

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 205 OF 2002

Maroti S/o Kaluba More

Age : 70 Yrs., Occ. Agril.,

R/o : Panshavdi, Tq. :

Kandhar, Dist. : Nanded.

..... APPLICANT/

[ORIGINAL COMPLAINANT]

V E R S U S

1. The State of Maharashtra
2. The Superintendent of Police
Nanded.
3. The Police Station Incharge/
P.S.O., Police Station,
Kandhar, Dist. Nanded.

..... RESPONDENTS

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Mr. Sk.S.A.R. Ahmed h/f Mr. A.S.Golegaonkar,
Advocate for the Applicant.

Mr. V.P.Kadam, A.P.P. for R – 1 to 3 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 4th FEBRUARY, 2015

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JUDGMENT :

1. Rule. Rule is made returnable forthwith. By the consent of the learned counsel for the Applicant, and the learned A.P.P. for respondent Nos. 1 to 3 – State, the present Criminal Revision Application is taken up for final hearing.

2. Heard Mr. Sk.S.A.R. Ahmed holding for Mr. A.S.Golegaonkar, the learned counsel for the applicant and Mr. V.P.Kadam, the learned A.P.P. for respondent Nos. 1 to 3 – State.

3. The applicant/original first informant questions the correctness and propriety of the Order dated 24/06/2002 passed by the learned Judicial Magistrate First Class, Kandhar, district Nanded in First Information Report [hereinafter referred as 'F.I.R.' for brevity] bearing No. 159/2000 discharging the accused persons, who were named in the said F.I.R.

4. The principal challenge against the said order is the denial of the opportunity of hearing to the applicant. It is submitted by the learned counsel for the applicant that no

prior notice was given by the learned Magistrate to the applicant and without giving opportunity of hearing to the applicant, the report filed by the Police Station Officer u/s 169 of the Code of Criminal Procedure was accepted. In order to buttress his submission, the learned counsel relied upon the decision in the case of **Bhagwant Singh Vs. Commissioner of Police and another, AIR 1985 Supreme Court 1285** and submitted that it was incumbent on the part of the learned Magistrate to give prior notice and hearing.

5. The question, which is posed before this Court for determination, is ' as to whether the first informant is entitled to notice and whether he is required to be heard by the learned Magistrate before he accepts the report submitted by the Investigating Officer in respect of his action taken u/s 169 of the Code of Criminal Procedure ' ?

6. A similar question was before the Gujarat High Court in Special Criminal Application No. 334 of 1993. **Natwarlal Ambalal Patel Vs. State of Gujarat.**

I have the advantage of perusal of the said Judgment of Gujarat High Court while deciding the present

Criminal Revision Application.

7. Section 169 of the Code of Criminal Procedure, 1973 reads as under, :

“ 169. Release of accused when evidence insufficient - If, upon an investigation under this Chapter, it appears to the officer-in-charge of the Police Station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a Police Report, and to try the accused or commit him for trial ”.

Perusal of the aforesaid Section would reveal that the Investigating Officer is under obligation to release such person, who is in custody on executing a bond with or without sureties, if evidence is not sufficient and/or there are no reasonable ground of suspicion to forward such person to

the Magistrate.

The plain reading of Section 169 of the Code of Criminal Procedure, therefore, postulates that when the Investigating Officer reports his action to the learned Magistrate, it will not be a report, however it will be a report of his action either by the Investigating Officer or by the Officer in-charge of the police station.

8. Section 173 of the Code of Criminal Procedure states about the steps to be taken by the Investigating Officer after the completion of the investigation. The Officer in-charge of the police station is required to forward the report under said Section to the Magistrate empowered to take cognizance of the offence in prescribed form.

Thus, Section 169 of the Code of Criminal Procedure is silent in making report to the Magistrate, however the Investigating Officer is under obligation to submit report to the Magistrate u/s 173 of the Code of Criminal Procedure. Thus, though Section 169 of the Code of Criminal Procedure does not contemplate making a report, it contemplates of obtaining a bond with or without sureties

from the accused to appear if and when so required before the Magistrate empowered to take cognizance of the offence on a police report and such report is contemplated u/s 173 of the Code of Criminal Procedure. Clause (d) and (f) of Section 173 (2) (i) of the Code of Criminal Procedure reads as under, :

“(d) whether any offence appears as to have been committed and, if so, by whom.

(f) whether he has been released on his bond and, if so, whether with or without sureties ”.

9. Paragraph 10 of the Judgment in the case of **Natvarlal Ambalal Patel Vs. State of Gujarat & 11 of Gujarat High Court in Special Criminal Application No. 334 of 1993** is as under, :

“ In fact if the provisions contained in Section 173 of the Code of Criminal Procedure are seen, they deal with a situation where upon completion of investigation, the officer in-charge of the police station is required to forward to a Magistrate empowered to take cognizance

of the offence on a police report, a report in the form prescribed by the State Government indicating the names of parties, nature of information, the names of persons who appear to be acquainted with the circumstances of the case, whether any offence appears to have committed and, if so, by whom, whether he has been released on bond and, if so, with or without sureties and whether he has been forwarded in custody under section 170 ”.

10. Their Lordship of Gujarat High Court also noticed the Apex Court's decision in the case of **Minu Kumari Vs. State of Bihar, (2006) 4 SCC 359**. The Apex Court made following observations :

“ 12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of

others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh Vs. Commr. Of Police [1985] 2 SCC 537] held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard ”.

11. After considering the observation of the Apex Court in the case of Minu Kumari cited supra, their Lordship of Gujarat High Court has observed as under :

“13. In view in the case of Bhagwant Singh (supra) is thus reaffirmed. The Supreme Court has dealt with cases of reports where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, which is termed variously

as referred charge or final report or summary, i.e. a situation contemplated under Section 169 of Cr.P.C. It is also observed that Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. The Court found that where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, which is a situation contemplated under Section 169 of Cr.P.C., the informant would certainly be prejudiced as the first information report lodged by him becomes wholly or partially ineffective ”.

12. I am in complete agreement with the observations of their Lordship of Gujarat High Court. Therefore, in my opinion also, it is mandatory that the learned Magistrate is under obligation to hear first informant before accepting the discharge as submitted by the Investigating Officer u/s 169 of the Code of Criminal Procedure.

13. In that view of the matter, the order passed by the learned Judicial Magistrate First Class, Kandhar, district Nanded dated 24/06/2002 in F.I.R. No. 159/2000 is hereby set aside. The matter is remanded to the learned Magistrate. The learned Magistrate is directed to take decision on the report of the Investigating Officer afresh after giving notice and hearing to the first informant.

14. Rule is made absolute.

[V.M.DESHPANDE, J.]
