

Neutral Citation No. - 2023:AHC:224212

A.F.R.

Court No. - 93

Case :- APPLICATION U/S 482 No. - 41397 of 2023

Applicant :- Dinesh Jatav

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajesh Kumar Patel, Ashutosh Kumar Gautam

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

1. Applicant being accused has approached this Court through this application under Section 482 Code of Criminal Procedure seeking quashing of the impugned summoning order dated 20.7.2023 passed by Civil Judge (J.D.)/ Judicial Magistrate, Konch, District Jalaun by disagreeing with the final report under Section 173(2) Cr.P.C. filed in Criminal Case No. 925 of 2023, titled *Rinku Jatav Vs. Dinesh Jatav*, arising out of Case Crime No. 57 of 2019, under Sections 279, 304-A I.P.C., Police Station Kotwali Konch, District Jalaun.

2. The facts leading to the application are as under:-

3. The above F.I.R. was registered on the basis of the complaint given by complainant Rinku Jatav, who alleged that he is a resident of village Unchagaon, District Jalaun and on 1.2.2019, the date of incident, at around 8:00 AM complainant's brother Mansingh Jatav s/o Sri Panna Lal was going from his house at Unchagaon to village Bhed, Police Station Konch, District Jalaun on his motorcycle bearing registration no. CG 085 6288. Mansingh Jatav was accompanied by pillion riders namely, Churaman Jatav and Parshuram Jatav both sons of Mohan Lal r/o village Unchagaon. At around 11:00 AM, when his brother's motorcycle reached near village Gurawati, Police Station Konch, District Jalaun near a turn, then the motorcycle bearing registration no. U.P. 92 R 7650 driven carelessly by Dinesh Jatav s/o Ramsiya r/o village Unchagaon, Police Station Kailiya, struck the motorcycle of complainant's brother and it

resulted in serious injuries leading to death of his brother. Complainant prayed that lawful action be taken against the accused persons. On these broad allegations, the above F.I.R. was registered against the accused, for the alleged commission of offences punishable under Sections 279 and 304-A I.P.C.

4. After registration of the case, the investigation was carried out and through the final report dated 8.8.2019 (Annexure No.3), the Investigating Officer concluded that the victim was driving the vehicle rashly and carelessly with two pillion riders and in order to cross the vehicle driven by Dinesh Jatav, he struck against the gas cylinder tied with the motorcycle of Dinesh Jatav and died accidentally. As per the final report, the adequate evidence against Dinesh Jatav was not found, therefore, it was requested that the report exonerating the accused-Dinesh Jatav be accepted.

5. Being dissatisfied with the final report bearing No. 64/2021 dated 8.8.2019 filed under Section 173(2) Cr.P.C., the complainant filed protest petition dated 12.7.2023 (Annexure No.4) and requested for rejecting the final report and made a prayer for taking cognizance against accused-Dinesh Jatav. The Judicial Magistrate, Konch, Distcit Jalaun vide impugned order dated 20.7.2023 rejected the conclusion of the investigator and summoned the accused for alleged commission of offences punishable under Section 279, 304-A I.P.C. and further directed to register the case as a State case. Hence, this application.

6. Learned counsel for applicant has argued that allegations made by the complainant were thoroughly looked into by the Investigating Officer after registration of the case and a just conclusion was drawn that the applicant was not responsible for causing the death of victim Mansingh, much less by driving his two wheeler rashly and negligently. He submits that trial court while considering the final report as well as the protest petition has committed a serious error of law in taking cognizance against the applicant by further directing to register the case

as a State case as once the cognizance is based on the protest petition, the procedure contained in Chapter XV Cr.P.C. has to be followed. Learned counsel for applicant has further drawn the attention of the Court to the statement of eye witness namely, Churaman recorded under Section 161 Cr.P.C. to contend that according to the statement of this witness, it was not a collision of two wheelers, but the handle of the motorcycle of Mansingh had touched the gas cylinder tied with the other two wheeler, which resulted in accident, and complainant lodged the false F.I.R.

7. Learned counsel for applicant in support of his submissions has placed reliance upon the decision of this court vide order dated 6.3.2020 passed in Application U/S 482 No. 14314 of 2006, titled *Wakil Ahmad and others Vs. State of U.P. and another*; and submitted that in the cited case as well, the Magistrate had on one hand rejected the final report submitted by police under Section 173(2) Cr.P.C., but at the same time, had proceeded to take cognizance against the accused as a police case, and the said order was set aside by this Court with a direction to proceed from the stage of consideration of final report submitted by police, and protest petition by complainant for passing appropriate orders in accordance with law. Learned counsel for applicant submits that case in hand is squarely covered by the said decision, therefore, interference is warranted by this Court and the impugned order dated 20.7.2023 be set aside and the final report dated 8.8.2019 submitted by the police be accepted.

8. Learned counsel for the applicant has been heard and with his assistance, the case file has been perused carefully.

9. Before adverting to the merits of the case, this Court deems it appropriate to have a glance at Section 190 Cr.P.C., which contemplates the cognizance of offences by Magistrate. The Section 190 Cr.P.C. reads as under:-

190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

10. A careful reading of the above would show that this provision empowers the Magistrate to take cognizance of offences allegedly committed, and though the expression cognizance has not been defined in the Code of Criminal Procedure, but it would certainly mean the application of judicial mind. At this stage, the Magistrate is required to satisfy, if, the material on record i.e. private complaint/ police report/ information received from the third person, as the case may be, discloses commission of a cognizable offence. Thus, it becomes clear that wide powers have been vested with the Magistrate through this provision, in order to commence the criminal proceedings against the accused.

11. By now, it is well settled law that at this stage, where the Magistrate is seized of the police report, he is not bound to follow the conclusion drawn by the Investigating Officer, and, if, the material collected during investigation suggests commission of cognizable offence, the Magistrate would be well within his powers to disagree with the police report exonerating the accused, and further may proceed to issue process against the accused based on the police report itself. The

above provision was analysed by the Hon'ble *Apex Court* in the case of ***Abhinandan Jha and others Vs. Dinesh Mishra, AIR 1968 SC 117***, and the relevant observations made by the Hon'ble Supreme Court in the said decision read as under:-

15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under section 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 section 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 section 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 section 190(1) (c), notwithstanding the contrary opinion of the police, expressed in the final report.

16. In this connection, the provisions of section 169 of the Code, are relevant. They specifically provide that even though, on investigation, a police officer, or other investigating officer, is of the opinion that there is no case for proceeding against the accused, he is bound, While releasing the accused,, to take a bond from him to appear, 'If and. when required, before a Magistrate. This provision is obviously to meet a contingency of the Magistrate, when he considers the report of the investigating officer, and judicially takes a view different from the police.

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 XXIV, as well as the observations of this Court in Rishbud and Inder Singh's Case(1) 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; nor 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 tile police, to take cognizance, under section 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 section 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 section 170, being a 'charge- sheet', or under section 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.

12. The above judgment was further followed by Hon'ble Apex Court in the case of **Minu Kumari and another Vs. The State of Bihar and others, (2006) 4 SCC 359**, the relevant observations read as under:-

In Abhinandan Jha and another v. Dinesh Mishra (AIR 1968 SC 117), this Court while considering the provisions of [Sections 156\(3\), 169, 178 and 190](#) of the Code held that there is no power, expressly or impliedly conferred, under [the Code](#), on a Magistrate to call upon the police to submit a charge sheet, when they have sent a report under [Section 169](#) of the Code, that there is no case made out for sending up an accused for trial. The functions of the Magistracy and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view. However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of the opinion by the police which is the final stage in the investigation has been provided for in [Section 190\(1\)\(c\)](#).

When a report forwarded by the police to the Magistrate under [Section 173\(2\)\(i\)](#) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under [Section 156\(3\)](#) and require the police to make a further report.

*The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under [Section 156\(3\)](#). The position is, therefore, now well-settled that upon receipt of a police report under [Section 173\(2\)](#) a Magistrate is entitled to take cognizance of an offence under [Section 190\(1\)\(b\)](#) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. [Section 190\(1\)\(b\)](#) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. 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 of 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 *M/s. India Carat Pvt. Ltd. v. State of Karnataka and another* (AIR 1989 SC 885)].*

13. In view of the above decisions by Hon'ble *Apex Court*, it emerges that the final report submitted by the police under [Section 173\(2\)](#) Cr.P.C. does not bind the Magistrate and in case, if, the material on record suggests commission of offence, the Magistrate would be justified in taking cognizance of the same.

14. Now, while reverting to the merits of the case in hand, this Court finds that as per the prosecution, the victim was the driver of two wheeler, whereas prosecution witnesses namely, Churaman and Parshuram both sons of Late Mohan Lal were the pillion riders. The statement of these two witnesses recorded under [Section 161](#) Cr.P.C. suggests the involvement of the motorcycle driven by accused Dinesh Jatav and case of the prosecution is further supported by medical evidence as well. Thus, the argument that applicant has been falsely implicate is misconceived at least at the stage of cognizance by Magistrate under [Section 190](#) Cr.P.C. Apart from this, a careful reading

of the impugned order would show that the Magistrate has minutely examined the final report under Section 173(2) Cr.P.C. while, refusing to accept the conclusion and rightly proceeded to take cognizance of the offences. The impugned order is based upon the material collected by the Investigating Officer during investigation and is not based upon any other material, much less filed by complainant along with his complaint/protest petition.

15. Therefore, in these circumstances, the decision in *Wakil Ahmad's case (Supra)* relied upon by the applicant would not be applicable, as in the said case, the Magistrate not only rejected the final report submitted by police, but also placed reliance upon two affidavits, which were filed by complainant along with his protest petition. It was in this background, this Court observed that once the cognizance is based upon the other material, which is not part of the final report submitted under Section 173(2) Cr.P.C., therefore, the Magistrate ought to have followed the procedure contained under Chapter XV Cr.P.C. In this case, no doubt the Magistrate used the expression that the final report is rejected, but it only means that the Magistrate has shown his disagreement to the conclusion drawn by the Investigating Officer, because in the end the Magistrate has directed that the case be registered as the case based on the police report.

16. Resultantly, in view of the above discussion, this Court does not find any merit in this case, therefore, the application fails and is hereby dismissed.

(Manoj Bajaj, J.)

Order Date :- 28.11.2023

P.S.Parihar