

Bhartendu Pratap Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Apr-11-2011

Judge : Shri Narayan Shukla, J.

Acts : Indian Penal Code.(IPC) - Sections 420, 465, 467, 468, 471, 120-B; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 173, 207-A, Sub-Section (1)

Appeal No. : Criminal Misc.Case No.4621 of 2010

Appellant : Bhartendu Pratap Singh

Respondent : State of U.P. and Another

Judgement :

1. Heard Mr.U.U.Lalit, Senior Advocate, assisted by Mr.K.S.Pawar, learned counsel for the petitioner, Mr.Mahendra Pratap Singh Yadav, learned Government Advocate, Mr.Gopal Swaroop Chaturvedi and Mr.Ravi Kant, Senior Advocates assisted by Mr.C.B.Pandey and Mr.Rohit Tripathi, learned counsels for the opposite parties.

2. The petitioner has prayed for quashing the charge sheet bearing No.317 of 2010 dated 8 th of November, 2010 as well as the order dated 9 th of November, 2010, passed by the Chief Judicial Magistrate, Lucknow in Criminal Case No.13126 of 2010, whereby the petitioner has been summoned for trial under Sections 420, 465, 467, 468, 471, 120-B of the Indian Penal Code.

3. The petitioner has also challenged the order dated 18 th of October, 2010, passed by the learned Chief Judicial Magistrate, Lucknow allowing the application moved by the Investigating Officer to issue direction to the Chief Vigilance Officer/Income Tax Department, New Delhi to provide relevant documents for the purpose of investigation.

4. So far as the relief against the order of providing the relevant documents to the Investigating Officer by the Chief Vigilance Officer is concerned, the same has become infructuous after the order passed by the Delhi High Court with the direction to the Chief Vigilance Officer to provide those documents to the Investigating Officer for the purpose of investigation.

5. The main ground of challenge of the charge sheet is that the Investigating Officer submitted the charge sheet on 8 th of November, 2010, even during the continuation of the investigation, as is evident from the charge sheet itself, which is impermissible. The cognizance taken by the learned Magistrate on the basis of the said charge sheet, submitted in continuation of the investigation, has also been questioned. No doubt the Investigating Officer recorded the statement of some of the witnesses, who alleged for commission of forgery in the documents, but it is not in dispute that by that time those documents were not in the hands of Investigating Officer, rather Investigating Officer was making efforts to get access over there. In furtherance of his efforts he filed writ petition before the Delhi High Court and also succeeded therein, later on. The Investigating Officer himself indicated the materials, which were to be collected at that stage including the necessary and desired documents. It is the allegation that since the husband of opposite party No.8, posted as DIG/SSP, Lucknow, being Police Head of the District, who was going to be posted out on the same very date, he misused his position to manage and filed the charge sheet on that date.

6. The learned Senior Advocate Mr.Lalit appearing for the petitioner invited the attention of this court towards the provisions of Section 173 of the Code of Criminal Procedure and submitted that it speaks that every investigation under this Chapter shall be completed without unnecessary delay and as soon as it is completed, the officer incharge of the police station shall forward to a Magistrate

empowered to take cognizance of the offence on a police report. It is stated that it means that the Investigating Officer is permitted to file the charge sheet only on completion of the investigation, particularly for the facts which were within his knowledge, therefore, he was obliged to complete the proceeding for collection of evidence, which was in his knowledge and then only to file the charge sheet, whereas the Investigating Officer, as is evident from the charge sheet, though was well aware with the documentary evidence and was also making efforts to collect them, yet before collecting the said evidence, he submitted the charge sheet, which is said to be incomplete charge sheet, therefore, the learned Magistrate was not empowered to take cognizance of offence on such a police report, which is based on incomplete investigation. Thus, it is stated that the cognizance taken by the learned Magistrate on the basis of incomplete investigation is unsustainable and deserves to be quashed. In reply the learned counsel for the respondents submitted that the Investigating Officer recorded the statement of witnesses, namely, Shri Kamal Joseph, Shri Dhananjay Singh, Shri Sunder4 Singh, Shri Brij Mohan Agarwal @ Balle, Shri Anand Kumar, and Shri Narendra Kumar @ Chootu as well as the statement of one Head Constable of Surveillance Cell Shri Jitendra Pratap Singh and also collected IDs and CDs provided by him and the conversations between the persons, which discloses the commission of cognizable offence by the petitioner, therefore, once the sufficient material was collected, there was no reason for the Investigating Officer to restrain his hand from filing the charge sheet. It is further stated that as soon as the material evidence comes with the hands of the Investigating Officer, which establishes the commission of offence, he is permitted to bring it to the knowledge of the learned Magistrate for taking cognizance, therefore, there is no error in filing the charge sheet at that very stage. So far as the continuation of Investigation is concerned, Section 173(8) of the Criminal Procedure Code itself permits further investigation. It is also stated that there was no occasion for the Investigating Officer to act under the pressure of husband of respondent No.8, as under the law itself nobody is permitted to interfere with the investigation even the Magistrate.

7. In the case of Bandi Kotayya versus State (S.H.O. Nandigamal and others, decided by Andhra Pradesh High Court, reported in AIR 1966 Andhra Pradesh 377 (Vol.53, C.115), the police submitted report with the following remarks

Investigation is not yet completed. Final charge-sheet with complete list of P.W.s will be submitted after completing the investigation. The High Court observed that Sub-Section (1) of Section 207-A of the Criminal Procedure Code postulates the receipt by the Magistrate of a police-report forwarded under Section 173 of the Criminal Procedure Code as a pre-requisite for commencing the inquiry against the accused and taking the first step in that direction, namely, fixing a date for the purpose of holding the inquiry. Therefore, unless and until a police report as contemplated by Section 173 is received by the concerned Magistrate, he cannot proceed with the inquiry and also cannot obviously apply his mind to the contents of the police report for the purpose of proceeding in a particular way, as indicated in the subsequent provisions of Section 207-A of the Criminal Procedure Code. Ultimately the High Court observed that the report submitted by police only after investigation is completed not before and in the said case report submitted by police could not be recorded as police report under Section 173 of the Code of Criminal Procedure.

8. In the case of Dharmendra Tripathi versus State of U.P., reported in 1997 JIC 127 (All), the Inspector of C.B. CID without completing the investigation submitted a report that a detailed investigation is going on and the statement of the eye witnesses have not been recorded, the charge sheet is being submitted since 90 days are elapsing and further detailed investigation is going on.

9. This court expressed the opinion that if the Investigating Officer is of the opinion that he has not completed the investigation, he cannot forward a police report under Section 173 (2) Cr.P.C. He also cannot get the advantage of Section 173(8) when the investigation is not completed in his opinion. In the case of T.V.Sarma versus Smt. Turgakamala and others, reported in 1976 Cri.L.J. 1247, the Supreme Court has distinguished the scope of Sub-Section (2) and Sub-Section (8) of Section 173, paragraph 14,15 and 16 of which are reproduced hereunder:-

14.A plain reading of Section 173 Cr.P.C. shows that every investigation must be completed without unnecessary delay and as soon as it is completed, the Officer-in-charge of the police station shall forward a report to the Magistrate in the form

prescribed. Therefore there is no question of sending up of a police report within the meaning of Section 173 Cr.P.C. sub-section (2) until the investigation is completed. Any report sent before the investigation is completed will not be a police report within the meaning of sub section (2) of Section 173 Cr.P.C. and there is no question of the Magistrate taking cognizance of the offence...

15. In the case on hand only a preliminary charge sheet has been filed and it is specifically stated therein that the investigation is not yet completed. Therefore it cannot be treated as a police report within the meaning of sub section (2) of Section 173 Code of Criminal Procedure and so the Magistrate could not take cognizance of the offence in the present case and remand the accused under Section 309 Cr.P.C.

16. The learned Public Prosecutor has argued that in this case there is a charge sheet though styled preliminary and so the proviso to Section 167 sub section (2) does not apply. The Code of Criminal Procedure does not contemplate a preliminary charge sheet and a final charge sheet. What is contemplated is only a police report within the meaning of sub-section (2) of Section 173 Cr.P.C. Admittedly in this case, there is no such report. The so-called preliminary charge sheet filed in this case is not a police report because the investigation is not yet completed, and so the proviso to Section 167 sub-section (2) is attracted. In this connection the learned Public Prosecutor has relied upon subsection (8) of Section 173 Cr.P.C. In order to contend that even a preliminary charge sheet is a police report within the meaning of sub-section (2) of that section. But a reading of sub section (8) of Section 173 Code of Criminal Procedure shows that after a police report under sub-section (2) is sent to the Magistrate, further investigation is not precluded and if upon such investigation further evidence is obtained a further report should be sent to a Magistrate. Therefore sub Section (8) of Section 173 Code of Criminal Procedure comes into play only after a report under sub section (2) is sent and not before. In this case since no report under sub section (2) is sent, sub section (8) does not come into operation at all. Since the preliminary report is not the one sent to the court after a report under sub-section (2) was sent, the learned Public Prosecutor cannot invoke the provisions of sub-section (8) of Section 173, Criminal Procedure Code.....

10. From the aforesaid observations of the Hon'ble Supreme Court, it is evident that the stage of further investigation under Section 173(8) of the Code of Criminal Procedure comes only after submission of complete police report under Sub-Section (2) of Section 173 of the Code of Criminal Procedure.

11. In the case of Satya Narain Musadi and others versus State of Bihar, reported in 1980 SCC (Cri.) 660, the Hon'ble Supreme Court held that the statutory requirement of the report under Section 173 (2) of the Code would be complied with if the various details therein prescribed are included in the report. The report has to be accompanied as required by sub-section (5) by all the documents and the statements of witnesses therein mentioned. One cannot divorce the details which the report must contain as required by sub-section (5).

12. The Hon'ble Supreme Court in the case of Dinesh Dalmia versus CBI, reported in (2007) 8 SCC 770, has also discussed the scope of sub-section (2) and sub-section (8) of Section 173 in the following manner:-

38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety.

Construction of a statute should be made in a manner so as to give effect to all the provisions thereof.

Remand of an accused is contemplated by Parliament at two stages; pre-cognizance and post-cognizance.

13. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed here-inbefore, to carry on further investigation despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.

14. In the case of Rama Chaudhary versus State of Bihar, reported in JT 2009 (5) SC 14, the Supreme Court has held that irrespective of report under sub-section (2) of Section 173 Cr.P.C., forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed.

15. In the case of Union of India versus Prakash P.Hinduja and another, reported in (2003) 6 SCC 195, the Hon'ble Supreme Court has held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, the result of the trial, which follows it, cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial.

16. In the case of Narayan Rao versus State of Andhra Pradesh, reported in MANU/SC0042/1957, the Hon'ble Supreme Court held that the scheme of Sub-section (8) of Section 173 also makes it abundantly clear that even after the chargesheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused.

17. In the case of State of W.B. Versus Salap Service Station and others, reported in 1994 Supp (3) SCC 318, the Hon'ble Supreme Court has held that what all Section 173(8) lays down is that the investigating agency can carry on further investigation in respect of the offence after a report under sub-section (2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject-matter of the earlier report. The purpose of sub-section (8) of Section 173 Cr.P.C. is to enable the investigating agency to gather further evidence and that cannot be frustrated.

18. In the case of State of Maharastra versus Sharad Chandra Vinayak Dongre, reported in 1995 (1) SCC 42, the Hon'ble Supreme Court held that the purpose of

submission of police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. It further observed as under:-

8..... We cannot persuade ourselves to accept the view of the High Court that if the investigating officer terms a police report as incomplete, it takes away the jurisdiction of the Magistrate to take cognizance of the offence, even if in the opinion of the Magistrate, the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report or the charge sheet by the investigating office and it is for him to decide whether the report and the material on which it is based is sufficient for him to take cognizance or not. It is pertinent to notice that the police report submitted before the Chief Judicial Magistrate did not even say that it was an incomplete charge-sheet or police report. The High Court was, therefore, not at all justified in opening that since the charge-sheet on the prosecution's own showing was incomplete, the Chief Judicial Magistrate could not have taken cognizance and quash the order of the CJM taking cognizance of the offence. We may also record at this stage that Shri Dholakia, the learned Senior Counsel appearing for the appellant, submitted before us that apart from the material already filed with the police report/charge sheet, on the basis of which the Chief Judicial Magistrate took cognizance on 21.11.1986, the State does not intend to file any further material by way of any supplementary charge sheet before the trial court.

19. The statement of Shri Dholakia, adequately protects the interests of the respondents. In view of the statement of Mr.Dholakia, we are relieved of the necessity to deal with the effect of Section 173(8) Cr.P.C. in this case.

20. In order to appreciate the law laid down by the Hon'ble Supreme Court, it is necessary to go through the provisions of Section 173 of the Code of Criminal

Procedure, which is extracted below:-

173. Report of police officer on completion of investigation.-(1) Every investigation under this Chapter shall be completed without unnecessary delay already.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from the report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of the opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5)

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of subsections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

21. Sub-Section (2) of Section 173 speaks that as soon investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report. Sub-Section (8) speaks that nothing shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains

further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed.

22. After going through the provisions of Section 173 of the Code of Criminal Procedure, I find that the police is supposed to file a report after completion of investigation and no doubt further investigation as well as filing of supplementary charge sheet is permitted, but for the evidences collected during the course of further investigation. The intention and purpose of Section 173 of the Code is to complete the investigation for the evidences which are in the knowledge of Investigating Officer and file the charge sheet. The charge sheet itself discloses that the Investigating Officer has observed that still the investigation is in process and the evidences on certain points still have to be collected, which shall be completed expeditiously. The materials which are to be collected as evidences have also been indicated therein.

23. I would like to reproduce the relevant observations of the Investigating Officer as under:-

Yadapi Abhi Kai Binduon par sakshya Sankalan evam Vivechana ki drshti se karyawahi shesh hai. Jise tatparta se purna kiya jayega. Jin vinduon par karyawai shesh hai, ish prakar hai:-

1. Vivechana Ke liye awashyak evam wanchaniya dastavejon ko mukhya Satarkata Adhikari (Ayakar Vibhag), Nai Dilli se prapta karna evam prapt abhilekhon ki sanniriksha kar aavashyak karyawahi kiya jana.
2. Manniya Mantri Shri Ved Ram Bhati ka kathan ankit karna.
3. Manniya Vidhan Parishad Sadasya Shri Ganesh Shanker Pandey ka kathan ankit kiya jana.
4. Abha Kala Chandra ke bare main Chanbeen Karna.
5. Sandigdha wa anya Vyaktiyon/Abhiyoukton ke finger print lekar parikshan karana.

6. Jawat Narendra urf Chhotu, R/o Bulandshahar ke sath Brijmohan ke pas jakar Manniya Vidhyak Sunder Singh ke letter pads le jane wale vyakti ka pata lagaya jana.

7. Company se CDRs ki pramanit pratiyan prapt karana shesh hai.

24. The aforesaid observation establishes that the Investigating Officer was having knowledge of the evidences, but without completing the investigation over there, he filed the charge sheet, which can be said to be his hasty action.

25. The filing of the aforesaid incomplete charge sheet has been said to be under pressure of the husband of respondent No.8, who was posted as District Head of the Police Officers and was going to be posted outside on the same date, thus the charge sheet has been said to be tainted with malafide action of the Investigating Officer. However, since the concluding part of the charge sheet itself establishes that it is an incomplete charge sheet, in view of the facts and circumstances of the case, it is needless to discuss the allegation of malafide in the matter.

26. Indisputedly the proceeding is going on, which can, in light of the aforesaid facts, be termed as the investigation in continuation of the earlier investigation. Thus, it cannot be said to be further investigation. The preposition of law laid down by the courts, as has been discussed here-in-above, enunciates that the charge sheet was incomplete for the evidences, which were within the knowledge of the Investigating Officer, therefore, in light of the facts of the present case, I am of the view that since the charge sheet is incomplete charge sheet, it is not the stage for the learned Magistrate to take cognizance of offence on the basis of incomplete charge sheet, therefore, I hereby quash the order impugned dated 9 th of November, 2010, passed in Case No.13126 of 2010, arising out of Criminal Case No.639 of 2010. However, since the investigation is still continuing on the evidences, which have been disclosed in the said incomplete charge sheet, I hereby observe that as soon as it is completed and police report is filed before the learned Chief Judicial Magistrate, he shall be at liberty to take cognizance of offence on the basis of police report.

27. With the aforesaid observations and directions the petition is partly allowed.

