



Judgment

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1

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.612 OF 2022

Janardhan s/o Dudharamji Tirpude,
aged about 64 years, occupation:
agriculturist, r/o mauza Khairi, taluka
Sakoli, district Bhandara.
(through legal aid). **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
Through Police Station Officer,
Sakoli Police Station, district
Bhandara.

2. The Superintendent of Police,
Bhandara.

3. Yadavrao s/o Shiva Kapgate,
aged about 43 years, occupation:
agriculturist.

4. Mahadeorao s/o Shiva Kapgate,
aged about 39 years, occupation : agriculturist,
both 3 and 4 r/o village Bodra,
taluka Sakoli, district Bhandara. **Respondents.**

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Shri S.G.Joshi, Counsel for the Appellant.
Shri H.M.Bobade, Counsel for Resp.Nos.3 & 4.
Shri A.G.Mate, Additional Public Prosecutor for Resp.Nos.1 &
2/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/06/2024
PRONOUNCED ON : 24/06/2024

JUDGMENT

1. The present appeal is preferred by the appellant under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the SC and ST Act) against order dated 4.6.2019 passed by learned Special Judge, Bhandara (learned Judge below) whereby “B-Summary Report” has been accepted.

2. The appellant has lodged report at Sakoli Police Station, district Bhandara against respondent No.3 – Yadavrao s/o Shiva Kapgate and respondent No.4 – Mahadeorao s/o Shiva Kapgate on the basis of which crime is registered vide Crime No.60/2017 for offences under Sections 294, 504, and 506 read with 34 of the Indian Penal Code and 3(1)(r)(s) and 3(2)(V)(a) of the SC and ST Act.

3. Brief facts necessary for disposal of the appeal are as under:

The appellant, who is original complainant, filed a report contending that he is residing along with a son Shantilal at village

3

Khairi, taluka Sakoli, district Bhandara and he is owner of agricultural land bearing gat No.67. He had dug a borewell in his agricultural land by incurring expenses. As respondent No.3 was not having sufficient water, he made a request to the complainant for supply of water in the year 2012. They mutually agreed to supply the water and in return, respondent No.3 would get electricity bill and the appellant would pay Rs.50/- per unit towards consumption of the electricity by the borewell. It was further agreed that respondent No.3 would pay bill for the amount accumulated for five years. Since respondent No.3 did not pay the bill, the appellant restricted him from fetching the water from the said borewell. On 11.1.2017, at about 9:00 am, when the appellant was at his house, respondent No.4 came along with Shrawan Walwe, his wife and one Arvind Maraskolhe for asking to fetch the water. They were restrained by the appellant, but they abused him on his caste and threatened him and, therefore, he approached the police station and lodged the report. On the basis of the said report, the police registered the crime.

4

4. Learned counsel Shri S.G.Joshi for the appellant, submitted that if various statements recorded by the Investigating Officer and allegations in the First Information Report are perused, it discloses that the offence is committed by respondent Nos.3 and 4. However, learned Judge below erroneously accepted the “B-Summary Report”. The order passed by learned Judge below is erroneous and without application of mind and contrary to provisions. It is contended that though investigation was carried out by the Investigating Officer, as respondent Nos.3 and 4 influenced the investigating agency, the Investigating Officer submitted “B-Summary Report”. Notice was received by the appellant and he opposed for granting “B-Summary Report”. However, learned Judge below erroneously observed that there is no *prima facie* material to show that the appellant was abused by respondent Nos.3 and 4 and the First Information Report lodged seems to be false and accepted “B-Summary Report” and, therefore, the order passed by learned Judge below deserves to be quashed and set aside.

5

5. Learned Additional Public Prosecutor Shri A.G.Mate for respondent Nos.1 and 2, supported the “B-Summary Report” as well as the order passed by learned Judge below.

6. Learned counsel Shri H.M.Bobade for respondent Nos.3 and 4, submitted that after issuance of notice, both sides were heard. The report revealed to the investigating agency that independent witnesses, who were present at the spot of incident, have not supported allegations and it is specifically stated that no such incident of abusing on the caste has taken place. Thus, learned Judge below rightly accepted the “B-Summary Report” and no interference is called for.

7. Thus, grievance of the appellant is that the investigation was not carried out properly and the “B-Summary Report” is filed though there was sufficient evidence against respondent Nos.3 and 4.

8. Before adverting to the issue involved, it would be necessary to refer relevant provisions contained in Chapter-XII of the Code of Criminal Procedure, which deals with registration of

6

the First Information Report and powers of police to investigate case.

9. Section 154 of the Code, deals with duty of the police officer incharge of police station to record in writing information relating to commission of cognizable offence.

10. Section 155 of the Code, deals with information as to non-cognizable cases and investigation of such cases.

11. Sub-section (1) of Section 156 of the Code, authorizes a police officer, in-charge of a police station, to investigate any cognizable case, without the order of a Magistrate.

Sub section (3) of Section 156 of the Code, empowers the Magistrate to record such investigation.

12. Section 157 of the Code, prescribes procedure for investigation. Sub-section (1) of the said Section mandates that whenever police officer has reasoned to believe that a cognizable offence has been committed, he shall forthwith forward report of the same to the Magistrate empowered to take cognizance of such offence.

7

13. Section 169 of the Code, 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 of the Code, prescribes procedure to be followed in cases to be sent to the Magistrate when the evidence is sufficient.

Section 173 contemplates filing of report upon completion of investigation.

14. The above said Sections i.e. 169; 170 and 173 of the Code, which are relevant to decide the issue, are reproduced, as under:

“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.”

8

“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 the 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 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.”

“173. Report of police officer on completion of investigation.(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1-A) The investigation in relation to [an offence under sections 376, 376A, 376AB, 376B, 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code shall be completed within two months.] from the date on which the information was recorded by the officer-in-charge of the police station.]

(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;

10

(g) whether he has been forwarded in custody under section 170.

(h) [Whether the report of medical examination of the woman has been attached where investigation relates to an offence under [Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code of the Indian Penal Code (45 of 1860)].

(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 along with the report --

11

(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 proceeding 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

12

they apply in relation to a report forwarded under sub-section (2).

15. Thus, a plain reading of Sections 169 and 170 of the Code reveals that these Sections can be invoked when accused is in police 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.

16. Section 173 of the Code, contemplates filing of a report upon completion of investigation, which should contain all the particulars mentioned in Sub-section (2) of Section 173 of the Code. Such report includes cases covered under Section 169 as

13

well as 170 of the Code. Sub-Section (4) of Section 173 relates to Section 169 of the Code. 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.

17. Thus, investigation, which commences with registration of FIR under Section 154 of the Code concludes with filing of report under Section 173 of the Code, subject to further investigation as contemplated under Section 173(8) of the Code.

18. The report under Section 173 of the Code 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 prescribe procedure and guidelines for filing Chargesheet and the final report under Section 173 of the Code. Rule 218 states that the reports required by Section 173 of the Code to be submitted on the completion of an investigation. Sub Rule 2 of Rule 218 states that when there is sufficient evidence

14

to justify the sending of an accused person to the Magistrate, the charge- sheet shall be sent to the Magistrate directly.

19. 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.

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 who is empowered to take cognizance of an offence on a police report.

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

15

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. A Summary Report is to be filed when 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).

20. The aforesaid rules clearly indicate that irrespective of the fact whether the accused person is released on bail under Section 169 of the Code or he is forwarded to the Magistrate under Section 170 of the Code, 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.

21. The Honourable Apex Court in the case of **Abhinandan Jha and ors vs. Dinesh Mishra**¹, after considering provisions contained in Chapter XIV of the Code, observes that, from the foregoing

¹ AIR 1968 SC 117

16

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 no power under any of these provisions, to interfere with the same. If, on investigation, it appears to the officer, incharge 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, if in custody, on his executing a bond to appear before the Magistrate. Similarly, if on the other hand, it appears to the officer, in-charge of a police station, or to the officer making the 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

17

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.

22. Similarly, the Honourable Apex Court, in the case of **Kamlapati Trivedi vs. State of West Bengal**², observed as under:

“Sections 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, (2) that there is sufficient evidence or reasonable ground as aforesaid. 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 fit".

18

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

24. From the aforesaid provisions and principles laid down by the Honourable Apex Court, it is clear that release of the accused under Section 169 of the Code cannot be equated with filing a report under Section of the Code, which has to be filed after completion of investigation. In fact, Section 169 of the Code nowhere states about filing of the report. All that Section 169 of the Code states is that 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. Thus, whether the accused is released on bonds under Section 169 of the Code and sent for trial under Section 170 of the Code, upon completion of investigation the police officer has to submit the report under Section 173 of the Code, which would include a chargesheet 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 of the Code which would include final

19

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.

25. In the light of the above provisions and principles, the procedure allegedly followed by the investigating agency in submitting the closure report under Section 169 of the Code is as per provisions of the law. It is pertinent to note that the concerned officer has already submitted the report. Notice was issued on the said report to the complainant. Admittedly, filing of final report is not empty formality. Such report should contain all 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 or direct further investigation or to take cognizance of the offence. In the instant case, from the report it reveals that the concerned investigating officer has filed the report in detail. The concerned police officer disclosed reasons why the accused should not be forwarded for trial and requested for issuing "B-Summary Report".

20

The Magistrate has considered the said report and rightly observed that the First Information Report as well as various statements recorded shows there is no substance in allegations that the accused have abused the appellant on his caste and does not not disclose any offence against the accused and accepted the “B-Summary Report”.

26. In view of the above, I do not find any error or illegality committed by learned Judge below and, therefore, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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