[2023] 11 S.C.R. 715 : 2023 INSC 778

ZUNAID

v.

STATE OF UP. & ORS.

(Criminal Appeal Nos. 2628-2629 of 2023)

August 29, 2023

[BELA M. TRIVEDI AND DIPANKAR DATTA, JJ.]

Issue for consideration: CJM rejected the final report submitted by the investigating officer and accepted the Protest Petition as the Complaint Case, whether the course opted by the CJM was just, legal and proper in the facts and circumstances of the case.

Code of Criminal Procedure, 1973 – The Investigating Officer, after completing the investigation, submitted the Final Report – Appellant-complainant filed a Protest Petition – The concerned CJM vide order dated 15.11.2018 rejected the Final Report of the Investigating Officer and directed that the Protest Petition be registered as the Complaint Case – High Court set aside the order dated 15.11.2018 u/s. 482 Cr.P.C.:

Held: The concerned CJM vide the detailed order passed on 15.11.2018 had rejected the final report submitted by the Investigating Officer and had accepted the Protest Petition, and decided to proceed further u/s. 200 Cr.P.C – Such a course opted by the CJM was absolutely just, legal and proper in the facts and circumstances of the case – The said order dated 15.11.2018 remained unchallenged at the instance of the respondents-accused – It was only when the concerned CJM after recording the statements of the complainant and eight witnesses, issued summons on 11.01.2022, the respondents filed the application challenging the said order dated 11.01.2022 u/s. 482 before the High Court and in the said application, the order dated 15.11.2018 came to be challenged by way of amendment – As such, the High Court should not have permitted the respondents-accused to amend the Application for challenging the order dated 15.11.2018

* Author

after about four years of its passing – The discretionary order of 11.01.2022 passed by the concerned CJM issuing summons to the accused, after recording statements of the complainant and the eight witnesses and after recording prima facie satisfaction about the commission of the alleged crime, also did not warrant any interference by the High Court – The impugned orders passed by the High Court being erroneous, the same are quashed and set aside. [Para 12]

Code of Criminal Procedure, 1973 – s. 173 – Police report – Magistrate can exercise three options:

Held: The receipt of the police report u/s. 173 Cr.P.C., the Magistrate can exercise three options – Firstly, he may decide that there is no sufficient ground for proceeding further and drop action – Secondly, he may take cognizance of the offence u/s. 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence u/s. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200.[Para 11]

Code of Criminal Procedure, 1973 – s. 173 – After acceptance of Police report – Discharge of accused – Power of magistrate to take cognizance of the offence on a complaint or a Protest Petition:

Held: It may be noted that even in a case where the final report of the police u/s. 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report – A Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report – No doubt a Magistrate while exercising his judicial discretion has to apply his mind to the contents of the Protest Petition or the complaint as the case may be. [Para 11]

Rakesh & Another v. State of Uttar Pradesh & Another **(2014) 13 SCC 133 : [2014] 13 SCR 1072 – relied on.**

Gopal Vijay Verma v. Bhuneshwar Prasad Sinha and Others **(1982) 3 SCC 510;** *B. Chandrika v. Santhosh and Another* **(2014) 13 SCC 699 : [2013] 12 SCR 588 – referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2628-2629 of 2023.

From the Judgment and Order dated 22.07.2022 and dated 21.07.2022 in A482 No. 14899 of 2022 of the High Court of Judicature at Allahabad.

Anurag Kishore, Ms. Ritika Srivastava, Advs. for the Appellant.

Salman Khurshid, Sr. Adv., Misbah Bin Tariq, Mohd. Amanullah, Ms. Shabana Anjum, Azhar Ali, Saurabh Mishra, Ankit Goel, Satyam Pandey, Advs. for the Respondents.

ORDER

1. Heard learned counsel for the parties.

2. Leave granted.

3. The two appeals arise out of the orders passed by the High Court of Judicature at Allahabad in the Application No.14899/2022 filed by the respondents-accused under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). These two appeals have been filed by the appellant-complainant challenging the order dated 21.07.2022 by which the High Court had granted the prayer made by the respondents-accused to amend the application filed under Section 482 Cr.P.C. and challenging the order dated 22.07.2022 by which the High Court has set aside the orders dated 15.11.2018 and dated 11.01.2022 passed by the Chief Judicial Magistrate (for short, 'CJM') in Misc. Case No.06/11/2018 arising out of Case Crime No.907/2017. The High Court vide the impugned order further directed the concerned Magistrate to pass a fresh order on the Protest Petition filed by the appellant-complainant in the light of observations made by it in the impugned order.

4. The short facts giving rise to the present appeals are that on 16.08.2017, the appellant – Junaid Khan had lodged an FIR alleging inter alia that the respondents–accused armed with sharp-edged weapons had attacked him and his family and also abused them due to an old enmity. As a

result thereof, his family members got seriously injured, and were sent to the hospital for treatment. The said FIR was registered as Crime Case No.907 of 2017 for the offence under Sections 147, 148, 149, 307, 323, 324, 504 IPC at P.S. Kotwali Gursahaiganj, Kannauj. The Investigating Officer, after completing the investigation, submitted the Final Report bearing No.164/2017 on 13.11.2017.

5. Being aggrieved by the said report, the appellant-complainant filed a Protest Petition being F.R. No.06/11/18 before the concerned CJM. The concerned CJM vide order dated 15.11.2018 rejected the Final Report of the Investigating Officer and directed that the Protest Petition be registered as the Complaint Case. The said complaint case was registered and numbered as the Complaint No.2783/2018.

6. The concerned CJM having regard to the provisions contained in Sections 200 and 202 Cr.P.C. and after recording the statements of the complainant and eight other witnesses, issued summons to the respondents-accused vide order dated 11.01.2022 in the said complaint case. Being aggrieved by the said order passed on 11.01.2022, the respondents-accused preferred an application under Section 482 bearing No.14899/2022 before the High Court.

7. On 20.07.2022, the respondents-accused, who were the applicants before the High Court, submitted an application seeking amendment in the prayer clause of the application filed under Section 482 and prayed for setting aside of the order dated 15.11.2018 as well. The said application for amendment came to be allowed by the High Court vide the impugned order dated 21.07.2022. On the very next day, the High Court after hearing the learned counsel for the parties passed the impugned order on 22.07.2022, allowing the said application under Section 482 as stated hereinabove.

8. The High Court while passing the impugned order, observed as under: -

"20. When the findings recorded by concerned Magistrate as noted above, are examined in the light of the observations contained in paragraph 28 of the judgement in Hari Ram (supra) do not fulfill the mandate of law which the Magistrate is required to comply while exercising jurisdiction under Section 190 (1) (b) Cr.P.C. No finding has been recorded by concerned Magistrate with regard to the papers accompanying the police report.

Without recording any finding that there is no evidence against applicants in the papers accompanying police report, the conclusion drawn by Magistrate to treat the protest petition as a complaint is not only illegal, but also arbitrary. Once the Magistrate came to prima facie conclusion that investigation of concerned case crime number is unsatisfactory or is the outcome of lackadaisical approach of investigating Officer, then in that eventuality, concerned Magistrate ought to have directed further investigation in the matter. The findings recorded by concerned Magistrate in support of his conclusion to treat the protest petition as a complaint are by themselves insufficient to proceed with the protest petition as a complaint."

9. In our opinion, the above observations recorded by the High Court are absolutely erroneous in view of the catena of decisions of this Court.

10. In *Rakesh & Another Vs. State of Uttar Pradesh & Another*[1], it is observed as under: -

"6. If we are to go back to trace the genesis of the views expressed by this Court in Gopal Vijay Verma v. Bhuneshwar Prasad Sinha, (1982) 3 SCC 510, notice must be had of the decision of this Court in H.S. Bains v. State (UT of Chandigarh) (1980) 4 SCC 631 wherein it was held that after receipt of the police report under Section 173, the Magistrate has three options: (H.S. Bains case (supra)

> "6. …. (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

1 (2014) 13 SCC 133

The second and third options available to the Magistrate as laid down in H.S. Bains (supra) has been referred to and relied upon in subsequent decisions of this Court to approve the action of the Magistrate in accepting the final report and at the same time in proceeding to treat either the police report or the initial complaint as the basis for further action/enquiry in the matter of the allegations levelled therein. Reference in this regard may be made to the decision of this Court in Gangadhar Janardan Mhatre v. State of Maharashtra (2004) 7 SCC 768. The following view may be specifically noted:

"9. ….The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132]" (SCC P. 140, Para 16)."

11. In view of the above, there remains no shadow of doubt that on the receipt of the police report under Section 173 Cr.P.C., the Magistrate can exercise three options. Firstly, he may decide that there is no sufficient ground for proceeding further and drop action. Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. It may be noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report. As held by this Court in *Gopal Vijay Verma Vs. Bhuneshwar Prasad Sinha and Others*[2], as followed in *B. Chandrika Vs. Santhosh*

2 (1982) 3 SCC 510

and Another[3], a Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. No doubt a Magistrate while exercising his judicial discretion has to apply his mind to the contents of the Protest Petition or the complaint as the case may be.

12. So far as the facts of the present case are concerned, the concerned CJM vide the detailed order passed on 15.11.2018 had rejected the final report submitted by the Investigating Officer and had accepted the Protest Petition, and decided to proceed further under Section 200 Cr.P.C. Such a course opted by the CJM was absolutely just, legal and proper in the facts and circumstances of the case. The said order dated 15.11.2018 remained unchallenged at the instance of the respondents-accused. It was only when the concerned CJM after recording the statements of the complainant and eight witnesses, issued summons on 11.01.2022, the respondents filed the application challenging the said order dated 11.01.2022 under Section 482 before the High Court, and in the said application, the order dated 15.11.2018 came to be challenged by way of amendment. As such, the High Court should not have permitted the respondents-accused to amend the Application for challenging the order dated 15.11.2018 after about four years of its passing, and in any case should not have interfered with the discretion exercised by the CJM within the four corners of law. The discretionary order of 11.01.2022 passed by the concerned CJM issuing summons to the accused, after recording statements of the complainant and the eight witnesses and after recording prima facie satisfaction about the commission of the alleged crime, also did not warrant any interference by the High Court. In our opinion, the High Court has committed gross error in setting aside the orders dated 15.11.2018 and 11.01.2022 passed by the CJM.

13. In that view of the matter the impugned orders passed by the High Court being highly erroneous, the same are quashed and set aside. The concerned CJM is directed to proceed with the complaint case in accordance with law. It shall be open for the respondents-accused to respond to the summons and appear before the concerned CJM within two weeks.

3 (2014) 13 SCC 699

14. The appeals stand allowed accordingly.

15. Pending application(s), if any, also stand disposed of.

Headnotes prepared by : Ankit Gyan *Result of the case :* Appeals allowed.