinandan Jha (1968 Cri LJ 97) (SC) is an authority on the point where Supreme Court has held that the Magistrate has the power to direct further investigation of the case upon submission of the report by the investigating authority Under section 173 of the Code of Criminal Procedure.

20. In the case of J. A. C. Saldana (1980 Cri LJ 98) (SC) (supra) the apex court observed in paragraph 19 as follows:-

The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out herein before. The power conferred upon the Magistrate Under section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8).

21. In the case of India Carat Pvt. Ltd. (supra) the apex court in : [1989]1SCR718 inter alia observed :-

The question need not detain us for long because the power of a Magistrate to take cognizance of an offence Under section 190(1)(b) of the Code even when the police report was to the effect that the investigation has not made out any offence against an accused has already been examined and set out by this court in Abhinandan Jha v. Dinesh Mishra, : 1968 CriLJ97 and H. S. Bains v. State, : 1980

CriLJ1308 . In *Abhinandan Jha v. Dinesh Mishra* (supra) the question arose whether a Magistrate to whom a report Under section 173(2) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the police. This court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet but it was open to the Magistrate to agree or disagree with the police report. If he agreed with the police report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect Under section 156(3) and if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report.

22. The apex court considered the scope of Article 21 of the [Constitution of India](#) along with the scope of the Criminal Procedure Code, 1973, in the case of *Abdul Rahman Antuley v. R. S. Naik* reported in : 1992 CriLJ2717 . At page 1739, paragraph 49 the Supreme Court has observed that:-

Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too, contained many procedural provision. After *Maneka Gandhi*, it can hardly be disputed that the law (which has to be understood in the sense the expression has been defined in clause (3)(a) of Article 13 of the Constitution) in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 19 and 14. In other words, such law should provide a procedure which is fair, reasonable and just. Then alone would it be in consonance with the command of Article 21.

23. The Court ultimately held in paragraph 50 at the same page as follows:-

The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provision of the Code are followed in their letter and spirit, there would be little

room for any grievance. The fact, however, remains - unpleasant as it is - that in many cases, these provisions are honoured more in breach. Be that as it may it is sufficient to say that the constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provision of the Code.

24. The apex court in the case of Janata Dal v. H. S. Chowdhary reported in : 1993 CriLJ600 has held at page 923 (of AIR) : (at p. 631 of Cri LJ) para 135 that -

This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

25. In the instant case, as it appears from the impugned order, certain materials were not seized which are very material for the purpose of the case and are lying in the office of the respondent No. 2. The allegations are of serious nature of cheating, criminal breach of trust by public servant and criminal conspiracy. From the impugned order it appears that the investigating authority acted negligently and carelessly. In such circumstances the learned Sub-Divisional Judicial Magistrate directed further investigation by an agency other than the criminal investigation department, which was investigated by a Sub-Inspector of Police. The learned Sub-Divisional Judicial Magistrate directed investigation by a higher authority not below the rank of Inspector of Police. He is also under the D.I.G. C.I.D. West Bengal. His jurisdiction is all over West Bengal and if an officer subordinate to him is directed to conduct investigation, in my view, there is no illegality and irregularity in that. In view of my above observation I am of the opinion that the impugned order of the learned S.D.J.M. does not call for any interference.

26. In view of the discussions above both the revisions being Criminal Revision No. 1971 of 1991 and Criminal Revision No. 2139 of 1991 stand dismissed.

27. All ad interim stay, if any, stand vacated.

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