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RAKESH & ANR

v.

STATE OF U.P. & ANR.

(Criminal Appeal No. 1412 of 2014)

B

AUGUST 13, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND

RANJAN GOGOI, JJ]

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Code of Criminal Procedure, 1973:

ss.173, 190(1)(a) and 190(1)(b) – Jurisdiction of Magistrate to take cognizance, on a protest petition/complaint, of an offence in respect of which a final report u/s 173 had been accepted – Held: Only because Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition; but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised.

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Respondent No.2 lodged an FIR for offence punishable u/s 364 IPC against the appellants and two others. On completion of investigation, the Investigating Officer submitted a final report to the court that no case was made out against the persons accused and that they were falsely implicated in the case. By order dated 26.11.2002, the Magistrate accepted the final report but simultaneously directed that the case be proceeded with as a complaint case. The statements u/ss 200 and 202 Cr.P.C.were recorded and the accused were summoned by the trial court to face the trial. The appellants moved the High Court, which answered in affirmative the question as to whether a Magistrate after accepting a negative final report submitted by the Police can take action on the basis of the protest petition filed by the complainant/first informant.

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In the instant appeal, it was contended for the accused-appellant that having accepted the final report, the Magistrate had become "*functus officio*" and was denuded of all powers to proceed in the matter.

Dismissing the appeal, the Court

HELD: 1.1 In *Gopal Vijay Verma**, this Court held that the High Court was clearly in error in thinking that the Magistrate could not take cognizance of a case upon complaint because he had earlier refused to take cognizance of the case on a police report. [Para 6] [1076-C-D]

**Gopal Vijay Verma v. Bhuneshwar Prasad Sinha & Ors. 1982 (3) SCC 510 ; H.S. Bains v. State (Union Territory of Chandigarh) 1980 Crl. LJ 1308 ; Gangadhar Janardan Mhatre v. State of Maharashtra & Ors. 2004 (4) Suppl. SCR 772 : 2004 (7) SCC 768 – relied on*

Bhuneshwar Prasad Sinha vs. State of Bihar 1981 Crl.LJ 795, stood reversed.

1.2 In *Mahesh Chand***, this Court has held that there cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition; but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised. Therefore, the High Court has rightly answered the question. [Para 9][1078-A-C]

***Mahesh Chand v. B. Janardhan Reddy & Anr. 2002 (4) Suppl. SCR 566 : 2003 (1) SCC 734; Kumar Gyanchandani vs. G.D. Mehrotra & Anr. 2011 (15) SCC 513 – relied on.*

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CASE LAW REFERENCE

1981 Cri.LJ 795	relied on	Para 5
1982 (3) SCC 510	stood disapproved	Para 9
1980 Cri. LJ 1308	relied on	Para 7
B 2004 (4) Suppl. SCR 772	relied on	Para 9
2002 (4) Suppl. SCR 566	relied on	Para 9
2011 (15) SCC 513	relied on	Para 9

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No(s). 1412 of 2014.

From the Judgment and Order dated 04.03.2013 of the High Court of Judicature at Allahabad, Lucknow Bench U. P. in Criminal Misc. Petition No. 64 of 2008.

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Shrish Kumar Misra, Adv., for the Appellants.

Ms. Nidhi, Adv., for the Respondents.

The Judgment of the Court was delivered by

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RANJAN GOGOI, J. 1. Leave granted.

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2. Whether a Magistrate after accepting a negative final report submitted by the Police can take action on the basis of the protest petition filed by the complainant/first informant? The above question having been answered in the affirmative by the Allahabad High Court, this appeal has been filed by the accused.

3. The bare facts that would be required to be noticed are as follows :

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Respondent No.2 herein lodged an FIR which was registered as Crime Case No.480 of 2000 under Section 364 of the Indian Penal Code at the Police Station Gosai Ganj District Sultanpur against the appellants and two other accused persons. On completion of investigation, the investigating officer submitted a final report to the court that no case is made

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out against the appellants and the other two accused and that they have been falsely implicated in the case. By order dated 26th November, 2002, the learned Magistrate accepted the final report but simultaneously directed that the case be proceeded with as a complaint case. The statements under Sections 200 and 202 of the Code of Criminal Procedure (Cr.P.C.) were recorded and the accused were summoned by the learned trial court to face the trial. Against the aforesaid orders passed by the learned Magistrate, the present appellants moved the High Court of Allahabad raising the question noticed earlier. The High Court having answered the said question in the affirmative, this appeal has been filed.

4. We have heard learned counsel for the parties.

5. In Bhuneshwar Prasad Sinha vs. State of Bihar¹, the very same question came up for consideration before the Patna High Court. The High Court answered the question in the negative by holding –

"In that case it has been held by the Supreme Court that if the Magistrate agrees with the opinion of the police he may accept the final report and close the proceedings. It will be deemed that the proceedings against the accused persons in respect of the facts constituting the offence have been closed by the Magistrate in a Judicial-Proceeding. If it is so, such proceeding can only beset aside in revision by the higher authority unless and until the order is not set aside, the Magistrate is not entitled to take cognizance on the basis of the complaint petition or protest petition in respect of the same facts constituting the offence as mentioned in the final form. In the present case, it is clear from the order dated 6th Dec. 1978, that the final form was accepted by the court earlier. If it is so, then the Magistrate was not justified in taking cognizance in

¹[1981 Cr.LJ 795]

A *respect of the same facts constituting the offence which were mentioned in the final form. In order to check the litigation, it is necessary that when a judicial order is passed by accepting the final form such order should not be set aside by the Magistrate by taking cognizance on the basis of the complaint petition."*

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6. In the appeal filed against the aforesaid order of the Patna High Court, this Court, however, held that –

C "The High Court was clearly in error in thinking that the Magistrate could not take cognizance of a case upon complaint because he had earlier refused to take cognizance of the case on a police report. The order of the High Court is set aside. The matter is remitted to the Chief Judicial Magistrate, Patna for disposal according to law. If the accused have any further objections to raise, they may do so before the Chief Judicial Magistrate."

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The decision of this Court is reported in **Gopal Vijay Verma vs. Bhuneshwar Prasad Sinha & Ors.**²

E 7. If we are to go back to trace the genesis of the views expressed by this Court in Gopal Vijay Verma (supra), notice must be had of the decision of this Court in **H.S. Bains vs. State (Union Territory of Chandigarh)**³ wherein it was held that after receipt of the police report under Section 173, the Magistrate has three options –

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"(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;

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²1982 (3) SCC 510

H ³[1980 CrI. LJ 1308].

(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.”

8. The second and third options available to the Magistrate as laid down in **H.S. Bains** (supra) has 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 & Ors.**⁴. The following view may be specifically noted -

“.....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*]” (Para 6)

9. The view expressed by this Court in **Gopal Vijay Verma** (supra) has been followed in **Mahesh Chand vs. B. Janardhan Reddy & Anr.**⁵ and also in a somewhat recent

⁴[2004 (7) SCC 768] (para 9)

⁵[2003 (1) SCC 734] (para 12)

A pronouncement in **Kishore Kumar Gyanchandani vs. G.D.Mehrotra & Anr.**⁶. The clear exposition of law in para 12 of **Mahesh Chand** (supra) which is extracted below would leave no manner of doubt that the answer to the question posed by the High Court is correct.

B “There cannot be any doubt or dispute that only because
 C the Magistrate has accepted a final report, the same by
 itself would not stand in his way to take cognizance of
 the offence on a protest/complaint petition; but the
 question which is required to be posed and answered
 would be as to under what circumstances the said power
 can be exercised.”

D 10. 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.

E 11. In **Kishore Kumar (supra)** the question has been
 gone into again and reliance has been placed on **Gopal Vijay
 Verma (supra)** to reiterate the same conclusion.

F 12. In view of the above, it has to be held that this appeal
 is without any merit or substance. It is accordingly dismissed.

Rajendra Prasad

Appeal dismissed.

⁶[2011 (15) SCC 513]