

Sham Lal Vs. the State

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Court : Himachal Pradesh

Decided On : Oct-31-1964

Reported in : AIR1965HP37,1965CriLJ99

Judge : Om Parkash, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 169, 170, 173, 190, 190(1), 207, 207A, 208, 251, 251A and 252

Appeal No. : Criminal Revn. No. 17 of 1963

Appellant : Sham Lal

Respondent : The State

Advocate for Def. : K.C. Pandit, Govt. Adv.

Advocate for Pet/Ap. : Sita Ram, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Om Prakash, J.C.

1. This revision petition is directed against an order of the learned Sessions Judge, Mahasu, Sirmur, Bilaspur and Kinnaur Sessions Division. The facts, giving rise to

the revision-petition, are as follows:

Shri Jagan Nath, a pleader at Solan, had lodged a report at the Police Station, Solan, on 11-7-62, that the petitioner had committed criminal trespass, in his house, on 10-7-62, at about 11.30 P. M., with an intention to beat him and had actually beaten him with a stick. The police registered a case, under Section 452 I. P. C., against the petitioner, on the basis of the above report. On 16-7-62, the aforesaid pleader submitted an application to the Magistrate First Class, Solan, alleging that the police was unduly delaying the completion of the investigation of the case. The Magistrate, First Class, by his order, dated 16-7-62, called for the relevant papers of the case, from the police. The aforesaid order, however, was not readily complied with.

Shri Jagan Nath, then, filed a complaint, on 27-7-62, in the Court of the Magistrate, First Class, Solan, making the same allegations which he had made in his report, to the police. The Magistrate examined Shri Jagan Nath and one witness on the same day i. e. 27-7-62 and adjourned the case to 30-7-62 for recording the remaining evidence. Evidence of one more witness was recorded on 30-7-62. From the evidence recorded, the Magistrate was of the opinion that there was sufficient ground for proceeding, against the petitioner, for offences, under Sections 452 and 323, I. P. C. Accordingly, he ordered that the petitioner be summoned, for 3-8-62. The Magistrate also wrote to the Superintendent of Police, Mahasu District, to issue instructions to the police to submit a chal-lan against the petitioner. The police did not submit a challan but submitted a final report, on 31-8-62, requesting that the case may be cancelled. The Magistrate, First Class, Solan, to whom the final report was submitted, passed the following order, on the report, on 3-9-62:

'From the perusal of the report, it appears that there is a prima facie case under Sections 452 and 323 I. P. C. and as such a challan be put up on 6-9-62. The cancellation report cannot be accepted.'

2. In pursuance of the order of the Magistrate, the police put up a challan, against the petitioner, on 1-10-62. The Magistrate had been adjourning the complaint of Shri Jagan Nath, during the period 3-8-62 to 1-10-62, on the ground that the

challan had not been put up. On 1-10-62, he ordered that the complaint be filed with the challan.

3. Both the complaint and the challan were transferred for disposal to Shri B. S. Gautam, Magistrate First Class, Kasumpti. Shri B. S. Gautam proceeded to try the case, under Section 251A, Criminal Procedure Code, on the basis of the challan. He thought that it was unnecessary to take any action on the complaint, in view of the challan, submitted by the police. He framed a charge, for an offence, under Section 452 1.. P. C., against the petitioner. On 17-11-62, an application was submitted, on behalf of the petitioner, for the cancellation of the charge, on the ground that the Magistrate, First Class, Solan, exceeded his jurisdiction in requiring the police to submit a charge-sheet and in proceeding with the case as if it had been instituted on a police report. The application was opposed, on behalf of the prosecution, and it was contended that it was not open to Shri B. S. Gautam to review his previous order, framing charge.

Shri B. S. Gautam was of the view that the Magistrate, First Class, Solan, did not act according to law, in asking the police to submit a charge-sheet, after he had taken cognizance of the offences, on the complaint of Shri Jagan Nath, and that the proceedings, taken on the basis of the challan, and the charge, framed, against the petitioner, were without jurisdiction. But Shri B. S. Gautam was also of the view that the contention of the prosecution that he was not competent to review his previous order was also correct. Shri B. S. Gautam made a reference to this Court that the proceedings, taken against the petitioner, on the basis of the challan, may be quashed. This Court rejected the reference, as being incompetent, but indicated that the proper course for Shri B. S. Gautam was either to accept or reject the application dated 17-11-62, of the petitioner and that, thereafter, it would have been open to the aggrieved party to seek his remedy in a higher Court.

4. After the rejection of the reference, the case was taken up, by Shri B. L. Budhiraja, Magistrate First Class, Kasumpti. Shri B. L. Budhiraja by his order dated 9-4-63, rejected the application of the petitioner. The petitioner went up in revision to the learned Sessions Judge, against the rejection of his application. His

revision-petition was dismissed. Hence, the present revision-petition, against the order of the learned Sessions Judge.

5. It was contended, by the learned counsel for the petitioner, that the Magistrate had no jurisdiction to follow the procedure, provided by Section 251A of the Criminal Procedure Code, for the trial of the case, as the challan submitted by the police, in pursuance of the order of the Magistrate, First Class, Solan, was not a 'police report', within the meaning of that section. This contention of the learned counsel appears to have force.

Though Section 251A of the Criminal Procedure Code (hereinafter referred to as the Code), was inserted in the Code, by the Amendment Act, 26 of 1955, but the expression 'police report' used in the section, occurred in the Code, previously. The expression was not defined in the Code. But, it was consistently interpreted, when used in the context, in which it is used, in Section 251A, to mean, not any communication, made, by a police officer, but only a formal report of a cognizable offence, made by him, after investigation. In this connection, it will be sufficient to refer to the basic authority, *King Emperor v. Sada*, ILR 26 Bom 150 (FB). The Code was amended in 1923 and 1955. The amendments indicated that the Legislature accepted the interpretation, put on by the Courts, on the expression 'police report'. The matter was discussed in *Premchand Khetry v. State*, AIR 1958 Cal 213, wherein it was observed that:

'The expression 'police report', as used in the Code for reports of offences made by the Police, carries a special meaning. As used in the old Section 190 (1) (b), the expression was interpreted by several High Courts as meaning reports made under Section 173, that is to say, reports of cognizable offences or non-cognizable offences with regard to which there had been a direction by a Magistrate to investigate, made after an investigation under chapter XIV. The result of that interpretation was that cognizance of an offence could be taken under Section 190 (1) (b) only on police reports of that particular kind and not on other police reports. Other police reports were to be treated as complaints, coming under Section 190(1) (a). Apparently, the Legislature did not desire that the operation of Section 190(1) (b) should be so restricted and so in 1923 it amended the section by

replacing the expression 'police report' by the more general words 'reports in writing of such facta (i.e., facta constituting an offence) made by any police officer' which would cover all 'police reports. At the same time, the Legislature left the expression, as occurring in Sections 170, 173, untouched. It must therefore be presumed that the Legislature accepted the Judicial construction of the expression 'police report', as used in the Code for reports of offences made by the police, and that where it left the expression used in a similar context untouched, it intended the expression to continue to bear the meaning which had been put upon it by the Courts. Not only did the Legislature not make any change in the expression 'police report', when amending the Code in 1923, at any place other than Section 190(1) (b), but when it amended the Code again in 1955, it itself used the same expression in enacting the new Sections 207, 207-A, 251 and 251-A and in amending Sections 208 and 252. In those circumstances it must equally be presumed that in the amendments made by it in 1955, the Legislature used the expression 'police report' in the sense in which it had been construed to bear in the old Section 190(1) (b).'

5a. It is, thus, clear that the expression 'police report' used in Section 251A of the Code, means a formal charge-sheet or challan, containing accusation of a cognizable offence, submitted by a police officer, after investigation. The so-called challan, submitted, in the present case, was not at all a charge-sheet, containing accusation of a cognizable offence. As already stated, the police had, after investigation, submitted a final report, requesting that the case may be cancelled. The Magistrate, First Class, Solan, had disagreed with the final report and had ordered the police to put up a challan, under Sections 452 and 323 I. P. C. In pursuance of this order, the Station House Officer, Solan, had submitted the challan. But he had made it clear that the view of the police was that there was no case against the petitioner, and that the challan was being submitted as ordered, by the Magistrate.

The so-called challan, submitted by the Station House Officer, Solan, did not make any accusation of a cognizable offence, against the petitioner. On the other hand, it was specifically stated therein, that there was no case against the petitioner. The so-called challan, therefore, could not be said to be a 'police report' within the

meaning of Section 251-A of the Code. The Magistrate was not competent to adopt the procedure, provided by that section, on such a challan. Of course, there is nothing to bar a Magistrate from taking cognizance of an offence on a final report, submitted by the police, if in his opinion, the report contains facts which constitute an offence. But in that event, he would have to follow the procedure, prescribed in Section 252 and subsequent sections of the Code and not the procedure, laid down in Section 251-A.

6. Even if it be assumed that the so-called challan, submitted by the police, in the instant case, was a 'police report', within the meaning of Section 251-A of the Code, even then the Magistrate was not competent to take cognizance of the offence, on the basis of that report, as he had already taken cognizance of the offence, on the basis of the complaint, filed by Shri Jagan Nath. It has been held in *Jamuna Singh v. Bhadaï Shah*, AIR 1964 SC 1541 that once a Magistrate takes cognizance of offences on the basis of a complaint, he cannot take cognizance of the same offences, afresh, on the basis of a charge-sheet, submitted by the police.

7. It was faintly contended by the learned Government Advocate that the Magistrate had not taken cognizance of the offences on the basis of the complaint, filed by Shri Jagan Nath, and that he was, therefore, not debarred from taking cognizance of the offences on the basis of the challan, submitted by the police. This contention is without any substance. It is, now, well settled that when, on a petition of complaint, being filed before him, the Magistrate applies his mind, for proceeding under the various provisions of Chapter XVI of the Code, he must be held to have taken cognizance of the offences, mentioned in the complaint, vide *R.R. Chari v. State of Uttar Pradesh*, AIR 1951 SC 207 and AIR 1964 SC 1541 *supra*.

In the instant case, the Magistrate, First Class, Solan, had recorded the statement of Shri Jagan Nath, after the complaint was filed, before him. He had, also, held a preliminary enquiry, and had recorded a finding that there were sufficient grounds, for proceeding, against the petitioner, for offences, under Sections 452 and 323 I. P. C., and had ordered the issue of process. It is clear that the Magistrate, First Class, Solan, had applied his mind to the complaint of Shri Jagan Nath for

proceeding under the various provisions of Chapter XVI of the Code. He had, therefore, taken cognizance of the offences, under Section 452 and 323 I.P.C., against the petitioner, on the basis of the complaint of Shri Jagan Nath.

8. From the above, it follows that the Magistrate fell into an error in taking cognizance of the offences, against the petitioner, afresh, on the basis of the so-called challan, submitted by the police, and in following the procedure prescribed by Section 251-A of the Code. The Magistrate should have tried the case on the basis of the complaint, filed by Shri Jagan Nath, and should have adopted the procedure, prescribed by Section 252 and subsequent provisions of the Code. The adoption of the wrong procedure i.e. adopting the procedure, provided in Section 251-A, instead of Section 252 and sub-sequent provisions of the Code, vitiated the trial and the charge, framed, against the petitioner, vide *Sardar Khan v. State*, AIR 1963 Madh Pra 337. The trial of the petitioner and the charge, framed, against him, are illegal and liable to be quashed.

9. It is to be, further, pointed out that the Magistrate First Class, Solan, was not Justified in ordering the police to submit a challan, after it had already submitted a final report, for cancellation of the case. The question, whether a Magistrate can direct the police to submit a charge-sheet, after it has submitted the final report, was considered by a Full Bench of five Judges of the Calcutta High Court, in *A.K. Roy v. State of West Bengal*, AIR 1962 Cal 135 (FB). The majority view was that the Magistrate cannot direct the police to submit a charge-sheet. S.K. Sen, J. said, on| page 139 :

'Both Sections 169 and 170 refer to the satisfaction of the officer-in-charge of the police station or the police officer making the investigation, as indicated by the use of clauses like 'when it appears to the officer-in-charge of the Police Station that there is no sufficient evidence or reasonable ground.' It appears to follow, therefore, that it is for the investigating officer or the officer-in-charge of the police station to decide whether a final report or a charge-sheet should be submitted. Accordingly, it would appear that when the police officer has submitted a final report, thinking that the case has not been proved, the Magistrate empowered to take cognizance has no power to direct the investigating officer to submit a

charge-sheet; and similarly, when the investigating officer submits a charge-sheet, the Magistrate has no power to direct him to submit a final report.'

10. I, respectfully, agree with the observations, made above.

11. For the reasons, stated above, the revision-petition is allowed. The charge, framed, against the petitioner, is quashed. The case is remitted to the Magistrate, First Class, Kasumpti, with the direction that he will proceed with the case, on the basis of the complaint, filed by Shri Jagan Nath and follow the procedure, laid down in Section 252, and subsequent sections of the Code.

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