Court No. - 12
Case :- CRIMINAL REVISION No. - 665 of 2024
Revisionist :- Ramesh Chandra Sharma
Opposite Party :- State Of U.P. Thru. Prin.Secy. Home And Another
Counsel for Revisionist :- Rahul Mishra,Dhirendra Pratap Singh
Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Shri Dinesh Kumar Chaudhary, Advocate has filed Vakalatnama in Court today on behalf of the opposite party no. 2 which is taken on record.

2. Heard learned counsel for the revisionist, Shri Ravish Chandra, Mishra, learned A.G.A. for the State and Shri Dinesh Kumar Chaudhary, learned counsel for the opposite party no. 2.

3. The instant revision has been filed for the following main relief:

> *"to allow the instant revision and set aside/quash the impugned order dated 02.03.2024 arising out of F.I.R./Case Crime No. 47/2020 under Section 465, 466, 468, 469, 471 IPC Police Station - Kotwali City, District - Balrampur passed by learned Chief Judicial Magistrate, Balrampur, and further proceedings of the Case Session Trial No. 3509/2021 in re "State Versus Ramesh Chandra Sharma", in pursuance thereof, in the ends of justice."*

4. The only ground pressed by learned counsel for the revisionist for seeking relief sought in the instant case is to the effect that the charge-sheet, after investigation, was filed under Section 465 IPC and the Magistrate concerned took cognizance under Sections 465, 466, 468, 469, 471 I.P.C. and summoned the accused though the Magistrate is not empowered to do so and in doing so, the Magistrate erred in law.

5. Submission of the revisionist is completely fallacious. The law is otherwise. This Court, at Allahabad, after considering the relevant provisions of Code of Criminal Procedure (Cr.P.C.) and judgement(s) passed by the Hon'ble Apex Court in the case of (i) **State of Gujarat Vs. Girish Radhakrishnan Varde** reported in **(2014) 3 SCC 659**, (ii) **Minu Kumari and Another Vs. State of Bihar and Others** reported in **(2006) 4 SCC 356**, (iii) **Ajay Kumar Parmar Vs. State of Rajasthan** reported in **(2012) 12 SCC 406**, (iv) **Balveer Singh and Another Vs. State of Rajasthan and Another** reported in **(2016) 6 SCC 680**, (v) **Dharam Pal and Others Vs. State of Haryana and Another** reported in **(2014) 3 SCC 306** and (vi) **Nahar Singh Vs. State of Uttar Pradesh and Another** reported in **2022 Cr. L. J. 1787 (S.C.)**, vide judgment dated 28.01.2023, dismissed the **Application**

U/s 482 No. 29523 of 2022 (Sadab Vs. State of U.P. and Another) reported in **2023 SCC OnLine All 30: (2023) 4 All LJ 223**, wherein the issue was similar to the issue involved in the present case.

6. In the case of **Sadab (supra)**, the charge-sheet was filed under Sections 323, 506, 498A IPC, thereafter, an application was filed on 18.12.2021 by the wife (opposite party no. 2 in the said case) and the same was allowed by the Magistrate on 10.01.2022, and thereafter, the Magistrate, after taking cognizance under Sections 498A, 323, 506, 376 IPC, summoned the accused (Sadab). The relevant paras of the judgment passed in the case of **Sadab (supra)** are as under:

> *"10. The core issue in the present application is that whether Magistrate is empowered to add any section at the time of taking cognizance and can issue summons to accused for such offence along with the offence mentioned in the charge-sheet.*
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> *11. The power of the Magistrate to take cognizance is prescribed under Section 190 Cr.P.C., which reads as:-*
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> *"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-*
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> *(a) upon receiving a complaint of facts which constitute such offence;*
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> *(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."*
>
> *12. According to Section 190(1)(b) Cr.P.C. a Magistrate is empowered to take cognizance of any offence upon a police report of such facts. Therefore, prima facie from the perusal of the Section 190(1)(b) Cr.P.C. it appears that Magistrate can take cognizance of "any offence" upon a police report submitted under Section 173(2) Cr.P.C.*
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> *13. The question with regard to power to take cognizance by a Magistrate has come up before the Apex Court in the case of Minu Kumari and another Vs. State of Bihar and others (2006) 4 SCC 356 and the Apex Court observed as:-*
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> *"11. ..... 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."

14. The Apex Court in case of Ajay Kumar Parmar Vs. State of Rajasthan (2012) 12 SCC 406 with regard to power of the Magistrate under Section 190 Cr.P.C. observed as:-

"18. .....The scheme of the Code simply provides that the Magistrate can determine, whether the facts stated in the report make out an offence triable exclusively, by the Court of Sessions. Once he reaches the conclusion that the facts alleged in the report, make out an offence triable exclusively by the Court of Sessions, he must commit the case to the Sessions Court."

15. Therefore, from the above authorities of the Apex Court, it appears that Magistrate is having authority to disagree with the police report and if from the perusal of the report submitted under Section 173(2) Cr.P.C. he arrives at the conclusion that an offence exclusively triable by the court of session is made out against the accused then he can commit the case to the Sessions Court after taking cognizance and Magistrate is not bound by the police report submitted under Section 173(2) Cr.P.C. Magistrate can ignore the conclusion arrived at by the Investigation Officer and he should apply his mind independently to the facts emerging from the investigation.

16. Further, the phrase "any offence" used in Section 190 (1) Cr.P.C. is significant. It implies that Magistrate can even take cognizance of the offence exclusively triable by the sessions court. As per section 190(1)(b) Cr.P.C. Magistrate can take cognizance of any offence upon a police report of such facts, therefore, as per Section 190(1)(b) Cr.P.C. if after perusal of the police report submitted under Section 173(2) Cr.P.C Magistrate arrives at the conclusion that an offence exclusively triable by the court of sessions is made out against an accused then he can take the cognizance of such offence and commit the case to the court of sessions even if no charge-sheet was submitted against the accused in such offence.

17. The Apex Court in the case of Balveer Singh and another Vs. State of Rajasthan and another (2016) 6 SCC 680 also observed as:-

"13. A bare reading of Section 190 of the Code which uses the expression "any offence" amply shows that no restriction is imposed on the Magistrate that Magistrate can take cognizance only for the offence triable by Magistrate Court and not in respect of offence triable by a Court of Session. Thus, he has the power to take cognizance of an offence which is triable by the Court of Session."

18. Therefore, in view of Balveer Singh case (supra) too, the

Magistrate is having all the authority to take cognizance of an offence which is exclusively triable by the court of sessions if after perusal of police report i.e. charge-sheet he arrives at the conclusion that such offence also made out against the accused.

19. The power to take cognizance of a Magistrate under Section 190 Cr.P.C. was exclusively discussed and dealt with by the Constitution Bench of the Apex Court in the case of Dharam Pal (supra), though the matter before Constitution Bench of the Apex Court was little bit different with regard to proceed against a person against whom charge-sheet was not submitted but Constitution Bench of the Apex Court analysed the power of the Magistrate under Section 190 Cr.P.C. very elaborately and observed that even if charge-sheet was not submitted against an accused and his name disclosed in column 2 to the charge-sheet, then also Magistrate can proceed against him if there is material against him in the police report submitted under Section 173(2) Cr.P.C. and Magistrate after taking cognizance can commit the case. The Constitution Bench of the Apex Court with regard to power of the Magistrate under Section 190(1)(b) Cr.P.C. observed as:-

"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."

20. <u>Therefore, from the Constitution Bench judgment of the Apex Court passed in the case of Dharam Pal (supra), it is evident that Magistrate may proceed against a person whose name was disclosed in column 2 to the police report i.e. charge-sheet and against whom charge-sheet was not filed if in view of the Magistrate material collected by the Investigating Officer during investigation prima facie discloses that he committed such offence. Therefore, if a Magistrate can proceed against a person against whom charge-sheet has not been filed then it cannot be said that Magistrate is not empowered to take cognizance of an offence, in which, charge-sheet was not submitted although from the police report, such offence also discloses.</u>

21. We can analyse the situation from different angle too, if Magistrate is not empowered to take cognizance for offences, in which charge-sheet was not submitted including the offence triable by court of sessions and charge-sheet was submitted only in offences, which are triable by the Magistrate (as the present case) then Magistrate will have to wait till framing of charges even if police report discloses offence also exclusively triable by sessions court and only at the time of framing of charges case would be committed to the court of session as police report also disclosed offence exclusively triable by sessions court. Therefore, in such case ultimately the case has to commit before

court of sessions and for that purpose Magistrate will have to wait till framing of charges, it appears to be improper as if police report disclosed such offences even at the time of taking cognizance then why Magistrate should wait till framing of charges. This will also waste the valuable time of the court, therefore, from this point of view too, in my considered view, Magistrate should not wait till framing of charges and if at the time of taking cognizance he arrives at the conclusion that from the perusal of the police report submitted under Section 173(2) Cr.P.C. it appears that accused also committed an offence triable by the court of sessions then he can take cognizance for such offence and commit the case to the court of sessions.

22. The Supreme Court in the case of Nahar Singh (supra) also after discussing the judgment of the Constitution Bench of the Apex Court in case of Dharam Pal (supra) observed that even if a person has not been nominated in the charge-sheet i.e. police report submitted under Section 173(2) Cr.P.C. but if Magistrate after perusal of the report arrives at the conclusion that against him an offence is made out then he can take cognizance for such offences and can summon him.

23. Therefore, from the law laid down by the Constitution Bench of the Apex Court and above noted other judgments of the Apex Court it appears that Magistrate is having all the authority to take cognizance of any offence on the basis of the material collected by the Investigating Officer during investigation and if he arrives at the conclusion that an offence is also made out, in which, charge-sheet has not been submitted then he can take cognizance for such offence(s) too and can summon the accused and if any such offence is exclusively triable by the court of sessions then he shall commit the case before the court of sessions.

24. Although, in the case of Girish Radhakrishnan Varde (supra), the two judges Bench of the Apex Court held that Magistrate is not empowered either to add or subtract section in the charge-sheet at the time of taking cognizance and he can take cognizance only of those offences, in which, charge-sheet was submitted and only at the time of framing of charges he can add or subtract such sections but the judgment of Girish Radhakrishnan Varde (supra) was delivered on 25.11.2013 whereas the judgment of Constitution Bench of the Apex Court in the case of Dharam Pal (supra) was delivered on 18.07.2013 but in spite of that case of Dharam Pal (supra) could not be placed before the Apex Court, in case of Girish Radhakrishnan Varde (supra). Further, neither the judgments of Minu Kumari (supra) nor Ajay Kumar Parmar (supra) were placed before the two judges Bench of the Apex Court, which decided Girish Radhakrishnan Varde case (supra), therefore, in view of the observation made by Constitution Bench in case of Dharam Pal (supra) as well as by the Apex Court in cases of Minu Kumari (supra) and Ajay Kumar Parmar (supra) the view expressed in Girish Radhakrishnan Varde (supra) does not prevail. Therefore, it cannot be held that Magistrate is not having any authority to take cognizance for the offences, in which, charge-sheet has not been submitted.

25. Further, in the later judgment of the Apex Court in the cases of Balveer Singh (supra) the Apex Court after considering the dictum of Constitution Bench in the case of Dharam Pal (supra) clearly held

that Magistrate is fully empowered to disagrees with the police report and he can independently apply his mind and can take cognizance even for such offences, in which, charge-sheet was not submitted if from the perusal of the charge-sheet i.e. police report submitted under Section 173(2) Cr.P.C. he arrives at the conclusion that such offences also made out. Similar import is also of the judgment of the Apex Court in case of Nahar Singh (supra).

26. As the Single Judge of this Court in case of Smt. Shalini Kashyap (supra) only after perusing the judgment of the Apex Court passed in Girish Radhakrishnan Varde (supra) held that Magistrate is not empowered to add or subtract any section in the charge-sheet, therefore, this case will be of no help for the applicant as at the time of making such observation, learned Single Judge of this Court did not discuss the law laid down by the Constitution Bench in the case of Dharam Pal (supra), Minu Kumari (supra), Balveer Singh (supra) and Ajay Kumar Parmar (supra). Although, Single Judge in later part of the judgment discussed the observation made by the Constitution Bench of Dharam Pal (supra) but with regard to different question to summon additional accused.

27. Therefore, from the discussion made above, in my considered view, as from the perusal of the statement of opposite party no.2, the informant and victim of the case, recorded under Section 161 Cr.P.C. and 164 Cr.P.C. prima facie offence under Section 376 IPC is made out against the applicant, therefore, Magistrate did not commit any illegality in summoning him under Section 376 IPC in spite of the fact that no charge-sheet was submitted against the applicant under Section 376 IPC.

28. Accordingly, the instant application under Section 482 Cr.P.C. stands dismissed."

7. From the above quoted paras, it is apparent that the Magistrate is fully empowered to disagree with the police report and he can independently apply his mind and take cognizance of even for such offence(s), in which, charge-sheet was not filed.

8. Taking note of the aforesaid and the only ground pressed, as indicated above, this Court finds no force in the instant criminal revision. Accordingly, the same is **dismissed.** No order as to costs.

Order Date :- 14.6.2024
Mohit Singh/-

Digitally signed by :-
MOHIT SINGH
High Court of Judicature at Allahabad,
Lucknow Bench