

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1350 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the 1st respondent State.

The present criminal revision case is filed against the orders passed in S.R.No.8613 of 2017 dated 15.04.2018 on the file of the Court of VII Metropolitan Magistrate, Cyberabad at Hyderabad, dismissing the complaint filed for the offences under Sections 420, 406, 506, 120B IPC and Sections 12(1) and 12(3) of the Passport Act.

The facts of the case are that the petitioner filed a complaint to refer the same to the Station House Officer, Vanasthalipuram Police Station under Section 156(3) Cr.P.C. and to investigate the same. The case of the prosecution is that A1 and A2 are the nephews of the complainant, A4 is his sister and A3 is his brother-in-law. A1 and A2 have produced false and fabricated birth certificates and obtained passports and thereby presently residing at USA and doing software jobs. As per the birth certificate, the date of birth of A1 is 24.02.1977 and as per the school records it is 24.12.1976. As far as A2 is concerned, he was born on 19.08.1979, but as per the passport it is 19.08.1980. A3 and A4 in collusion with A1 and A2 manipulated their date of births and created fabricated birth certificates and thereby committed offences

punishable under the above said provisions of law. During the enquiry, the complainant was examined as PW.1. However, the Court below, after looking into the statement of the petitioner as PW.1, came to a conclusion that no prima facie case is made out attracting the essential ingredients of the sections with which the accused are charged and dismissed the complaint by orders dated 18.04.2018 at the S.R. stage itself. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would basically contend that under Section 202 Cr.P.C., it is the bounden duty of the Magistrate to issue notice to the accused before passing any order at the stage of enquiry. The Magistrate has no power to dismiss the complaint at the stage of enquiry. He also contended that the learned Magistrate ought not to have decided the matter on merits even before referring the matter to the police under Section 156(3) Cr.P.C.

Learned Public Prosecutor appearing for the 1st respondent State supported the impugned proceedings and would submit that there is no irregularity or illegality in the order passed by the Court below dismissing the complaint, particularly, when no prima facie case is made out satisfying the essential ingredients of offence for which the accused are charged.

The provisions of Section 202 Cr.P.C., which contemplate issuance of process, is as under:

“202. Postponement of issue of process: (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made:

- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or
- (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station, except the power to arrest without warrant.”

A perusal of the above said provision indicates that the scope of enquiry under Section 202 Cr.P.C., is extremely limited. A Magistrate at such stage is expected to examine prima facie the truth or falsehood of the allegation made in the complaint. The Magistrate has to decide purely from the point of view of the complainant without adverting to any defence that the accused may have and at the same time if he is of the view that there are no merits in the case and no prima facie case is made out for commission of any of the offences, he has got the power to dismiss the complaint at

that stage itself without even issuing notice to the accused.

In this context, the provisions of Section 203 Cr.P.C., are relevant and the same is as under:

“203. Dismissal of complaint; If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

A perusal of the said provisions would indicate that if the Magistrate is of the opinion that there is no ground for proceeding, he shall dismiss the complaint and at the same time, he shall briefly record his reasons for doing so. This aspect has been considered by the Apex Court in **Chandra Deo Singh v. Prakash Chandra Bose alias Chabi Bose and another**¹ and the relevant portion is as under:

“Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, nor he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for respondent No.1 that the very object of

¹ AIR 1963 SC 1430

the provisions of Ch. XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate subordinate to him. A privilege conferred by these provisions can, according to Mr. Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects behind the provisions of S.202 Cr.P.C. is to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to boor a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under S.202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry. It is true that there is no direct evidence in the case before us that the two persons who were examined as court witnesses were so examined at the instance of respondent No.1 but from the fact that they were persons who were alleged to have been the associates of respondent No.1 in the first information report lodged by Panchanan Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for respondent No.1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated. In this connection, the observations of this court in *Vadilal Panchal v. Dattatraya Dulaji Ghadigsonkar*: [1961]1 SCR at P.9: (AIR SC 1113 at P.1116), may usefully be quoted:

"The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so

as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

Having regard to the facts and circumstances of the case and in the light of the law laid down by the Apex Court in **Chandra Deo Singh (supra)**, this Court is of the view that there is no illegality or irregularity in the orders passed by the Court below in dismissing the complaint.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

Date: 22.06.2018.
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P. KESHA RAO, J

