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Neutral Citation No. - 2025:AHC:33440

Court No. - 52

Case :- APPLICATION U/S 482 No. - 25836 of 2024

Applicant :- Smt. Suman Prajapati

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Lalji Yadav, Yashpal Yadav

Counsel for Opposite Party :- G.A., Sanjay Kr. Srivastava

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Yashpal Yadav, learned counsel for the applicant, Mr. Sanjay Kr. Srivastava, learned counsel for the opposite party no.2 and Mr. Amit Singh Chauhan, learned A.G.A. for the State.

2. The present application has been filed with prayer to quash the order dated 30.01.2024 passed by Additional Chief Judicial Magistrate¹, Court No.16, Allahabad in Criminal Case No.04/2024 (State Vs. Tripurari), arising out of Case Crime No.436/2023, under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 D.P. Act, P.S. Dhoomanganj, District-Prayagraj (Allahabad). It is further prayed to direct the A.C.J.M. Court No.16, Allahabad to provide an opportunity of hearing to the applicant before taking further cognizance.

3. Brief facts of the case are; a first information report² was lodged on 23.08.2023 at 20:55 hours by Smt. Suman Prajapati (applicant) against six persons with the allegations of being mentally and physically harassed for additional dowry demand. After investigation charge sheet was submitted on 19.11.2023 only against Tripurari Prajapati whereas final report was submitted in favour of Santlal, Smt. Lalmani Devi, Smt. Pratibha, Smt. Sandhya and Divya on 19.11.2023. The charge sheet dated 19.11.2023 was placed before the Court

1 ACJM

2 FIR

concerned on 30.01.2024 and the Court concerned took cognizance and summoned Tripurari Prajapati fixing 28.01.2024.

4. Learned counsel for the applicant has challenged the order dated 30.01.2024 passed by the Court concerned summoning Tripurari Prajapati against whom a charge sheet has been submitted without providing any opportunity to the applicant (informant in the present case) before taking cognizance in the matter.

5. Learned counsel for the applicant submits that as per Section 173(2) of the Code of Criminal Procedure, 1973³ the Investigating Officer must communicate about the action taken by him to persons by whom the information relating to commission of offence was given first. The applicant-informant lodged the FIR but the Investigating Officer neither informed her about the progress of investigation nor supplied a copy of the case diary (police report) before its submission to the Court below. Thus, the submission of charge sheet before the Court concerned without informing and communicating about the police report to the applicant was against the mandate of Section 173(2) of Cr.P.C., hence, improper, unjust and illegal.

6. Learned counsel for the applicant further submits that a final report was submitted in favour of other five persons who were named in the FIR exonerating them from the *nemesis of law* (legal proceedings) as the applicant who had lodged the FIR was affected by the same, hence, it was mandatory for the learned Magistrate to issue notice, give an opportunity to the informant and only after hearing the informant, order taking cognizance should have been passed, thus the order taking cognizance against Tripurari Prajapati and not against the others, who were named in the FIR, though they were exonerated is illegal and against the principles of natural justice.

3 Cr.P.C.

7. Learned counsel for the applicant next submits that the Investigating Officer should have informed the applicant about the charge sheet being submitted against opposite party no.2 and final report being submitted against other persons and also before passing any orders the Court concerned should have issued notices to the informant and after providing an opportunity of hearing should have taken cognizance. In support of his submission he has relied upon judgement of Apex Court passed in case of **Bhagwat Singh vs. Commissioner of Police and Anr**⁴. Thus, order dated 30.01.2024 is illegal and is liable to be quashed.

8. Learned A.G.A. submits that at this stage issuing notice to the informant giving an opportunity to him to address the Magistrate with respect to non-charge sheeted persons, would prolong the matter causing unnecessary delay whereas there is ample time for the informant to place an evidence on record during course of trial. There is no illegality and infirmity in submitting the charge sheet against the accused only, hence, no interference is required.

9. Heard learned counsel for the parties and perused the record.

10. Before dealing with the issue in hand, it would be appropriate to discuss certain provisions for proper adjudication of the matter.

11. Chapter XII of the Cr.P.C. deals with information to the police and their powers of investigation.

12. Section 154(1) provides that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be

4 AIR 1985 SC 1285

signed by the person giving it. As per Section 154(2) Cr.P.C. a copy of such information shall be given forthwith, free of cost, to the informant.

13. Section 156(1) Cr.P.C. vests in the officer-in-charge of a police station the power to investigate any cognizable case without the order of a magistrate and sub-section (3) of that section authorises the magistrate empowered under Section 190 to order an investigation as mentioned in sub-section (1) of that section.

14. Section 157(1) Cr.P.C. lays down that if, from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 Cr.P.C. to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. Thus, on an application u/s 156(3) Cr.P.C. as moved by complainant/informant before the Magistrate, FIR is lodged pursuant to the order passed by the concerned Magistrate to investigate and lodge an FIR. No sooner he lodges the First Information Report, a copy of it has to be supplied to him, free of cost, under Section 154(2) Cr.P.C..

15. Proviso (b) to Section 157(2) Cr.P.C. enacts that if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. But in such a case, section 157(2) Cr.P.C. requires that the officer shall forthwith notify to the informant the fact that he will not investigate the case or cause it to be investigated. What the officer in charge of a police station is required to do on completion of the investigation is set out in section

16. Section 173(2)(i) Cr.P.C. provides that as soon as investigation is completed, the officer in charge of a police station shall forward to the magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government setting out various particulars including whether, in the opinion of the officer, an offence appears to have been committed and if so, by whom.

17. Section 173(2)(ii) Cr.P.C. states that 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.

18. When the report forwarded by the Officer-in-charge of a police station, to the Magistrate under Section 173(2)(i) Cr.P.C. comes up for consideration by the Magistrate, one of two different situations may arise.

(1) The report may conclude that an offence appears to have been committed by a particular person or persons.

(2) The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed.

In such a situation the Magistrate may take one of three following things:-

(i) He may accept the report and take cognizance of the offence and issue process; or,

(ii) he may disagree with the report and drop the proceeding; or,

(iii) he may direct further investigation under Section 156(3) Cr.P.C. and require the police to submit a further report.

19. In either of these two situations, the Magistrate decides to take cognizance of the offence and issue process, the informant is not

prejudicially affected, nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceedings or takes the view that though there is sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose; wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in Section 154(2) Cr.P.C, of Section 157(2) Cr.P.C. and Section 173(2)(ii) Cr.P.C, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him.

20. The Court in **Bhagwat Singh (supra)** was of the view that in a case when a Magistrate to whom a report is forwarded under Section 173(2)(i) Cr.P.C. decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give a notice to the informant and provide him an opportunity of being heard at the time of consideration of the report, and the difficulty of serving notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

21. In the aforesaid case, the Court could not find out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such a person is the informant who has lodged the First Information Report. But observed that even if such a person is not entitled to notice from the Magistrate, they may still can appear before the Magistrate and make their submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. It was also observed that the injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus standi to appear before the Magistrate at the time of consideration of the report, if they otherwise come to know that the report is going to be considered by the Magistrate and if they wants to make their submissions in regard to the report, the Magistrate is bound to hear them.

22. From the provisions of Code of Criminal Procedure, 1973, principles of natural justice as well as observations made in **Bhagwat Singh (supra)**, even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.

23. In the criminal cases, when charge sheet is filed under Section 173 of Cr.P.C., the Magistrate reviews it to decide whether to take cognizance of the offence. If the Police does not include certain persons in charge sheet, who are shown as an accused in the FIR, and the Magistrate disagrees with this, the Magistrate can still summon those persons if the evidence suggests their involvement. However whether the Magistrate is bound to summon the informant or complainant before deciding not to summon the un-chargesheeted persons depends upon the situation and legal proceedings.

24. The Courts have ruled that the informant and complainant should be given an opportunity to be heard before Magistrate decides not to summon individuals who have been left out of the charge sheet. This is based on the principles of natural justice, ensuring that the informant has a chance to contest the police's decision. However, if the Magistrate is satisfied with the police report and sees no ground to summon the un-chargesheeted individuals, they can proceed without necessarily hearing the informant. The informant always has a chance to challenge the final report by means of filing protest petition which shall be heard by the concerned Magistrate. It was also observed that in the case where the persons shown as an accused in the FIR are not charge sheeted, there is always a scope of them being summoned under Section 319 Cr.P.C., thus, it cannot be said that the right of informant is affected in case notices are not issued to them in those cases where charge sheet has been submitted against a few persons and rest of the persons remain un-chargesheeted.

25. The Supreme Court of India in the case of **Bhagwat Singh (supra)** held that the informant must be heard when the Magistrate is considering, dropping proceedings or accepting the final report that excludes some accused persons. However from the aforesaid, it cannot

be said that it is automatic in every case, that if the Magistrate is not considering to proceed against someone who was named in the original complaint or FIR but left out of the charge sheet, informant has right to be heard. The aforesaid case is frequently cited case for the principle that the informant has right to be heard before a Magistrate accepts a police report that omits certain accused persons.

26. The Apex Court in another case of **Union Public Service Commission v. S. Papaiah**⁵, has clarified that the Magistrate is not bound by the police report and has the authority to take cognizance of an offence even if certain individuals are not charge sheeted, however, informant must be given a chance to present objections if Magistrate is inclined to accept the report as it is.

27. In another case of **Abhinandan Jha & Ors. v. Dinesh Mishra**⁶, the Supreme Court ruled that Magistrate cannot direct the police to submit a charge sheet but can choose to disagree with the police report and take cognizance of the offence, this case establishes the Magistrate's independence in evaluating the police report but does not specifically address the informant's right to be heard.

28. The Supreme Court in the case of **Mahesh Chand v. B. Janardan Reddy And Anr.**⁷ reiterated that the Magistrate can take cognizance against individuals not named in the charge sheet, if there is sufficient material and the informant's right to be heard can be implied in cases where the Magistrate is evaluating whether to proceed against un chargesheeted individuals or not.

29. The Apex Court expressed its view in the case of **M.S. Ahlawat v. State of Haryana And Anr.**⁸ that a fair hearing for the complainant or

5 1997 (7) SCC 614

6 1968 AIR 117

7 2003 (1) SCC 734

8 2000 (1) SCC 278

informant is essential in criminal proceedings especially the Magistrate is deciding on reports excluding certain individuals from prosecution.

30. From the aforesaid judgements, it is established that while the Magistrate has discretion in accepting or rejecting the police report, the informant or complainant must generally be given an opportunity to be heard, especially if the Magistrate is inclined to accept a report that exonerates some individuals.

31. After going through the aforesaid provisions of the Code of Criminal Procedure and various decisions, this Court is of the opinion that issuance of notice to informant giving opportunity to him to address the Magistrate with respect to non-charge-sheeted persons would prolong the matter causing unnecessary delay and whereas ample opportunity is there for the informant to place evidence and materials on record during course of trial, on the basis of which they can be arrayed as accused persons under the provisions of Section 319 Cr.P.C., no prejudice is caused to the informant when the Magistrate has only issued notice to the charge-sheeted persons as in the present case. The right of the informant is not in any way affected in case if the Magistrate has taken cognizance only against charge-sheeted persons without issuing notice to the informant with respect to the persons who are named in the FIR but have not been charge-sheeted.

32. This Court feels that the stage of Section 319 of Cr.P.C., has not yet been reached in the present case. The order impugned vide which cognizance has been taken against the charge-sheeted persons is in exercise of powers under Section 190(1)(b) of Cr.P.C. and at this stage it is not fatal to the powers of the Magistrate to take cognizance of offence and issue process against those who have not been arrayed as accused persons by the police while filing the charge sheet. The

aforesaid has also been held in the case of **India Carat P. Ltd. Vs. State of Karnataka & Anr.**⁹.

33. Having considered the submissions advanced by learned counsel for the parties, facts of the case and material brought on record in view of the discussion as referred to herein above, and keeping the settled proposition of law on the issue, I am of the view that no interference is called for in the present matter. The instant application under Section 482 Cr.P.C. stands **dismissed**.

34. The Court would like to appreciate the hard work put in by Ms. Shreya Shukla, Research Associate, who has drawn attention to detail and the same shows in her work of providing legal assistance in this matter.

Order Date :- 06.03.2025
Rahul.

Justice Manju Rani Chauhan

9 AIR 1989 SC 885