

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 397 of 2013

Pradip Kumar Sengupta

....

Petitioner

Mr. S.D. Das, Senior Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. Janmejaya Katikia

Additional Government Advocate

CORAM:

THE CHIEF JUSTICE

ORDER

05.08.2022

Order No.

23. 1. The present petition under Section 482 of Cr PC seeks the quashing of an order dated 4th March 2011, passed by the learned Sub-Divisional Judicial Magistrate (SDJM), Angul in C.T. Case No.1808 of 2007.
2. The background facts are that the Petitioner is the authorised representative of M/s. Techno Electric and Engineering Co. Ltd. (hereafter 'the company') which has its Registered Office at Kolkata and a worksite office at Angul in Orissa. On 28th September, 2007 the Petitioner made a complaint to the Officer-in-Charge, Nalco Nagar PS informing about the commission of an offence under Section 379 of IPC in connection with the theft of 39 random length 5 to 6 meters stainless steel pipes from the company's stockyard situated in front of its site office, which is inside the plant of Nalco Nagar, District Angul, Orissa.

3. According to the complainant company, despite repeated requests, no action was taken by the said PS. In the circumstances, on 16th October, 2007 the Petitioner made a complaint to the Superintendent of Police (SP), District Angul. Thereafter, P.S. Case No.116 dated 19th October, 2007 was registered at the Nalco Nagar PS under Section 379 of the IPC against “unknown” accused.

4. On 31st August, 2010 a notice under Section 173 of Cr PC was issued by the Inspector-in-Charge (IIC), Nalco PS regarding closure of the investigation. The company then filed a protest petition before the SDJM, praying *inter alia* not to accept the final report and to either direct the IIC or the State CID to conduct further investigation or reinvestigation under Section 173 (8) of Cr PC.

5. It is stated that with the closure report, the Investigating Officer (IO) had filed statements supposedly made by (1) Sri Pradip Kumar Sengupta, (2) Sri Rabin Biswas, (3) Sri Partha Sarathi Bose, (4) Sri Samar Pal and (5) Sri Prasanta Kumar Biswas. The affidavits of these persons have now been filed with this petition to state that none of them had in fact made any statement that was recorded by the IO.

6. By the impugned order dated 4th March 2011, the SDJM, Angul accepted the final form and rejected the protest petition filed by the company.

7. This Court has heard the submissions of Mr. S.D. Das, learned Senior Counsel appearing for the Petitioner and Mr. Janmejaya Katikia, learned Additional Government Advocate for the State.

8. It is seen from the impugned order that the learned SDJM was of the view that even if the protest petition were to be entertained and the case was registered as a complaint case, “then against whom it shall proceed when the accused is not known till date”. According to the SDJM, “the case cannot certainly be proceeded without a known accused”. At the same time, the SDJM noted the decision in ***Abhinandan Jha v. Dinesh Mishra AIR 1968 SC 117***, where it was held that in the context of Section 156 (3) and 173 Cr PC, that the Court of the SDJM had the power “to pass a direction for further investigation under Section 156(3) of the Cr. P.C., if it is not satisfied by the final report submitted by the Police under Section 173 of Cr PC.”

9. The legal position was explained in ***Vinay Tyagi v. Irshad Ali @ Deepak (2013) 5 SCC 762***, as under:

“28. The next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct “further investigation” or “fresh investigation”. As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct “fresh” or “de novo” investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending

investigation or when report is filed to wipe out the report and its effects in law. Reference in this regard can be made to *K. Chandrasekhar v. State of Kerala*, *Ramachandran v. R. Udhayakumar*, *Nirmal Singh Kahlon v. State of Punjab*, *Mithabhai Pashabhai Patel v. State of Gujarat* and *Babubhai v. State of Gujarat*”

10. If as observed by the SDJM the accused was still ‘unknown’, then clearly it was within the power of the SDJM to order a further investigation so that the persons behind the crime could be ascertained. Also going by the affidavits filed with the present case, serious doubts arise whether the IO did record the statements of the said persons as claimed by him. This aspect also does not appear to have been taken into account by the learned SDJM while passing the impugned order. Therefore, both factually and legally, the learned SDJM would have to undertake the exercise afresh.

11. In this context, the following observations in ***Rakesh v. State of Uttar Pradesh (2014) 13 SCC 133*** would be relevant:

“6. If we are to go back to trace the genesis of the views expressed by this Court in *Gopal Vijay Verma (1982) 3 SCC 510*, notice must be had of the decision of this Court in *H.S. Bains v. State (UT of Chandigarh) (1980) 4 SCC 631* wherein it was held that after receipt of the police report under Section 173, the Magistrate has three options: (*H.S. Bains case (1980) 4 SCC 631, SCC p. 635, para 6*)

“6.(1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence

under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.”

The second and third options available to the Magistrate as laid down in *H.S. Bains (1980) 4 SCC 631* have been referred to and relied upon in subsequent decisions of this Court to approve the action of the Magistrate in accepting the final report and at the same time in proceeding to treat either the police report or the initial complaint as the basis for further action/enquiry in the matter of the allegations levelled therein. Reference in this regard may be made to the decision of this Court in *Gangadhar Janardan Mhatre vs. State of Maharashtra (2004) 7 SCC 768*. The following view may be specifically noted: (SCC pp. 773-74, para 9)

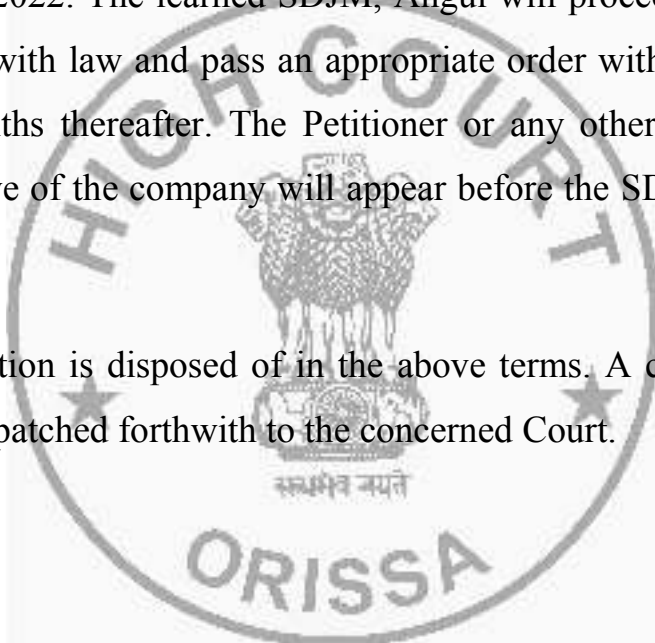
“9. ...The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See *India Carat (P) Ltd. v. State of Karnataka (1989) 2 SCC 132* (SCC p. 140, para 16).]”.

8. In the present case, the contention advanced on behalf of the accused pertained to the question of jurisdiction alone; it was urged that having accepted the final report the learned Magistrate had become “functus officio” and was denuded of all power to proceed in the matter. The above stand taken and the answer provided by the High Court would not require us to consider the circumstances in which the exercise of power was made.”

12. The impugned order of the learned SDJM, does not account for the legal position as aforementioned. In the considered view of the Court, the case would have to be considered afresh by the learned SDJM from the stage at which the final form was submitted by the Police and a protest petition was thereafter filed by the company.

13. Consequently, the impugned order of the SDJM, Angul is hereby set aside and C.T. Case No.1808 of 2007 is remanded to the Court of the SDJM, Angul where it will be listed on 12th September, 2022. The learned SDJM, Angul will proceed afresh in accordance with law and pass an appropriate order within a period of four months thereafter. The Petitioner or any other authorized representative of the company will appear before the SDJM, Angul on that day.

14. The petition is disposed of in the above terms. A copy of this order be despatched forthwith to the concerned Court.



(Dr. S. Muralidhar)
Chief Justice

S. Behera