



CRM-M-15351-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

201

CRM-M-15351-2024

Date of Decision:12.07.2024

Kuldeep and another

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Manish Soni, Advocate and
Mr. Mukul Ahuja, Advocate for the petitioners

Ms. Tanushree Gupta, Deputy Advocate General, Haryana

Mr. Gautam Dutt, Advocate with Ms. Radhika Mehta, Advocate
and Mr. Rehan Gupta, Advocate for the applicant/respondent
no.2

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed challenging the order dated 13.12.2023, Annexure P-9, passed by the Judicial Magistrate Ist Class, Gurugram, accepting the protest petition and summoning the petitioners as accused to face trial for commission of offences under Sections 304-B, 406, 498-A read with 34 IPC.

2. Facts of the case in brief are, the deceased got married to accused Chetan Yadav on 18.02.2022, and resided in the matrimonial home with him, mother-in-law Ramesh Devi, and the petitioners herein, brother-in-law (*jeth*) and his wife (*jethani*). The deceased committed suicide within three months of



marriage on 19.05.2022, leaving a dying declaration accusing all the above named persons of causing harassment and torture for bringing insufficient dowry, and blamed them for the suicide.

2.1. The police registered a case bearing FIR no.232, dated 19.05.2022, under Sections 304-B, 406, 498-A read with 34 IPC, at Police Station Palam Vihar, Gurugram, and conducted the investigation. Accused husband and mother-in-law were arrested, and final report under Section 173 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') *qua* both of them was presented in Court on 18.08.2022, stating that the remaining two accused, petitioners herein, were yet to be arrested, and supplementary report under Section 173 (8) Cr.P.C. would be filed as and when they join the investigation. Since the offence alleged against those two accused under Section 304-B IPC was exclusively triable by the Court of Sessions, the case against them was committed to it by the Magistrate vide order dated 23.09.2022, Annexure P-2.

2.2. After investigation, the police came to a conclusion that no ground for proceeding against the petitioners was made out as they were residing separately. And a cancellation report was presented in the form of supplementary report, dated 18.10.2022, under Section 173(8) Cr.P.C. to the Sessions Court, which was objected to by learned counsel for the complainant. Accepting the objection, learned Additional Sessions Judge took a view that the cancellation report should have been filed before the Magistrate and opportunity should have been afforded to the complainant to appear and contest the same, as that was the procedure meant to be followed. The report could not have been filed directly before the Sessions Court. Accordingly, it



was remanded to the Magistrate to decide the same in accordance with law vide order dated 09.12.2022, Annexure R-2/2. Thereafter, the second respondent/complainant filed a protest petition dated 20.05.2023, Annexure P-6.

2.3. Meanwhile, trial against two of the accused whose case had been committed to the Sessions, commenced and charges were framed against them vide order dated 06.06.2023, Annexure P-7, and one of the prosecution witnesses, PW-1, was examined on 20.11.2023.

2.4. In these circumstances, the Magistrate considered the relevant facts brought on record, including the statements of witnesses recorded by the police under Section 161 Cr.P.C. as well as disclosure statements, suicide note, etc., and came to a conclusion that there was sufficient material to show involvement of the petitioners in the case. The Magistrate being competent to take cognizance of the offence against them under Section 190(1)(b), irrespective of the police report finding them innocent, accepted the protest petition and summoned the petitioners to face trial vide impugned order dated 13.12.2023.

3. Learned senior counsel for the petitioners has challenged the impugned order on two accounts; *firstly*, it has been contended that cognizance of the offence could only be taken once, and that has already been taken by the Sessions Court after the case was committed to it. The Magistrate had no jurisdiction to take the cognizance again vide the impugned order, and summon the petitioners as accused. In support of the contention, he has relied upon the Constitution Bench judgment in *Dharam Pal and others v. State of*



Haryana and another, (2014) 3 SCC 306. Secondly, learned senior counsel has contended that even on merits the impugned order needs to be set aside, since it is in violation of Section 190(1)(b) Cr.P.C. The provision empowers the Magistrate only to look upon the facts which were brought before it by way of supplementary report under Section 173(8) Cr.P.C., and nothing beyond. In summoning the petitioners, the Magistrate has relied upon statements recorded under Section 161 Cr.P.C. and considered other material which was part of the final report presented under Section 173(2) Cr.P.C.; these documents were not part of the supplementary report presented to the Magistrate. Therefore, the order is unsustainable in law. Second limb of this argument is that in considering the documents attached with the protest petition and summoning the petitioners as accused, the Magistrate has proceeded to decide the protest petition which is in the form of the complaint before him. It could only have been done by following the procedure laid down under section 200 Cr.P.C., on examining the complainant and other witnesses on oath. Only thereafter, the process under Section 204 Cr.P.C. could have been issued summoning the petitioners. Failure to follow the procedure has led to miscarriage of the justice.

4. *Per contra*, learned counsel for the complainant contends that due procedure as laid down under law has been followed by the Magistrate in summoning the petitioners as accused vide the impugned order. In doing so, he has taken cognizance of the offence against the petitioners for the first time, after the final report under Section 173(8) Cr.P.C. against them was placed before him for the purpose. Besides, this was done under order of the Sessions Court, dated 09.12.2022, which has not even been impugned by the



was not against the petitioners as they had not joined the investigation by then; final report *qua* them was presented for the first time under Section 173(8), dated 16.11.2022. Therefore, it cannot be said that cognizance of the offence had ever been taken earlier, before passing the impugned order. In support of the contentions, he has also relied upon the law laid down in *Dharam Pal* case *ibid*. Secondly, it has been contended by the learned counsel that, as per the settled law, upon receipt of a police report, Magistrate is entitled to take cognizance of offence under Section 190 (1) (b) even if the police report is to the effect that no case is made out against the accused. In this regard, he has referred to the judgment rendered by the Supreme Court in *India Carat Private Limited v. State of Karnataka and another*, (1989) 2 SCC 132. It lays down that the Magistrate can look into the statements of accused examined by the police during investigation and take cognizance of the offence by ordering issue of process. In doing so, he is not bound to follow the procedure laid down in Section 200 and 202 Cr.P.C. for taking cognizance of the offence, though it is open for him to act under those sections as well.

5. Heard.

6. Reference can be made to the law laid down in *Dharam Pal* case (*supra*) regarding the role of Magistrate on disagreeing with the police report; relevant paragraphs of the judgment read as under:

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police



report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court.

6.1. As per facts apparent on record, after lodging of FIR in the case, the investigating agency presented final report under Section 173 (2) Cr.P.C. only against two of the accused on 18.08.2022; against the petitioners the investigation was completed later and final report, dated 16.11.2022, was presented in the form of supplementary report under Section 173(8) Cr.P.C., finding them not to have committed the offences alleged. The report was sent to the Magistrate by the Sessions Court for consideration in accordance with law, vide order dated 09.12.2022. Thereupon, a protest petition was filed by the complainant on 20.05.2023. Since the final report against the petitioners was presented for the first time on 16.11.2022, cognizance of offence against them could not have been taken prior thereto, nor was it actually taken.

Accordingly, presentation of final report, dated 18.10.2022, against two of the



accused and taking cognizance of offence against them by the Sessions Court, cannot have a bearing on the Magistrate taking cognizance of the offence against the remaining accused/petitioners vide the impugned order dated 13.12.2023.

6.2. Much reliance was placed by learned senior counsel for the petitioner on para 39 of the judgment in *Dharam Pal* case *ibid*, to contend that the cognizance could not have been taken by the Magistrate, as it could be taken only once. The paragraph reads as under:

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the



Magistrate and part cognizance being taken by the learned Sessions Judge.

6.3. The Court has held that cognizance of an offence can be taken once, either by the Magistrate or the Sessions Court. In case a Magistrate takes cognizance and commits the case to the Sessions Court, taking fresh cognizance of the offence by the Sessions and proceeding to issue summons to the accused, is not in accordance with law. It is, thus, evident that cognizance can be taken by both, either the Court of Session or Magistrate. Further, cognizance of offence is *vis-à-vis* an accused in particular; once cognizance is taken either by the Magistrate or the Sessions Court, it is with regard to the offence(s) said to have been committed by the specific accused on the basis of material brought on record, and not all of them in general. Unless upon receiving the police report, whether by agreeing or disagreeing with it, the Court is satisfied that a case has been made out to proceed against the accused, there is no occasion to take cognizance. In the instant case, neither the police report against the petitioners had been presented before any Court, nor was any satisfaction ever recorded that case was made out to proceed against them. Therefore, the Magistrate was competent to take cognizance of the offence vide the impugned order, by considering the police report against the petitioners, presented for the first time.

7. The second submission by learned senior counsel for the petitioners is that the Magistrate, while passing the impugned order, has gone beyond jurisdiction as the order is based upon material which did not form part of the supplementary report under Section 173 (8) Cr.P.C. The argument



rationale in limiting the sphere for the Magistrate to look into the facts, as that would be counter-productive and impede the process of arriving at the satisfaction to proceed against the accused. Thus, the Magistrate has power to look into and consider all material facts of the case brought on record during investigation in the form of a police report(s). Besides, while passing the impugned order, the Magistrate decided the protest petition as well, and was competent to look into the documents/material appended therewith, to form an opinion. Therefore, no exception can be taken to the impugned order passed by the Magistrate merely because he has taken into consideration statements under Section 161 Cr.P.C. and other material, which forms part of final report under Section 173(2) Cr.P.C. filed by the police against the co-accused.

7.2. It is also well settled that while exercising powers under Section 190(1)(b) Cr.P.C. to issue process and summon the accused to face trial, Magistrate is not bound to follow the procedure laid down under Section 200 Cr.P.C. for taking cognizance. In this regard, reference can be made to law laid down in *India Carat Private Limited (supra)* case, which is as under:

16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognisance of an offence under Section 190(1) (b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognisance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognisance of an offence only



if the investigating officer gives an opinion that the investigation has made out a case against the accused. 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 cognisance of the case, if he thinks fit, in exercise of 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. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metro-politan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.

8. In view of the discussion, this Court is of the considered opinion that present petition is *sans* merit, and stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

12.07.2024
Payal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No