

Court No. - 75

Case :- APPLICATION U/S 482 No. - 5784 of 2020

Applicant :- Nanne Khan

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Ajay Kumar Pal, Kuldeep Singh Yadav, Rahul Kumar Sharma

Counsel for Opposite Party :- G.A., Yadvendra Mani Mishra

Hon'ble Raj Beer Singh, J.

1. Heard Sri Rahul Kumar Sharma, learned counsel for the applicant and learned A.G.A. for the State. None has appeared on behalf of opposite party nos.2 to 5. doubt?
2. This application under Section 482 Cr.P.C. has been preferred against the judgment and order dated 14.01.2020, passed by learned Additional Sessions Judge, Court No.2, Hathras in Criminal Revision No.135 of 2019 (Raheemuddin @ Chhote Vs. State of U.P. and another), arising out of Case No.656/12/2019 (New No.1998 of 2019), under Sections 498A, 304B, 201 I.P.C. and Section 34 D.P. Act, Police Station- Chandapa, District- Hathras.
3. It has been submitted by learned counsel for the applicant that impugned order is against facts and law and thus liable to be set aside. The applicant has lodged first information report on 04.12.2016 under Sections 498A, 304B, 201 IPC and Section 34 D.P. Act against private opposite parties regarding harassment and dowry death of his daughter. The police have not investigated the case properly and preferred final report. The applicant has preferred protest petition against the said final report and the private opposite parties were summoned by the C.J.M., Hathras vide order dated 24.07.2019. The private opposite party no.2 has preferred a criminal revision against order dated 24.07.2019, which was allowed vide impugned judgment dated 14.01.2020, without considering the facts and law. Earlier the private opposite parties have filed an application under Section 482 Cr.P.C. vide Application

No.38859 of 2019 for quashing of orders dated 24.07.2019 & 02.09.2019, which was decided by order dated 31.10.2019 and relief sought by the applicants for quashing of order dated 24.07.2019 was refused. The Revisional Court has passed the impugned order without considering evidence on record. Referring to facts of the matter, it was submitted that impugned order is not sustainable. Learned counsel has placed reliance upon case of **Vaibhav Jaiswal Vs. State of U.P. and Others** 2023:AHC:194639.

4. Learned A.G.A. has opposed the application and submitted that there is no illegality or perversity in the impugned order.

5. I have considered the rival submissions and perused the record.

6. Chapter XIV of Cr.P.C. deals with conditions requisite for initiation of proceedings and also the powers of cognizance of a Magistrate. Provisions of Section 190 Cr.P.C. relevant for this case, are reproduced as under:

"190. (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."

7. It is well-settled that if magistrate finds that Police have not made proper investigation and submitted final report, it can direct police to make further investigation in the matter, or, if there is sufficient material, he can pass order taking cognizance and summoning accused. In case of Tula Ram Vs. Kishore Singh AIR 1977 SC 2401, the Apex court observed that Magistrate can ignore a final report submitted by Police including the conclusion and take cognizance of case under Section 190(1)(b) on the basis of material collected during investigation and issue process, or in the alternative, he may take cognizance of original complaint, examine the complainant and his witnesses and thereafter issue process to accused,

if he is of opinion that case should be proceeded with.

8. In **M/s India Carat Pvt. Ltd. Vs. State of Karnataka** 1989 (26) ACC 280 (SC), the Supreme Court has observed that Magistrate can take into account statements of witnesses examined by Police during investigation, take cognizance of offence complained of, order to issue a process to accused. Section 190(1)(b) Cr.P.C. does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion of making out a case against accused. Magistrate can ignore conclusion arrived at by Investigating Officer, independently applying his mind to the facts emergent from investigation and can take cognizance of case or in alternative he can take cognizance of original complaint and examine complainant and his witness and thereafter issue process to accused, if he is of opinion that the case should proceed. The observations made in **M/s India Carat Pvt. Ltd.** (supra), make it very clear that Magistrate if proceeds to take cognizance on Police report, material which can be examined by him would be such which has been collected during investigation. If Magistrate finds that Police has not properly made investigation and appropriate material has not been collected, it is always open to him to direct Police for further investigation but if Magistrate finds fault with investigation made by Police and still finds justification to proceed with the matter taking into account complaint made by complainant, in such case he has to examine complainant and his witness and thereafter issue process.

9. It is clear that while proceeding to issue process considering facts emergent from investigation and taking a different view than what has been reported by Police, Magistrate need not apply procedure laid down in section 200 and 202 Cr.P.C. However, if Magistrate finds lack of material with investigation of Police, option available to him is to take into account original complaint and if that is adopted by Magistrate, he is bound to follow procedure prescribed in Section 200 and 202 or taking cognizance, but he can not mix-up the material placed by complainant along with Protest Petition to take cognizance after rejecting Police Report but without following the procedure prescribed under Chapter XV. A similar view has also been

expressed in **Rakesh and another Vs. State of U.P.** and another 2014 (13) SCC 133, where Court referred to and relied on the decision in **H.S. Bains Vs. State (UT of Chandigarh)** 1980 (4) SCC 631.

10. In case of **Minu Kumari and another Vs. State of Bihar and others** 2006 (4) SCC 359, Court held as under:

"11. 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."

11. This Court has also followed a similar view and in this connection reference may be made to case of **Pakhando and others Vs. State of U.P.** 2001 (43) ACC 1096, wherein a Division Bench of this Court after considering Section 190 Cr.P.C. has held that if upon investigation Police comes to conclusion that there was no sufficient evidence or any reasonable ground of suspicion to justify forwarding of accused for trial and submits final report for dropping proceedings, Magistrate shall have following four courses and may adopt any one of them:

"(I) He may agree with the conclusions arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall give an opportunity of hearing to the complainant;

(II) He may take cognizance under Section 190(1)(b) and issue process straightway to the accused without being

bound by the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed; or (III) He may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner; or (IV) He may, without issuing process or dropping the proceedings decide to take cognizance under Section 190(1)(b) upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202 Cr.P.C. and thereafter decide whether complaint should be dismissed or process should be issued."

12. Thus, position of law is well settled that upon receipt of a police report under Section 173(2), a Magistrate / court is entitled to take cognizance of an offence under Section 190(1)(b) Cr.P.C. even if the police report is to the effect that no case is made out against the accused but for that purpose, the Magistrate has to 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. 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, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. In such circumstances the satisfaction of Magistrate / Court must be based on material collected during investigation. In **Mohd. Yusuf and Others vs. State of U.P. & Anr** 2007 0 Supreme (All) 2080, it was observed that when the magistrate decides to take cognizance under section 190 (1) (b) Cr.P.C. ignoring the conclusions reached at by the investigating officer and applying his mind independently, he can act only upon the statements of the witnesses recorded by the police in the case-diary and material collected during investigation. It is not permissible at that stage to consider any material other than that collected by the investigation Officer.

13. In the instant matter, perusal of record shows that applicant has lodged first information report on 04.12.2016 against private opposite parties under Sections 498A, 304B, 201 IPC, alleging that his daughter Subhana was married with accused Faheemuddin about five years back and she was harassed by the accused persons on account of dowry and that on 07.11.2016 accused persons have caused her death and cremated without giving information to the informant and his family

members. It appears from impugned orders that police have submitted final report in favour of accused persons. On protest petition of applicant, the C.J.M., Hathras has rejected the said final report and took cognizance under Section 190(1)(B) Cr.P.C. and summoned the private opposite parties for offences under Sections 498A, 304B, 201 IPC and Section 34 D.P. Act vide order dated 24.07.2019.

14. The opposite party no.2 has filed revision against order dated 24.07.2019, which was allowed by learned Additional Sessions Judge vide impugned order dated 14.01.2020 and the order dated 24.07.2019 was set aside and matter was remitted back to the learned Magistrate to pass an order in accordance with law. It appears from record that in Application 482 Cr.P.C. No.38859 of 2019 filed by the private opposite parties, the prayer for quashing of impugned order dated 24.07.2019 was not pressed and the said application was not decided on merits vide order dated 31.10.2019. From aforesaid case law, it is clear that if after investigation police files final report (closure report) in favour of accused persons, the Magistrate can take cognizance under Section 190(1)(B) Cr.P.C. and summon the accused persons but such an order can be passed only on the basis of material collected during investigation. In order dated 24.07.2019 the learned C.J.M. has not discussed any other statement except the statement of informant recorded under Section 161 Cr.P.C. It appears that the learned C.J.M. has taken cognizance under Section 190(1)(B) Cr.P.C. and summoned the accused persons without considering the material collected during investigation. Learned Revisional Court has observed that the order dated 24.07.2019 has been passed by the C.J.M. without perusing the record and statements of independent witnesses and even accused Rajwati, who has already passed away, was also summoned. Learned Revisional Court has discussed all relevant facts and position of law and set aside the summoning order dated 24.07.2019. It would be pertinent to mention that in pursuance to the impugned order the matter has been remanded back to the learned C.J.M., Hathras and applicant would have opportunity to put up his case before the C.J.M. Considering entire facts of the matter and position of law, it appears that there is no such patent illegality or abuse of the process in respect of impugned order, so as to require any

interference by invoking powers under Section 482 Cr.P.C. The application 482 Cr.P.C. lacks merit and liable to be dismissed.

15. Accordingly, the application u/s 482 Cr.P.C. is hereby **dismissed**.

Order Date :- 27.11.2024

SP/-