

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 599 OF 2014

Mrs. Shahnaj Taj. Mohd. Hashmi
& Anr.

..Petitioners

v/s.

Senior Inspector of Police & Anr.

..Respondents

Mr. Afroz A. Siddiqui for the Petitioner.
Mr.S.K.Shinde, P.P. a/w. Mr.K.V.Saste, APP for the respondent
Nos.1 and 2.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
RESERVED ON : 10TH MARCH, 2017
PRONOUNCED ON : 5th MAY, 2017**

JUDGMENT (PER ANUJA PARABHUDESSAI, J.).

1. Rule. Rule made returnable forthwith. By consent of parties taken up for hearing.
2. By this petition under Article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure (in short "Cr.PC.") the Petitioners have sought to quash the FIR No. 295 of 2013 registered against the Petitioners at Sakinaka Police

Station for the offences under Section 498A, 323, 504 read with 34 of the Indian Penal Code.

3. The Respondent No.3/ first informant was married to one Karam Husain Hashmi. The petitioners are the sisters of said Karam Husain Hashmi and the sisters-in-law of the Respondent No.3/ first informant. The Respondent no.3 had lodged the aforestated FIR alleging that her husband Karam Husain Hashmi and his family members, including the Petitioners herein had been demanding dowry and subjected her to cruelty.

4. The learned Counsel for the Petitioners has submitted that the allegations in the FIR taken at its face value do not disclose any offence against the petitioners. He submitted that continuation of this proceeding would amount to abuse of process of law.

5. The learned APP, upon instructions has submitted that the investigation in the subject FIR is already completed and the chargesheet has been filed against the husband and the parents-in-law of the Respondent no.3/ first informant. He

has submitted that a closure report has been filed against the aforesaid Petitioners under Section 169 of Cr.P.C.

6. The grievance of the Petitioners would stand redressed with the statement that no charge sheet has been filed against them. Nevertheless, we deem it appropriate to consider the legality of submitting the closure report under Section 169 of Cr.P.C and the procedure adopted by the investigating agency.

7. In this regard, it would be necessary to refer to the relevant provisions contained in Chapter XIV of the Cr.P.C., which deals with registration of First Information Report and powers of the police to investigate the First Information Report.

. Section 154 Cr.P.C imposes duty on the Officer-in-charge of the police station to record in writing the information relation to commission of a cognizable offence.

. Section 155 Cr.P.C relates to the information as to non-cognizable cases and investigation of such cases.

. Sub-Section (1) of Section 156 Cr.P.C. authorizes the police officer to investigate any cognizable case without the order of the Magistrate. Sub-Section (3) of Section 156 Cr.P.C.

empowers the Magistrate to order such investigation.

. Section 157 Cr.PC prescribes the procedure for investigation. Sub-Section (1) of this Section mandates that whenever the police officer has reason to suspect that a cognizable offence has been committed he shall forthwith forward the report of the same to a Magistrate empowered to take cognizance of such offence.

. Sections 160 to 166 of the Cr.PC. prescribe power and procedure of securing attendance of persons acquainted with the facts and circumstances of the case, recording and use of the statements of the witnesses, search, issuance of search warrants etc.

. Section 167 Cr.PC prescribes the procedure when the investigation of an offence cannot be completed within a period of 24 hours.

. Section 169 Cr.PC relates to the powers of the officer in charge of the concerned Police Station to release the accused person when the evidence is deficient. Whereas Section 170 Cr.PC prescribes the procedure to be followed in cases to be

sent to Magistrate when evidence is sufficient. Section 173 Cr.P.C contemplates filing of the report upon completion of investigation. These three Sections which are relevant to decide the issue read as under :

S. 169: Release of accused when evidence deficient.-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.

S.170: Cases to be sent to Magistrate when evidence is sufficient.-

1. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed

and for his attendance from day to day before such Magistrate until otherwise directed.

2. When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

3. If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

4. The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

S. 173. Report of police officer on completion of investigation.-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall 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, stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during

investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

8. A plain reading of Sections 169 and 170 Cr.PC reveals that these Sections can be invoked when the accused is in

custody. Section 169 comes into operation when there is no sufficient evidence to proceed against the accused. This Section empowers the officer-in-charge of the concerned police station to release such accused person on bail on executing bond, with or without surety to appear before the concerned Magistrate, if and when so required. Whereas, Section 170 comes into play when there is sufficient evidence or reasonable ground to send the accused for trial. In such circumstances, the Officer-in-charge is required to forward the accused to the concerned Magistrate, and in case the offences are bailable, to release the accused on bail upon taking surety for his appearance before such Magistrate.

9. Section 173 Cr.P.C contemplates filing of a report upon completion of investigation, which should contain all the particulars mentioned in sub Section (2) of Section 173 of Cr.P.C. Such report includes the cases covered under Section 169 as well as 170 of Cr.P.C. Sub-Section (4) of Section 173 relates to Section 169 of Cr.P.C., where the accused has been released on his bond for want of sufficient evidence or

reasonable grounds to send him for trial. This provision empowers the Magistrate either to discharge the bond, or to order further investigation, or to take cognizance of the offence, as the Magistrate thinks fit. Sub Section 5 of Section 173, which relates to the cases under Section 170 of Cr.P.C. mandates that the police officer shall forward to the Magistrate along with the report, all relevant documents and the statements recorded under Section 161 of Cr.P.C. Thus, the investigation, which commences with registration of FIR under Section 154 of Cr.P.C concludes with filing of report under Section 173 of Cr.P.C, subject to further investigation as contemplated under Section 173(8) of Cr.P.C.

10. The report under Section 173 has been classified in Bombay Police Manual, 1959 as - "Charge-sheet"- to be filed when the accused is sent for trial and "Final Report"- to be filed when the accused is not sent for trial. It would be therefore advantageous to refer to Rules 218 and 209 of Bombay Police Manual which prescribes the procedure and guidelines for filing Charge-sheet and the final report under Section 173 of

Cr.P.C. Rule 218 states that the reports required by Section 173 Cr.P.C., to be submitted on the completion of an investigation are of two kinds viz. (1) Chargesheet in Form C.P.C.20 and (ii) Final reports in Form C.P.C.19. Sub-rule 2 of Rule 218 states that when there is sufficient evidence to justify the sending of an accused person to the Magistrate, the charge-sheet shall be sent to the Magistrate directly. The said sub-Rule (2) specifies further details/points which are required to be observed in addition to the information to be filled up in the columns of the charge-sheet.

11. Rule 219 stipulates that when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, the police station officer or the Investigating Officer shall release the accused person on bail, if he is in custody.

12. Rule 219 (1) states that when there is no sufficient evidence to justify the forwarding of the accused to the Magistrate, the Police Station Officer or the Investigating Officer will release the accused person on bail, if he is in custody. Sub-Rule 2 of Rule 219 stipulates that the police

station officers shall then submit a final report to the Magistrate empowered to take cognizance of an offence on a police report, through the Superintendent of Police or the subdivisional police officer, as the case may be, in the following three cases.

(a) those in which it appears from the police investigation that no offence has been committed.

(b) Those in which it appears from the police investigation that only a non-cognizable offence has been committed.

(c) Those in which there are grounds for believing that offence has been committed, but in which, in the opinion of the officer in charge of the police station, there are not sufficient grounds to investigate or there is no sufficient evidence to justify sending anyone for trial, or in which the offender is not known or cannot be arrested and send for trial.

13. Sub-Rule 3 of Rule 219 contemplates that the final report should be written up carefully by the officer-in-charge of the police station personally and should be accompanied by all the case papers numbered and indexed methodically. If the

accused has been released on bail, the Magistrate should be requested to cancel the bail bonds and pass order regarding disposal of property. A request should also be made to the Magistrate to classify the case and to issue appropriate summary of his order viz. 'A' True, undetected (where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up to the Magistrate (for trial).

"B' Maliciously false.

"C' Neither true nor false eg. due to mistake of facts or being of a civil nature.

"Non-cognizable" police investigation reveals commission of only a non-cognizable offence.

14. The aforesaid rules clearly indicate that irrespective of the fact whether the accused person is released on bail under Section 169 of Cr.P.C. or he is forwarded to the Magistrate under Section 170 of Cr.P.C., upon completion of investigation, the concerned officer-in-charge of the police station has to either file a report referred to as charge-sheet in Rule 218, or a

final report as contemplated under Rule 219 of Bombay Police Manual. Needless to state that the Final Report should contain detail reasons for not sending the accused for trial.

15. In this connection we may refer to the decision in ***Abhinandan Jha And Others vs. Dinesh Mishra***¹, wherein the Apex Court, after considering the provisions in Chapter XIV of the Code of Criminal Procedure has held as under:

"9. From the foregoing sections, occurring in Chapter XIV, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused and is also completed without unnecessary or undue delay. But the point to be noted is that the manner and method of conducting the investigation, are left entirely to the police, and the Magistrate, so far as we can see, has not power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer, in-charge of a police station, or to the officer making an investigation, that there is no sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate, Section 169 says that the officer shall release the accused to a Magistrate, Section 169 says that the officer shall release the accused, if in custody on his executing a bond to appear before the Magistrate. Similarly, if , on the other hand, it

1 AIR 1968 SC 117

appears to the officer, in-charge of a police station, or to the officer making investigation, under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of an accused to a Magistrate, such an officer is required, under Section 170, to forward the accused to a Magistrate; or, if the offence is bailable, to take security from him for his appearance before such Magistrate. But whether a case comes under Section 169, or under Section 170 of the Code, on the completion of the investigation, the police officer has to submit a report to the Magistrate, under Section 173, in the manner indicated therein, containing the various details ..."

16. Similarly, in ***Kamalapati Trivedi v. State of West Bengal***², the Apex Court has observed that:

"Section 169 and 170 do not talk of the submission of any report by the police to the Magistrate, although they do state what the police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate (section 169), (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the police is to be submitted to the Magistrate under sub-section (1) of section 173. Sub-section (3) of that section further provides that in the case of a report by the police that the accused has been released on his bond (which is the situation envisaged by section 169), the Magistrate shall make "such order for the discharge of such bond or otherwise as he thinks

² AIR 1979 SC 77

fit". Now what are the courses open to the Magistrate in such a situation? He may, as held by this Court in Abhinandan Jha & Others v. Dinesh Mishra. (1) agree with the report of the police and file the proceedings, or (2) not agree with the police report and (a) order further investigation, or (b) hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of.

The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof.

17. From the aforesaid provisions and the principles laid down by the Apex Court, it is clear that release of the accused under Section 169 of Cr.P.C. cannot be equated with filing a report under Section 173 Cr.P.C., which has to be filed after completion of investigation. In fact, Section 169 Cr.P.C. does not contemplate filing of such report. All that Section 169 Cr.P.C stipulates is the release of the accused upon taking bonds (with or without surety) to appear before the Magistrate when so required, when there is no sufficient material to send the accused for trial. Whether the accused is released on bonds under Section 169 Cr.P.C. and sent for trial under Section 170

Cr.P.C., upon completion of investigation the police officer has to submit the report under Section 173 Cr.P.C. which would include a charge-sheet under Rule 218 and a final report under Rule 219 of Bombay Police Manual. It is only upon filing of the report under Section 173 which would include final report under Rule 219 of Bombay Police Manual, that the Magistrate has to either agree with the report and discharge the bond, or not agree with the police report and order further investigation, or in the alternative take cognizance of the offence complained of. In the light of above provisions and principles, the procedure allegedly followed by the investigating agency in submitting the closure report under Section 169 of Cr.P.C. against the aforesaid petitioners is apparently not in consonance with the provisions of law.

18. It is also pertinent to note that in the instant case, the concerned Officer-in-charge has already submitted a report under Section 173 of Cr.P.C. A copy of the said report which has been placed on record for our perusal reveals that Kumar Husein Hashmi who is the husband of the first informant, and

three other accused namely Sakunissa Mohd. Hadis Hashmi, Akhtar Husein Md. Husein Hashmi and Karam Husein Md. Hadis Hashmi have been sent for trial. The report further reveals that the petitioners herein were not arrested and have not been sent for trial. The said report against the Petitioner would therefore be a Final Report under Rule 219 of Bombay Police Manual.

19. It may be mentioned that filing of the Final Report is not an empty formality. Such report should contain all the details for not sending the accused for trial, as to enable the Magistrate to decide what course to adopt i.e. whether to accept the report and discharge the bonds or order further investigation or to take cognizance of the offence. In the instant case, the report reveals that the concerned Investigating Officer/ Officer-in-charge of the police station had not filled up all the required details pertaining to these petitioners and in fact, most of the columns have been left blank. The concerned Police Officer has also not disclosed the reasons for not sending the aforesaid petitioners for trial and has not made request to

classify the case and issue an appropriate summary viz. "A", "B" or "C" Summary. The final report is filed in a most cursory manner and is not in consonance with the provisions of Cr.P.C. as well as the Rules under Bombay Police Manual.

20. Be that as it may, since the report is already filed before a Magistrate, it would be within the domain of the Magistrate to consider the said report and take a decision whether or not to accept the report filed against the petitioners, or send the case for further investigation or take cognizance of the offence under Section 190 (1)(b) of the Cr.P.C. Nevertheless, the powers under Section 482 of Cr.P.C. are wide and can be exercised to prevent abuse of process of law. In exercise of these powers we have perused the FIR, which reveals that the petitioners are the married sisters of the husband of the first informant. The first information report does not contain any allegation against the petitioners. The allegations contained in the first information report, even when taken at face value and accepted in entirety, do not disclose any offence against these petitioners. In such circumstances, continuation of the

proceedings emanating from the said FIR would be nothing but abuse of process of law.

21. Hence, the petition is allowed. The FIR No. 295 of 2013 registered with the Saki Naka Police Station, and all further proceedings arising from the said FIR qua these petitioners are hereby quashed and set aside.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)