Dharmatma Singh vs Harminder Singh & Ors on 10 May, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2094, 2011 (6) SCC 102, 2011 AIR SCW 3147, AIR 2011 SC (CRIMINAL) 1458, 2011 (3) AIR JHAR R 667, (2011) 4 MAD LJ(CRI) 525, 2011 (2) SCC(CRI) 834, 2011 ALL MR(CRI) 2917, 2011 (5) SCALE 552, 2011 CRILR(SC MAH GUJ) 575, (2011) 103 ALLINDCAS 57 (SC), 2011 (103) ALLINDCAS 57, (2011) 2 CRILR(RAJ) 575, (2011) 4 MH LJ (CRI) 8, (2011) 3 JCR 204 (SC), (2011) 49 OCR 555, (2011) 3 RAJ LW 2719, (2011) 3 RECCRIR 38, (2011) 2 CURCRIR 401, (2011) 2 UC 1170, 2011 CRILR(SC&MP) 575, (2011) 2 CRIMES 259, (2011) 5 SCALE 552, (2011) 3 CHANDCRIC 149, (2011) 74 ALLCRIC 266, 2011 (2) KLT SN 132 (SC)

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Bench: A. K. Patnaik, R.V. Raveendran

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1126 of 2011

(Arising out of S.L.P. (Crl.) No. 3391 of 2008)

Dharmatma Singh ..... Appellant

Versus

Harminder Singh & Ors. ..... Respondents

J U D G M E N T

A. K. PATNAIK, J.

Leave granted.

2. This is an appeal by way of Special Leave against the order dated 25.03.2008 of the High Court of Punjab and Haryana in Criminal Misc. No.10664-M of 2007 quashing a criminal proceeding against respondents Nos. 1 and 2.

3. The relevant facts briefly are that on 12.12.2004, F.I.R.

No.276 was registered at Police Station Sadar, District Ludhiana, against the appellant under Sections 452, 324, 323, 506, 326 read with Section 34 of the Indian Penal Code (for short `the IPC') on information furnished by respondent No.1. The allegations in the F.I.R. were that on 12.12.2004, at about 8.00 a.m., the respondent No.1 and his mother were on their plot of land and they had engaged mason and labours for erecting walls on the plot when the appellant with others came armed with weapons and started beating the respondent No.1 and his mother and as a result the respondent No.1 and his mother suffered injuries and were admitted in the hospital. On 13.12.2004, the appellant gave a different version of the incident on 12.12.2004 to the police alleging that when he along with his father Mohan Singh reached the plot, they saw the respondent Nos. 1 and 2 along with others erecting walls on the plot and when Mohan Singh stopped the mason saying that the plot was a disputed one, respondent no.2 gave a lalkara and all others attacked Mohan Singh and the appellant caused injuries on them and as a result they have been admitted to the hospital. After investigation, the police filed two challans on 02.02.2006 before the Judicial Magistrate, First Class, Ludhiana. Under one challan, the appellant, his father Mohan Singh and Bhupinder Singh were charge-sheeted for offences under Sections 452, 323, 326, 506 read with Section 34 of the IPC and under the other challan, respondent Nos.1 and 2 and some others were charge-

sheeted for offences under Sections 342, 323, 324, 148 of the IPC. On 22.03.2006, the respondent No.1 submitted an application to the Additional Director General of Police, Crime Branch, Punjab, pursuant to which the prosecution moved an application before the Judicial Magistrate, First Class on 19.07.2006 for permission to investigate further in the case and on 27.07.2006 the Judicial Magistrate, First Class, Ludhiana, granted such permission to the prosecution.

4. After further investigation, the Superintendent of Police, City-II, Ludhiana, submitted his report to the Deputy Inspector General of Police, Ludhiana Range. The relevant portion of the report of the Superintendent of Police, City-II, Ludhiana, which contains his conclusions after further investigation, is extracted hereinbelow:

> "I found during my investigation that Mohan Singh, son of Shri Sher Singh , Dharmatma Singh, Harpal Singh, Jagdev Singh and Bhupinder Singh, sons of Mohan Singh, residents of Pullanwal, sold one plot of 1 kanal 13 marlas on 09.03.2004 to Bharpur Sigh, Harnek Singh, sons of Balbir Singh, Jagjit Singh, son of Amarjit Singh, Gurcharan Singh, son of Hari Dass and Jagdev Singh, son of Harpal Singh, resident of Phulanawal through registered sale deed vasikha No.23895 and the mutation

No.10940 duly entered in the name of purchasing party. The purchasing party Harminder Singh @ Hindri, son of Shri Harnek Singh on 12.12.2004 was constructing 4 walls on this plot by employing labours and mason and while so in the meantime Dharmatma Sigh, Bhupinder Singh, sons of Mohan Singh and Mohan Singh came present on this plot and they stopped forcibly Harminder Singh not to erect 4 walls and when Harminder Singh @ Hindri did not stop, they started beating Harminder Singh @ Hindri with their weapons and he ultimately for his self defence ran towards his house and all these three persons while following Harminder Singh entered his house. Smt. Kamaljit Kaur, mother of Harminder Singh was also present in the house and in this incident, she got also various injuries. During this incident, Mann Singh, Bharpur Singh, son of Balbir Singh also come present at the place of occurrence, after hearing the raula of Harminder Singh @ Hindri and his mother Kamaljit kaur and none was other present at the place of seen and Dharmatma Singh party have wrongly mentioned the name of other persons in the cross case. In this incident, Dharmatma Singh also got some injuries and as a result of that and as per M.L.R., a case under Sections 323, 324 IPC alleged to have been made out and the injuries, which got by Harminder Singh @ Hindri etc., a case under Sections 323, 324, 326 IPC is made out. Since Dharmatama Singh, Bhupinder Singh and Mohan Singh while entering into the house of Harminder Singh @ Hindri gave injury to Harminder Singh @ Hindri and the aforesaid Harminder Singh for his self defence gave some injuries to Dharmatma Singh etc. and the same shall come under the definition of self defence and, therefore, no proceeding/case can be initiated against Harminder Singh @ Hindri party and therefore, the cross case as registered against Harminder Singh @ Hindri party is required to be cancelled. And if your goodself agree with the report, please necessary orders be issued in this regard to S.H.O. Police Station Sadar, Ludhiana.

Sd/-

(D. P. Singh)

S. P. City-II,

Ludhiana"

It will be clear from the aforesaid extract from the report of further investigation that Superintendent of Police, City II, Ludhiana, was of the opinion that respondent No.1 gave some injuries to the appellant and others for his self- defence and such injuries come under the definition of right of private defence and, therefore, no proceedings could be initiated against respondent No.1 and the case registered against respondent No.1 should be cancelled.

5. The Deputy Inspector General of Police, Ludhiana Range, to whom the aforesaid report was submitted, referred the matter to the Additional Director General of Police, Crime Branch, Punjab, Chandigarh, and the Additional Director General of Police was of the opinion that as the challans had already been filed against the respondents in the cross-case, the decision of the case should be left to the Court. The opinion of the Additional Director General of Police as stated in his communication to the Deputy Inspector General of Police, Ludhiana Range, Ludhiana, is quoted herein below:

> "After thoroughly investigating this case, finding has already been recorded at ADGP/Crime level that Man Singh, Harminder Singh party did not cause injuries to other party in self defence. In the main case and cross case, challan has already been presented in the court. During further investigation, no new evidence came on record. In other words, report of S.P. City I, Ludhiana is not based on any such evidence which was not available at the time of inquiry conducted by the Crime Wing. So, the cross case does not deserve to be cancelled. By ignoring the above report, decision of the case should be left to the court.
>
> Sd/-
>
> For Addl. Director General of Police, Crime, Punjab, Chandigarh"

6. However, before the Court of the Judicial Magistrate, First Class, Ludhiana, could apply its mind and take a decision on the original challan against respondents No. 1 and 2 and on the report of further investigation recommending dropping of the criminal proceedings against them, respondent Nos. 1 and 2 filed Criminal Misc.

Application No.10664-M of 2007 under Section 482 Cr.P.C.

on 17.02.2007 in the High Court of Punjab and Haryana praying for quashing of DDR No.15 dated 13.12.2004 and the challan filed against them by the police in the Court of Judicial Magistrate, First Class. After considering the report of further investigation recommending dropping of the criminal proceedings against respondent No.1 and others, the High Court passed the impugned order dated 25.03.2008 quashing the criminal proceedings initiated pursuant to the DDR No.15 dated 13.12.2004 and further directing that the criminal proceedings against the appellant at the behest of the respondent No.1 initiated pursuant to the F.I.R. No. 276 dated 12.12.2004 shall not be affected.

7. Learned counsel for the appellant submitted that the power under Section 482 of the Cr.P.C. is to be exercised only in the exceptional circumstances and that the High Court should not have exercised this power and quashed the criminal proceedings against the respondents No.1 and 2 when the Magistrate was yet to exercise his judicial mind under Section 190 of the Cr.P.C. to the police reports filed under Section 173 of the Cr.P.C. He submitted that the Magistrate before whom the entire records were placed including the evidence collected during the investigation was in a better position to appreciate the facts and circumstances of the case and pass orders whether to take cognizance of the offences against the respondents No.1 and 2 registered pursuant to the DDR No.15

dated 13.12.2004 on the basis of information furnished by the appellant.

Learned counsel for the respondent Nos. 1 and 2, on the other hand, relied on the report of the Superintendent of Police, City-II, Ludhiana, recommending dropping of the criminal proceedings against them and supported the impugned order passed by the High Court quashing the criminal proceedings against them.

8. For deciding the issue, we must first refer to the provisions of Section 173 of the Cr.P.C. under which the police submits reports after investigation and after further investigation, Section 190 of the Cr. P.C. under which the Magistrate takes cognizance of an offence upon a police report and Section 482 of the Cr.P.C. under which the High Court exercises its powers to quash the criminal proceedings. These three provisions of the Cr.P.C. are extracted below:

> "173. Report of police officer on completion of investigation. (1) Every investigation under this Chapter shall be completed without unnecessary delay.
>
> [(1A) The Investigation in relation to rape of a child may be completed within three 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;
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> (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, weather with or without sureties;
>
> (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 section 376, 376A, 376B, 376C or 376D 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 alongwith the report-

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

190. Cognizance of offences by Magistrate. -

(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.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

482. Saving of inherent power of High Court.-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

9. A reading of provisions of sub-section (2) of Section 173, Cr.P.C. would show that as soon as the investigation is completed, the officer in charge of the police station is required to forward the police report to the Magistrate empowered to take cognizance of the offence stating inter alia whether an offence appears to have been committed and if so, by whom. Sub-section (8) of Section 173 further provides that where upon further investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall also forward to the Magistrate a further report regarding such evidence and the provisions of sub-section (2) of Section 173, Cr.P.C., shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

Thus, the report under sub-section (2) of Section 173 after the initial investigation as well as the further report under sub-section (8) of Section 173 after further investigation constitute "police report" and have to be forwarded to the Magistrate empowered to take cognizance of the offence. It will also be clear from Section 190 (b) of the Cr.P.C. that it is the Magistrate, who has the power to take cognizance of any offence upon a "police report" of such facts which constitute an offence. Thus, when a police report is forwarded to the Magistrate either under sub-section (2) or under sub-section (8) of Section 173, Cr.P.C., it is for the Magistrate to apply his mind to the police report and take a view whether to take cognizance of an offence or not to take cognizance of offence against an accused person.

10. It follows that where the police report forwarded to the Magistrate under Section 173 (2) of the Cr.P.C. states that a person has committed an offence, but after investigation the further report under Section 173 (8) of the Cr.P.C. states that the person has not committed the offence, it is for the Magistrate to form an opinion whether the facts, set out in the two reports, make out an offence committed by the person. This interpretation has given by this Court in Abhinandan Jha & Ors. v. Dinesh Mishra [AIR 1968 SC 117] to the provisions of Section 173 and Section 190 of the Criminal Procedure Code, 1898, which were the same as in the Criminal Procedure Code, 1973. In Abhinandan Jha (supra), para 15 at page 122 of the AIR this Court observed:

> "... The police, after such investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report."

11. After referring to the law laid down in Abhinandan Jha (supra) this Court has further held in Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr. [AIR 1996 SC 309] that where the police in its report of investigation or further investigation recommends discharge of the accused, but the complainant seeks to satisfy the Court that a case for taking cognizance was made out, the Court must consider the objections of the complainant and if it overrules such objections, it is just and desirable that the reasons for overruling the objections of the complainant be recorded by the Court and this was necessary because the Court while exercising power under Section 190, Cr.P.C. whether to take cognizance or not to take cognizance exercises judicial discretion.

12. In the facts of the present case, the police in its report submitted to the Judicial Magistrate, First Class, Ludhiana, on 02.02.2006 had filed two challans, one against the appellant, his father Mohan Singh and Bhupinder Singh stating that they had committed offences under Sections 452, 323, 326, 506 read with Section 34 of the IPC and the other challan against the respondent Nos.1 and 2 and some others stating that they had committed offences under Sections 342, 323, 324, 148 of the IPC. Pursuant to permission granted by the learned Magistrate on 27.07.2006 for further investigation, a further report has been made by the Superintendent of Police, City-II, Ludhiana, stating that respondent no.1 for his self-defence had caused injuries to the appellant and others and hence the cross-case against the respondent no.1 is required to be cancelled. This further report has to be forwarded to the learned Magistrate and as has been held by this Court in Abhinandan Jha (supra) and Mrs. Rupan Deol Bajaj (supra) it was for the learned Magistrate to apply judicial mind to the facts stated in the reports submitted under sub-sections (2) and (8) respectively of Section 173, Cr.P.C., and to form an opinion whether to take cognizance or not to take cognizance against the respondent no.1 after considering the objections, if any, of the complainant, namely, the appellant.

13. Section 482 of the Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It has been held by this Court in R. P. Kapur v. State of Punjab [AIR 1960 SC 866] that Section 561-A of the Criminal Procedure Code, 1898 (which corresponds to Section 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice and such inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code and therefore where the Magistrate has not applied his mind under Section 190 of the Cr.P.C. to the merits of the reports and passed order, the High Court ought not to consider a request for quashing the proceedings. In the case of R. P. Kapur (supra) on 10.12.1958, M.L. Sethi lodged a First Information Report against R.P. Kapur and alleged that he and his mother-in-law had committed offences under Sections 420-109, 114 and 120B of the Indian Penal Code.

R.P. Kapur moved the Punjab High Court under Section 561-A of the Code of Criminal Procedure for quashing the proceedings initiated by the First Information Report. When the petition of R.P. Kapur was pending in the High Court, the police report was submitted under Section 173, Cr.P.C.

and the High Court held that no case had been made out for quashing the proceedings under Section 561-A of the Criminal Procedure Code, 1898 and dismissed the petition.

R. P. Kapur carried an appeal by way of Special Leave to this Court and this Court dismissed the appeal for inter alia the following reasons:

> " ... In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage..."

As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Section 173, Cr.P.C., we are of the considered opinion that the exercise of power by the High Court under Section 482, Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case.

14. In the result, the appeal is allowed and the impugned order dated 25.03.2008 is set aside. The police will forward the further report of the Superintendent of Police, City-II, Ludhiana, to the Magistrate concerned and the learned Magistrate will apply his mind to the police report already forwarded to him and the further report of further investigation forwarded to him and take a final decision in accordance with law after considering the objections, if any, of the appellant against the further report of further investigation.

.....J. (R.V. Raveendran) .....J. (A. K. Patnaik) New Delhi, May 10, 2011.