

Court No. - 82

Case :- CRIMINAL APPEAL No. - 11676 of 2023

Appellant :- Manoj Kumar

Respondent :- State of U.P. and Another

Counsel for Appellant :- Manish Rai, Ramesh Chandra, Santosh Kumar

Counsel for Respondent :- G.A., Jai Prakash Singh

Hon'ble Nalin Kumar Srivastava, J.

1. This criminal appeal under Section 14-A (1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been preferred by the appellant - **Manoj Kumar** with the prayer to set-aside the judgment and order dated 22.9.2023 passed by the Special Judge (SC/ST Act) Ghazipur in Criminal Case No. 533 of 2022, arising out of case crime no. 91 of 2022, under Sections 302 IPC and 3(2)(V) SC/ST Act, P.S. Bhudkuda, District Ghazipur whereby final report submitted by the I.O. has been accepted.

2. Heard learned counsel for the appellant as well as the learned A.G.A. for the State and perused the entire record.

3. It is submitted by the learned counsel for the appellant that F.I.R. was lodged by the appellant on 30.5.2022 which was registered as Case Crime No. 91 of 2022 under Sections 302 IPC and 3(2)(v) of the SC/ST Act on the basis of order passed by the Court on the application under Section 156(3) CrPC. It is further submitted that the Investigating Officer did

not conduct fair investigation into the matter and submitted final report in illegal manner in favour of the opposite party no.2. It is also submitted that the appellant filed protest petition before the Court concerned challenging the said final report which was rejected by the Court concerned illegally without applying judicial mind.

4. Learned AGA opposed the prayer.

5. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

6. Before advertng to the rival submissions made by the learned counsel for the parties, it would be appropriate to have a glance on the relevant provisions / laws on the subject.

7. In **Sampat Singh vs. State of Haryana (1993)1 SCC 561** the Hon'ble Apex Court has held that when the investigation culminates into a final report, the duty of the Magistrate or the court is to scrupulously scrutinize the report and accompaniments by applying the judicial mind either to accept or reject the final report and take cognizance.

8. It is settled law that the Magistrate on receiving a closure report may either (a) accept the report and take cognizance of the offence and issue process, or (b) agree with the report and drop the proceedings,

or (c) direct further investigation and require the police to make a further report. But, where the Magistrate agrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit his protest application, if any. After providing such opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the accused or not. If the Magistrate accepts the objections, in that case, he may issue process and/or even frame the charges against the accused. That apart, on not being satisfied with the investigation after considering the report forwarded by police under Section 173(2) (i) CrPC, the Magistrate may, at that stage, direct further investigation and require the police to make a further report (vide : **Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542**).

9. In **Union of Public Service Commission vs. S. Papaiah and others, AIR 1997 SC 3876** the Hon'ble Apex Court held that where the Magistrate after accepting the final report submitted by CBI passed an order to drop the proceedings and not to take cognizance, without notice to the informant the order of the Magistrate was illegal. The issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must". In such a case, the issuance of notice by the CBI to the informant would not be a substitute for the notice which was required to be given by the Magistrate. Magistrate could not in any event 'delegate' to the

investigating agency its function of issuing notice. Moreover, when law requires a particular thing to be done in a particular manner, it must be done in that manner and in no other manner.

10. Further, in **Kishore Kumar Gyanchandani vs. G.D. Mehrotra and another, AIR 2002 SC 483**, the Hon'ble Supreme Court held that when police after investigation files a final form under Section 173, the Magistrate may disagree with conclusion arrived at by police and take cognizance in exercise of power under Section 190 CrPC. The Magistrate may not take cognizance and direct further investigation in matter under Section 156(3) CrPC. Where Magistrate accepts final form submitted by police, right of complainant to file regular complaint is not taken away and in fact on such a complaint being filed Magistrate follows the procedure under Section 201 CrPC and takes cognizance if materials produced by complainant make out an offence. Acceptance of final form does not debar Magistrate from taking cognizance on basis of materials produced in a complaint proceeding.

11. Thus, it is trite law that on receiving a closure report by the police it is obligatory upon the Court to issue notice to the informant of the case and he must be provided an opportunity of hearing.

12. Naturally, if the informant does not find himself in conformity with the final report submitted by the

police, he has all rights to oppose the final report by way of filing a protest petition and on receiving the protest petition if the Court after perusing the entire record including the protest petition and final report is of the view that the final report submitted by the police is a bogus document it can very well reject the final report, secondly, the Magistrate is empowered to take cognizance of the matter and order for issuance of the process against the accused for the relevant offences, and thirdly, the Magistrate is empowered to treat the protest petition submitted by the informant as complaint and thereafter he may apply the procedure of a complaint case and on completing the necessary formalities he may summon the accused to face trial in a complaint case. He is further empowered to pass an order for further investigation in the matter. But the issue mandatory is that in no case the informant should be left unheard and if he has been served with the notice and appears before the Court and opts to submit a protest petition, the Magistrate is bound to take into consideration the objections raised in the protest petition.

13. So far as the impugned order is concerned, it is mentioned in the said order that despite service of notice the informant is not present before the Court nor any counsel is representing him and even no adjournment application has been moved by the informant. It is nowhere mentioned in the said order

that the Court concerned at any point of time perused the case diary, which was essential for the Court and it is only mentioned in the impugned order that the final report has been submitted by the Investigating Officer on the ground that during investigation sufficient evidence was not found against the accused persons and even there is no evidence to affirm the incident, hence final report was submitted and further the Court concerned averred that in the facts and circumstances of the case prima facie the final report was liable to be accepted and accordingly it was accepted.

14. However, a perusal of the record reveals that after receiving the notice the informant of this case not only appeared before the Court but he also submitted his protest petition dated 3.11.2022 before the Court concerned wherein the entire process of investigation was assailed. It is very surprising that while passing the impugned order the Court concerned totally ignored the existence of any protest petition and it also denied even the presence of the informant before the Court after service of notice. Hence, the impugned order on the very face of record is perverse and against the provisions of law. Even if the informant remained absent on the date of hearing, the Court concerned had a bounden duty to take into consideration the contents of the protest petition already on record and it ought not to discard it in any case.

15. In view of the above discussions, in my view, the impugned order suffers from perversity and illegality and the same is liable to be set aside and the criminal appeal is liable to be allowed.

16. Accordingly, the impugned order dated 22.9.2023 is set-aside. The criminal appeal is **allowed** and the matter is remanded back to the Court concerned for passing fresh order in the matter after providing full opportunity of hearing to the informant.

Order Date :- 27.2.2025

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