S. N. SHARMA

v.

BIPEN KUMAR TIWARI AND ORS.

March 10, 1970

[S. M. SIKRI, V. BHARGAVA & C. A. VAIDIALINGAM, JJ.]

Code of Criminal Procedure, (5 of 1898), s. 159—Magistrate—if can hold enquiry himself, and stop police investigation.

A first information report was lodged in respect of a crime and the appellant, who was the Additional District Magistrate (Judicial) was named therein as principal accused. The offences mentioned were cognizable and the Police after registering the case, started investigation. The appellant applied to the Judicial Magistrate for invocation of the provisions of s. 159 Cr.P.C., and for conducting preliminary enquiry by the Court itself and for issuance of necessary directions to the Police to stop investigation alleging that a false report had been lodged at the instance of the local police. The Magistrate directed the police to stop investigation and decided to hold the enquiry himself. Thereupon an application was moved in the High Court under s. 561 A Cr.P.C. for quashing the order of the Magistrate as he had no jurisdiction to pass such an order under s. 159 Cr.P.C. The High Court accepted the application and set aside the Magistrate's order. Dismissing the appeal, this Court,

HELD : Section 159 Cr.P.C. does not empower a Magistrate to stop investigation by the police.

This section first mentions the power of the Magistrate to direct an investigation on receiving the report under s. 157, and then states the alternative that, if he thinks fit, he may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary enquiry into, or otherwise to dispose of, the case. On the face of it, the first alternative of directing an investigation cannot arise in a case where the report itself shows that investigation by the police is going on in accordance with s. 156. It is to be noticed that the second alternative does not give the Magistrate an unqualified power to proceed himself or depute any Magistrate to hold the preliminary enquiry. That power is preceded by the condition that he may do so, "if he thinks fit'. The use of this expression makes it clear that s. 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decides not to investigate the case under the proviso to s. 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative. Without the use of the expression "if he thinks fit" the second alternative could have been held to be independent of the first; but the use of this expression makes it plain that the power conferred by the second clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable.

Even in sub-s.(3) of section 156, the only power given to the Magistrate, who can take cognisance of an offence under section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is 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

A 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. [949 G-950 F]

The Crown v. *Mohammad Sadiq Naiz*, A.I.R. 1949, Lah. 204, *Pancham Singh* v. *The State*, A.I.R. 1967 Pat. 416 and *King Emperor* v. *Khwaja* B *Nazir Ahmad*, 71 I.A. 203, referred to.

(2) The Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect a cognizable offence has been committed. If the police engineer a false report of a cognizable offence against any person he can in appropriate cases always invoke the power of the High Court under Art. 226. Therefore, the fact that the Code does not provide for a power to a Magistrate to stop investigation by C the police cannot be a ground for holding that such a power must be read into s. 159 of the Code. [951 H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 256 of 1969.

Appeal by special leave from the judgment and order dated D January 15, 1969 of the Allahabad High Court in Criminal Misc. Case No. 1770 of 1968.

R. K. Garg, S. C. Agarwal, D. P. Singh, V. J. Francis and *S. Chakravarty*, for the appellant.

O. P. Rana, for respondent No. 2.

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The Judgment of the Court was delivered by

Bhargava, J. A first information report was lodged by one Vijay Shanker Nigam in Police Station Cantonment, Gorakhpur, in respect of an incident alleged to have taken place at about 7 p.m. on 10th April, 1968 in front of his house. The report F stated that one Bipen Kumar Tiwari had been attacked by certain goondas who also stabbed him with a knife and further caused injuries ot Vijay Shankar Nigam also. One of the principal accused named in that report was S. N. Sharma, Additional District Magistrate (Judicial), Gorakhpur, who is the appellant in this appeal. The allegation against him was that it was at his G instigation that the goondas had attacked Bipen Kumar Tiwari and attempted to murder him. The offences made out by the report lodged by Vijay Shankar Nigam were cognizable and the Police, after registering the case, started investigation. On the 13th April, 1968, the appellant moved an application before the Judicial Magistrate having jurisdiction to take cognizance of the H offence, alleging that a false report had been lodged against him at the connivance and instance of the local police. It was urged that it would, therefore, be desirable in the interest of justice that provisions of section 159 of the Code of Criminal Procedure be

invoked and the preliminary enquiry may be conducted by the Court itself and necessary directions may be issued to the Police to stop the investigation. The Magistrate, after hearing both parties, passed an order directing the police to stop investigation and decided to hold the enquiry himself. Thereupon, on 2nd May, 1968, an application was moved in the High Court of Allahabad under section 561A, Cr. P.C., to quash the order passed by the Magistrate on 13th April, 1968, on the ground that he had no jurisdiction to pass such an order under s. 159, Cr. P.C. This application was allowed by the High Court by its judgment dated 15th January, 1969, so that the High Court quashed the order of the Judicial Magistrate and held that the police of Gorakhpur was at liberty to conclude the investigation and submit its report to the Magistrate after which the case could proceed in accordance with law. The appellant has challenged this order of the High Court in this appeal brought up by special leave.

Section 156(1) of the Code of Criminal Procedure empowers an officer in charge of a police-station to investigate any cognizable case without the order of a Magistrate. Sub-section (2) of s. 156 lays down that no proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowred under this section to investigate, while sub-s. (3) gives power to any Magistrate empowered under section 190 of the Code to order such an investigation in any case as mentioned in sub-s. (1). Section 157 requires that, whenever such information in received by an officer in charge of a police-station that he has reason to suspect the commission of an offence which he is empowered to investigate under section 156, he must forthwith send a report of it to the Magistrate empowered to take cognizance of such an offence upon a police report and, at the same time, he must either proceed in person, or depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and, if necessary, to take measures for discovery and arrest of the offender. This provision is qualified by a proviso which is in two parts. The first clause of the proviso enables an officer in charge of a police station not to proceed to make an investigation on the spot or to depute a subordinate officer for that purpose if the information received is given against a person by name and the case is not of a serious nature. The second clause of the proviso permits the officer in charge of a police station not to investigate the case if it appears to him that there is no sufficient ground for entering on an investigation. The report to be sent to the Magistrate under sub-s. (1) of section 157 requires that in each of the cases where the officer in charge of the police station decides to act under the two clauses of the proviso, he must state in his report

his reasons for not fully complying with the requirements of sub-section (1) and, in addition, in cases where he decided not to investigate on the ground mentioned in the second clause of the proviso, he is required to notify to the informant the fact that he will not investigate the case or cause it to be investigated. These provisions are followed by section 159 which is as follows :—

> "159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code."

The High Court has held that, under s. 159, the only power, which the Magistrate can exercise on receiving a report from the officer in charge of a police station, is to make an order in those cases which are covered by the proviso to sub-s. (1) of section 157, *viz.*, cases in which the officer in charge of the police station does not proceed to investigate the case. The High Court has further held that this s. 159 does not empower a Magistrate to stop investigation by the police in exercise of the power conferred on it by section 156. It is the correctness of this decision which has been challenged by the appellant, and the ground taken is that s. 159 should be interpreted as being wide enough to permit the Magistrate to proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary enquiry into, or otherwise to dispose of, the case in the manner provided in this Code, even if the report from the police, submitted under section 157, states that the police is proceeding with the investigation of the offence. It was urged by counsel for the appellant that the narrower interpretation of s. 159 accepted by the High Court will leave persons at the mercy of the police who can harass any one by having a false report lodged and starting investigation on the basis of such a report without any control by the judiciary. He has particularly emphasised the case of the appellant who was himself a Judicial Officer working as Additional District Magistrate and who moved the Magistrate on the ground that the police had engineered the case against him.

We, however, feel constrained to hold that the language used in s. 159 does not permit the wider interpretation put forward by counsel for the appellant. This section first mentions the power of the Magistrate to direct an investigation on receiving the report under s. 157, and then states the alternative that, if he thinks fit, he may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary enquiry into, or otherwise to dispose of, the case. On the face of it, the first alternative of directing an investigation cannot arise in a case where the report itself shows that investigation by the police is going on in

accordance with s. 156. It is to be noticed that the second alternative does not give the Magistrate an unqualified power to proceed himself or depute any Magistrate to hold the preliminary enquiry. That power is preceded by the condition that he may do so, "if he thinks fit". The use of this expression makes it clear that s. 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decide not to investigate the case under the proviso to s. 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative. If the expression "if he thinks fit" had not been used, it might have been argued that this section was intended to give in wide terms the power to the Magistrate to adopt any of the two courses of either directing an investigation, or of proceeding himself or deputing any Magistrate subordinate to him to proceed to hold a preliminary enquiry as the circumstances of the case may require. Without the use of the expression "if he thinks fit", the second alternative could have been held to be independent of the first; but the use of this expression, in our opinion, makes it plain that the power conferred by the second clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable.

It may also be further noticed that, even in sub-s. (3) of section 156, the only power given to the Magistrate, who can take cognizance of an offence under section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is 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. The power of the police to investigate has been made independent of any control by the Magistrate.

The High Court of Lahore in *The Crown* v. *Mohammad Sadiq Niaz*(1), and the High Court of Patna in *Pancham Singh* v. *The State*(2) interpreted section 159 to the same effect as held by us above. The reasons given were different. Both the Courts based their decisions primarily on the view expressed by the Privy Council in *King-Emperor* v. *Khwaja Nazir Ahmad*(3). That case, however, was not quite to the point that has come up for decision before us. The Privy Council was concerned with the question whether the High Court had power under section 561A of the

(1) A.I.R. 1949 Lah. 204. (2) A.I.R. 1967 Patna 418.
(3) 71 I.A. 203.

A Code of Criminal Procedure to quash proceedings being taken by the police in pursuance of first information reports made to the police. However, the Privy Council made some remarks which have been relied upon by the High Courts and are to the following effect :—

B "In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the
C court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved
D under s. 491 of the Criminal Procedure Code to give directions in the nature of *habeas corpus*."

This interpretation, to some extent, supports the view that the scheme of the Criminal Procedure Code is that the power of the police to investigate a cognizable offence is not to be interfered
E with by the judiciary. Their Lordships of the Privy Council were, of course, concerned only with the powers of the High Court under section 561A, Cr. P.C., while we have to interpret section 159 of the Code which defines the powers of a Magistrate which he can exercise on receiving a report from the police of the cognizable offence under section 157 of the Code. In our opinion, section 159 was really intended to give a limited power to the Magistrate
F to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence.

Counsel appearing on behalf of the appellant urged that such an interpretation is likely to be very prejudicial particularly to
G Officers of the judiciary who have to deal with cases brought up by the police and frequently give decisions which the police dislike. In such cases, the police may engineer a false report of a cognizable offence against the Judicial Officer and may then harass him by carrying on a prolonged investigation of the offence made out by the report. It appears to us that, though the Code of Cri-
H minal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art.

226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer *mala fide*, the High Court can always issue a writ of *mandamus* restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in section 159 of the Code.

In the result, the decision of the High Court in this case must be upheld, so that the appeal fails and is dismissed.

Y.P. *Appeal dismissed.*