

Supreme Court of India

H. S. Bains Director Small ... vs The State (Union Territory Of ... on 10 October, 1980

Equivalent citations: 1980 AIR 1883, 1981 SCR (1) 935

Author: O C Reddy

Bench: Reddy, O. Chinnappa (J)

PETITIONER:

H. S. BAINS DIRECTOR SMALL SAVING-CUM-DEPUTY SECRETARY, FINAN

Vs.

RESPONDENT:

THE STATE (UNION TERRITORY OF CHANDIGARH)

DATE OF JUDGMENT 10/10/1980

BENCH:

REDDY, O. CHINNAPPA (J)

BENCH:

REDDY, O. CHINNAPPA (J)

SARKARIA, RANJIT SINGH

CITATION:

1980 AIR 1883                      1981 SCR (1) 935

1980 SCC (4) 631

CITATOR INFO :

RF                      1981 SC 877 (20)

E&F                    1989 SC 885 (14)

ACT:

Code of Criminal Procedure 1898-Section 190(1)(b) and (c)-Scope of-Magistrate ordered investigation under section 156(3)-Police submitted report under section 173-Disagreeing with police report Magistrate directed issue of process-Magistrate if competent to take cognizance of complaint under section 190(1)(b).

HEADNOTE:

On a complaint by the complainant that the appellant, armed with a revolver and accompanied by two persons, trespassed into his house and threatened to kill him, the Magistrate ordered investigation by the police under section 156(3) of the Code of Criminal Procedure. In their report under section 173 the police stated that the complaint was false in that on the date and time mentioned therein, the appellant was at a different place far away from the place where the complainant alleged that the appellant had threatened to kill him. Disagreeing with the conclusion of the police the Magistrate took cognizance of the case under sections 448, 451 and 506 I.P.C. and directed the issue of

process to the appellant. The appellant's petition seeking to quash the proceedings before the Magistrate was dismissed by the High Court.

In appeal to this Court, it was contended on behalf of the appellant that the Magistrate was not competent to take cognizance of the case as if it was upon a police report since the report under section 173 by the police did not disclose any offence having been committed by the appellant.

Dismissing the appeal

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HELD: Where the Magistrate, on receiving a complaint orders investigation under section 156(3) and receives a report under section 173 to the effect that no offence was disclosed against the accused, the Magistrate might either (i) decide that there is no sufficient ground for proceeding further and drop action or (ii) he may take cognizance of the offence under section 190(1)(b) and issue process without being bound in any manner by the conclusion of the police or (iii) 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 enquiry under section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process as the case may be. [940E-G]

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In any event, it is impossible to say that the Magistrate, who takes cognizance of an offence on the basis of the facts disclosed in the police report, 936

must be said to have taken cognizance of the offence "on suspicion" and not upon police report, merely because he and the police arrived at different conclusions from the facts. The Magistrate is not bound by the conclusions of the police: if he ignores their conclusions and takes cognizance of the offence himself, he does so upon the facts disclosed by the police report though not on the conclusions arrived at by them. In such a case, it cannot be said that he was taking cognizance "on suspicion". [942E-H]

In *Abhinandan Jha & ors. v. Dinesh Mishra* [1967] 3 SCR 668, where this Court stated that the Magistrate could take cognizance of the offence under section 190(1)(c) notwithstanding the contrary opinion of the police, the reference to sub-clause (c) therein was a mistake for sub-clause (b). The argument of the appellant that the Court, in this case, had apparently taken the view that the Magistrate could take cognizance of the offence not under section 190(1)(b) as if it was a police report but under section 190(1)(c) as if it was "on suspicion" is not sustainable, because section 190(1)(c) was never intended to apply to cases where there was a police report under section 173(1). [942C-D]

section

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 687 of 1980.

Appeal by Special Leave from the Judgment and Order dated 18-4-1980 of the Punjab and Haryana High Court in Crl. Misc. No. 26-M/1980.

Mrs. Urmila Sirur for the Appellant.

Mrs. Shobha Dixit and M. N. Shroff for the Respondent. The Judgment of the Court was delivered by CHINNAPPA REDDY, J.-On August 13, 1979, Gurnam Singh a resident of Chandigarh submitted a complaint to the Judicial Magistrate 1st Class Chandigarh, alleging that the appellant H. S. Bains accompanied by two persons had come to his house in a car on the morning of August 11, 1979, at about 8 a.m., trespassed into the house and threatened to kill him and his natural son if he did not take away his natural son Aman Deep Singh from the house of his sister Bakshish Kaur, who had taken the boy in adoption as she was issueless. Bakshish Kaur was the widow of the brother of the appellant and the adoption made by Bakshish Kaur was not to the liking of the appellant. It was alleged in the complaint that the appellant was armed with a revolver which he pointed at the complainant. The complainant raised a hue and cry. The accused and his companions fled away in their car. As August 11, 1979 and August 12, 1979 were holidays, he was able to file the complaint only on 13th August, 1979. The learned Magistrate to whom the complaint was submitted ordered an investigation by the police under Sec. 156(3) of the Code of Criminal Procedure. The police after completing the investigation, submitted a report to the Magistrate under Sec. 173 of the Code of Criminal Procedure stating that the case against the appellant was not true and that it might be dropped. The police arrived at the conclusion that the case against the appellant was not true as their investigation revealed, according to them, that the appellant was at Amritsar with Shri Jai Singh, District Magistrate of Amritsar at 9 a.m. on August 11, 1979 and it was, therefore, impossible for him to have been at Chandigarh at 8 a.m. on August 11, 1979. The learned Magistrate after perusing the report submitted by the police disagreed with the conclusion of police, took cognizance of the case under Sections 448, 451 and 506 of the Indian Penal Code and directed the issue of process to the appellant. Aggrieved by the issue of process, the appellant filed Criminal Miscellaneous Case No. 26-M of 1980, in the High Court of Punjab and Haryana to quash the proceedings before the Magistrate. The application was dismissed by the High Court and the appellant filed a petition for the grant of special leave to appeal against the order of the High Court. We granted Special Leave and straightaway heard the appeal with the consent of the parties.

Shri Kapil Sibal urged that the Magistrate had issued process to the accused without recording the statement, on oath, of the complainant and the witnesses under Sec. 200 Criminal Procedure Code and therefore, he must be taken to have taken cognizance of the case under Sec. 190(1)(b), as if upon a police report. Shri Sibal submitted that the Magistrate was not competent to take cognizance of the case as if it was upon a police report as the report under Sec. 173 Criminal Procedure Code submitted to him disclosed that no offence had been committed by the accused. According to Shri Sibal, in the circumstances of the case, the Magistrate, on receipt of the report under Sec. 173 Criminal Procedure Code to the effect that the case against the accused was not proved, had only

two options before him. He could either order a further investigation or he could take cognizance of the case as if upon a complaint, record the statements of the complainant and witnesses under Sec. 200 Criminal Procedure Code and then proceed to issue process if he was satisfied that process ought to be issued. In any case Shri Sibal submitted that the order of the Ist Class Magistrate taking cognizance of the case was so unjudicial that it ought to be struck down. Shri Sibal invited our attention to two decisions of this Court: Abhinandan Jha & Ors. v. Dinesh Mishra; and Tula Ram & Ors. v. Kishore Singh.

Chapter XII of the Code of Criminal Procedure 1973 deals with information to the Police, and their powers to investigate. Sec. 156 (1) vests in an officer incharge of a Police Station the power to investigate any cognizable case, without the order of a Magistrate. Sec. 156(3) authorises a Magistrate, empowered under Sec. 190, to order an investigation as mentioned in Sec. 156(1). The provisions from Sec. 157 onwards are concerned with the power and procedure for investigation. Sec. 169 prescribes that if upon an investigation it appears to the officer incharge of the Police Station that there is no 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) to appear if and when required, before a Magistrate empowered to take cognizance of an offence on a police report and to try the accused or commit him for trial. Sec. 170 prescribes that if upon investigation it appears to the officer incharge of the Police Station that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of an offence on a police report and to try the accused or commit him for trial. If the offence is bailable the officer 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. Sec. 173(1) casts a duty upon the police officer to complete the investigation without unnecessary delay. Sec. 173(2) prescribes that as soon as the investigation is completed the officer incharge of the police station shall forward to a Magistrate empowered to take cognizance of an offence on a police report, a report in the prescribed form stating the various particulars mentioned in that sub- section.

Sec. 190(1) which occurs in Chap. XIV (Conditions requisite for initiation of proceedings) may be extracted at this stage. It is as follows:

"190(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed".

What has been extracted is Sec. 190 as it stands at present. Sec. 190 of the previous Code was slightly different. Clause (1)(b) read as "upon a report in writing of such facts made by any police-officer". In clause (1)(c) after the word 'knowledge', the words 'or suspicion' occurred, and these words have now been omitted.

Chapter XV (Sections 200 to 203) of the Code deals with "complaints to Magistrates". A Magistrate taking cognizance of an offence on complaint is required by Sec. 200 to examine the complainant and the witnesses present, if any. Sec. 202 provides that a Magistrate taking cognizance of a case upon complaint, may, if he thinks fit, 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. Sec. 203 empowers the Magistrate to dismiss the complaint, if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the enquiry or investigation (if any) under Sec. 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding. Chapter XVI deals with "commencement of proceedings before Magistrate" and Sec. 204 enables a Magistrate to issue summons or a warrant as the case may be to secure the attendance of the accused if in the opinion of the Magistrate taking cognizance of the offence there is sufficient ground for proceeding.

It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Sec. 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Sec. 203. If in his opinion there is sufficient ground for proceeding he may issue process under Sec. 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Sec. 156(3). The police will then investigate and submit a report under Sec. 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Sec. 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Sec. 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Sec. 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Sec. 156(3) and received a report under Sec. 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200,

203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (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 Sec. 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 Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200. If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

In *Abhinandan Jha & Ors. v. Dinesh Mishra*, (supra) the question arose whether a Magistrate to whom a report under Sec. 173(1) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the Police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet. It was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect under Sec. 156(3). If ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police the Court observed that the Magistrate could take cognizance under Sec. 190(1)(c). We do not have any doubt that the reference to 'Sec. 190(1)(c)' was a mistake for 'Sec. 190(1)(b)'. That appears to be obvious to us. But Shri Kapil Sibal urged that the reference was indeed to Sec. 190(1)(c) since at that time Sec. 190(1)(c) included the words 'or suspicion' and the Court had apparently taken the view that the Magistrate could take cognizance of the offence not under Sec. 190(1)

(b) as if on a police report but under Sec. 190(1)(c) as if on suspicion'. We do not agree with this submission. Sec. 190(1)(c) was never intended to apply to cases where there was a police report under Sec. 173(1). We find it impossible to say that a Magistrate who takes cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police report merely because the Magistrate and the Police arrived at different conclusions from the facts. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence under Sec. 307 Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under Sec. 324 Indian Penal Code only and he may take cognizance of an offence under Sec. 324 instead of Sec. 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eye witnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the

police report. He would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police. It could not be said in such a case that he was taking cognizance on suspicion.

In *Tula Ram & Ors. v. Kishore Singh* (supra) the Magistrate, on receiving a complaint, ordered an investigation under Sec. 156(3). The Police submitted a report indicating that no case had been made out against the accused. The Court, however, recorded the statements of the complainant and the witnesses and issued process against the accused. It was contended that the Magistrate acted without jurisdiction in taking cognizance of the case as if upon a complaint when the police had submitted a report that no case had been made out against the accused. This Court held that the Magistrate acted within his powers and observed that the complaint did not get exhausted as soon as the Magistrate ordered an investigation under Sec. 156(3). We are, therefore unable to agree with the submission of Shri Sibal that the Magistrate acted without jurisdiction in taking cognizance of the offence and issuing process to the accused notwithstanding the fact that the police report was to the effect that no case had been made out.

We do not propose to say a word about the merits of the case since it was entirely a matter for the learned Magistrate to take cognizance or not to take cognizance of the several offences. We however wish to observe that it was wholly unnecessary for the Magistrate to write such an elaborate order as if he was weighing the evidence and finally disposing of the case. We also desire to say that some of the observations of the learned Magistrate about the District Magistrate were wholly uncalled for as the latter was yet to appear before him as a witness. We are told that the case has already been transferred to some other Magistrate. It is, therefore, unnecessary to say anything further in the matter. The appeal is, therefore, dismissed. P.B.R. Appeal dismissed