

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 831/2008 & CRL.M.A. 3151/2008(stay)

Date of order: 04th April, 2008.

DR. NARENDRA NATH Petitioner
Through Mr. Sidharth Luthra, Senior Advocate
with Mr. M. Pandey & Mr. Shri Singh, Advocates.

versus

STATE & ANR Respondents
Through Ms. Mukta Gupta with Mr. Pawan Behl
and Mr. Rajat Katyal, Advocates for R-1.
Ms. Radha Yadav Respondent No.2 in person.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks to challenge an order dated 7th March, 2006 passed by the learned Metropolitan Magistrate ('MM'), Delhi in Complaint Case No. 366 of 2001 titled ***Radha Yadav v. Narendra Nath & Others*** and also seeks the quashing of the Complaint Case itself "along with the proceedings emanating therefrom qua the Petitioner."

2. The facts leading to the filing of this petition are that an FIR No. 191

of 2001 was registered on 15th August, 2001 under Sections 147/148/149/186/332/353/427 IPC read with Section 3 of the Prevention of Public Property Act, 1984 at police station Krishna Nagar.

3. The case of the prosecution in the said FIR is that at about 8.25 pm on 15th August, 2001 an information was received through the wireless that certain people had blocked the traffic at Aggarwal Sweet Chowk Road No. 57 and on receipt of the said information when SI Sunil Kumar proceeded to the spot, he found Smt. Radha Yadav Respondent No.2 and Shri Kant Sharma with about 30 to 35 women and about 300 persons had blocked the traffic on both sides. They were armed with hockey sticks and lathis and shouting slogans against the officials of Delhi Electricity Supply Undertaking. It is stated that when the police officials tried to pacify Respondent No.2 and Shri Kant Sharma, the crowd got aggressive and despite being asked to disburse did not do so. It is then stated that some of the ladies started pelting stones on the police vehicles and the DTC vehicles. It is stated that at about 10.15 pm under the leadership of Respondent No.2 and Shri Kant Sharma the people assembled there grappled with SI Sunil Kumar, assaulted him and started pelting stones on the police. Two persons out of the mob were caught hold of by the police and that basis the aforementioned FIR was registered.

4. In relation to the same incident of 15th August, 2001 Respondent No.2 filed a complaint giving her version and what had transpired. According to

her at about 9.15 pm on that day when she along with family members and a colleague Shri Rajender Pal went to Aggarwal Sweets when she came out at about 10 pm after having dinner she noticed a huge crowd. Her neighbor Shri Vinod Sharma called her and informed her that in view of the electricity problem in the area, he and the other persons had come to make a complaint to Shri Narender Nath, the Petitioner here, who at that point of time was the Minister of Power & Education in the Government of National Capital Territory of Delhi and Shri Sharma informed Respondent No.2 that the Petitioner had, instead of making arrangements for restoration of electricity, called the police. It is then stated that when Respondent No.2 went to the spot, the Petitioner here taunted and insulted her in the presence of the crowd and by stating that she was trying to portray herself as a leader, he exhorted the DCP to beat her up. It is then stated that at the instance of Shri Manoj Kumar, the DCP and Shri R.K. Sharma, the Additional DCP, Shri Ashok Tyagi the SHO tried to catch hold of her. It is stated that when the Petitioner here explained that she was a practising lawyer and that being a lady some women constable should be called, the Petitioner is supposed to have shouted “yeh saali bohat kannoon jhaad rahi hai, iska who hall karo key yeh bejjati ke karan kuch no bol sake, phir bhi na mane toh jaan se maar do”. It is further alleged that SI Sunil Kumar abused her, gave her lathi blows, caught hold of her blouse and tried to outrage her modesty. When she tried to save herself, SI Sunil Kumar snatched her Mangal Sutra, pushed her to the ground and again gave her lathi blows. Respondent No.2 states that

she was taken to the clinic of Dr. Bhardwaj. The next morning she was taken to the S.D.N. Hospital, Shahdara where an MLC was prepared and she was discharged late in the evening. Thereafter she had to obtain anticipatory bail in the FIR registered against her and on 20th August, 2001 filed her complaint.

5. It is stated that on 29th August, 2001 on the basis of the complaint of Respondent No.2, the learned MM directed registration of the case and investigation by the police under Section 156(3) CrPC. The said direction was challenged by the State and that challenge was negated in this Court as well as in the Supreme Court. FIR No. 274 of 2002 was registered and investigated by the police. On 15th October, 2003 the Inspector SIT Section of Crime Branch, Delhi Police filed a closure report or what is called an “untraced report” in the court of the learned MM.

6. On 6th December, 2005 the learned MM took up the matter and also heard the complainant i.e. Respondent No.2. A copy of the untraced report was supplied to the complainant and her preliminary submissions were heard. Thereafter the learned MM passed an order on 6th December 2005, the relevant portion of which reads as under:

“At this juncture, under the law, Complainant has three courses open to her. First is that if she is not satisfied with the investigation then she can pray for further investigation in this matter. Second option is that she can

straightway argue and try to make out the case on summoning of accused. The third option is that the untraced report is kept pending on record for consideration and she may proceed with her evidence on her private complaint, initially filed by her in the court.

It is submitted by the learned Counsel for Complainant as well as Complainant that they would like to lead their evidence in support of their complaint.

As such as prayed now, to come up for CE on 03/01/2006.

The untraced report is kept pending consideration on record. Fate of the same shall be decided alongwith arguments on summoning with the complaint.”

7. Thereafter the learned MM proceeded to record the statement of the complainant and two other witnesses. On 7th March, 2006 he passed a detailed summoning order summoning the Petitioner and two other accused for the offences under Sections 119/109 read with 114/323/352/355/120 B/34 IPC. Two other accused persons were summoned under some of these and other provisions.

8. Against the aforementioned summoning order dated 7th March, 2006 the State has filed Crl. Misc. Case No. 7031 of 2006 titled ***State v. Radha Yadav*** still which is pending in this Court and listed for 1st May, 2008. The

present petition has been filed by the Petitioner challenging that very order.

9. It is submitted by Mr. Sidharth Luthra, learned Senior counsel appearing for the Petitioner that once the learned MM chose to direct registration of the case and investigation by the police under Section 156(3) CrPC he had to proceed in the matter thereafter by either dropping the action after being satisfied that there was no sufficient ground for proceeding, or taking cognizance of the offence under Section 190(1)(b) on the basis of the police report and issuing process notwithstanding the closure report or take cognizance of the offence under Section 190(1) (a) on the basis of the original complaint and proceeding to examine the complainant and his witnesses under Section 200 CrPC. He submits that the order dated 6th December, 2005 indicates that the learned MM did not choose any of these courses. Instead, he opted to keep the untraced report pending consideration. This course was not open for him to adopt. Reliance was placed upon the judgments of the Supreme Court in *Gopal Das v. State of Assam AIR 1961 SC 986*, *Minu Kumari v. State of Bihar AIR 2006 SC 1937*, *Abhinandan Jha v. Dinesh Mishra AIR 1968 SC 117*, *H.S. Bains v. State AIR 1980 SC 1883* and *Dr. Kapil Garg v. State 107(2003) DLT 228*. He submits that the Petitioner would be content if the matter is remanded to the learned MM at the stage the proceedings were as on 6th December, 2005 for the learned MM to consider the closure report filed by the police and to form an opinion in the manner indicated by the Supreme Court in the

aforementioned judgments.

10. Respondent No.2 appeared in person and submitted that the order of the learned MM passed on 7th March, 2006 summoning the accused persons impliedly rejected the closure report filed by the police. Although she was unable to dispute the fact that the said order does not expressly refer to the closure report, she stated that she had in fact pointed out to the learned MM that the closure report was on the face of it unacceptable since it contained numerous errors and was faulty in its analysis. However, while not disputing the fact that on 6th December, 2005 the learned MM had indeed kept the untraced report “on record pending consideration”, she submits that in light of the judgment in ***H. S. Bains*** it must be construed that the learned MM had, when he proceeded to record the evidence of the complainant and her witnesses, adopted the third course as highlighted in that judgment. She also adverted the fact that the Petitioner being a person having considerable influence was interested in delaying the matter and that he has approached this Court more than two years after the passing of the summoning order. She submitted that by remanding this case to the learned MM, the proceedings would be further delayed.

11. As regards the submission about the procedure that the learned MM was expected to follow, the law has been clearly set out by the Supreme Court in the judgments referred to. In ***Abhinandan Jha*** the Supreme Court

explained what the learned MM is expected to do when a closure report is submitted by the police under Section 173 CrPC in the following passages:

“15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under s. 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 instances when the Magistrate may take the view, on a consideration of the 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 directions to the police, under s. 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 s. 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence under s. 190(1) (c), notwithstanding the country opinion of the police, expressed in the final report.”

“17. We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the scheme of Chapter xiv, as well as the observations of this Court in *Rishbud* and *Inder Singh's Case* AIR 1955 SC 196 that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack; not can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under s. 190(1) (c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under s. 190(1) (c), on the ground that, after having due regard to the final report

and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under s. 170, being a 'charge-sheet', or under s. 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report, either under s. 169, or under s. 170, depending upon the nature of the decision. Such a function has been left to the police, under the Code.”

12. The latest judgment in *Minu Kumari* also reiterates the same position. In *H.S. Bains* the Supreme Court explained the three options available to the

learned MM in situations as the present one in the following words:

“6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The

Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156(3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things : (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.”

13. In light of the aforementioned law, there can be no manner of doubt that in the instant case, the learned MM could not have chosen to ignore the report submitted by the police under Section 173 CrPC after having directed the registration of the case and investigation by the police under Section 156(3) CrPC. He has to either accept the report or reject it. In case he was rejecting the report he was to give reasons before deciding to proceed further in the matter by directing recording of evidence of the complainant. Unfortunately, neither the order dated 6th December, 2005 nor the summoning order dated 7th March, 2006 reflects the consideration by the learned MM of the closure report. While the former order states that “the fate of the same shall be decided along with arguments on summoning with the complaint,” the summoning order dated 7th March, 2006 does not even make a mention of the closure report.

14. The learned MM was bound to go by the procedure outlined in the CrPC and had no other option. Whatever may be the compulsions including the possible delay that might now occur remanding the case to the learned MM and requiring him to proceed in accordance with law, this Court is of the considered view that the procedure outlined in the CrPC as explained by the Supreme Court is inviolable and cannot be allowed to be bypassed. Keeping in view the fact that the complaint has been pending since August

2001 it would be in the interests of justice to direct the time bound disposal of the proceedings by the learned MM.

15. Accordingly the orders dated 6th December, 2005 and the order dated 7th March, 2006 are hereby set aside in so far as they concern the Petitioner here. It is made clear that this order does not affect the said two orders as far as they concern the other accused persons who have been summoned. The case is now remanded to the learned MM, so far as it concerns the Petitioner, for consideration of the closure report filed by the police in accordance with law and in light of the judgments of the Supreme Court. Needless to say that complainant Respondent No.2 will be heard before any order is passed by the learned MM. Thereafter the learned MM will proceed in accordance with law and pass fresh orders within a period of three months from the date of the receipt of this order.

16. The other contentions raised by the Petitioner in this petition including the non-grant of sanction for prosecuting the Petitioner here, are left open to be agitated by the Petitioner at an appropriate stage. The petition and the application are accordingly disposed of.

17. A copy of this order be sent to the concerned learned MM within five days from today.

18. A copy of this order be given dasti to learned counsel for the parties.

S. MURALIDHAR, J.

APRIL 04, 2008
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