

Kishore Kumar Gyanchandani vs G.D. Mehrotra And Anr. on 28 February, 2001

Equivalent citations: AIR2002SC483, AIR 2002 SUPREME COURT 483, 2011 (15) SCC 513, 2002 AIR SCW 12, 2001 (2) EASTCRIC 121, 2001 (2) CURCRIR 122, 2001 (2) JT (SUPP) 386, 2001 (4) SUPREME 584, 2001 (3) CRIMES 205, 2002 (2) MAH LR 240, 2002 (1) GUJLH 771, 2003 (2) RECCRIR 594, AIRONLINE 2001 SC 149, (2002) 2 MAH LR 240, (2001) 2 JT (SUPP) 386, (2001) 2 EAST CRI C 121, (2001) 2 CUR CRI R 122, (2001) 3 CRIMES 205, (2003) 2 REC CRI R 594, (2002) 1 GUJ LH 771, (2001) 4 SUPREME 584, (2000) 3 EASTCRIC 2043, (2002) 1 BLJ 716, (2001) 3 PAT LJR 586

Bench: S.N. Phukan, B.N. Agrawal

ORDER

1. Leave granted.

2. The complainant is the appellant in this Court assailing the order of the High Court in revision setting aside the cognizance taken by the Magistrate on the basis of a complaint. It transpires that in respect of the incident in question an F.I.R. was lodged on 15th of September, 1995 making out an offence under Sections 279 and 338 of the Indian Penal Code (IPC). The police on investigation into the offence, filed the final form which was accepted by order dated 27-1-1996. On 19-4-1996 a Protest Petition is alleged to have been filed and on that petition the Magistrate by order dated 7-1-1998 directed that the same be treated as a complaint. The Magistrate then held an inquiry under Section 202 of the Code of Criminal Procedure (Cr.P.C.) and ultimately, on the basis of the materials produced in the inquiry, taking the same with the allegations made in the Protest Petition which has already been treated as a complaint, took cognizance under Sections 279 and 338. IPC. The accused then filed an application for dismissal of the complaint before the Magistrate on 12-3-1994. The Magistrate, however, dismissed the same on 24-8-1997. The accused then moved the High Court invoking its revisional jurisdiction and the High Court by the impugned order, having set aside the order taking cognizance and issuance of process in the complaint proceeding, the present appeal has been preferred,

3. There is some controversy between the parties that before accepting the final form by the Magistrate on 27-1-1996 notice had been served on the complainant and the complainant did not file objections, whereas the case of the complainant is that he had not received any notice from the Court. Be that as it may, we are not entering into that controversy for deciding the present case as in our view it is not material either way nor does it oust the jurisdiction of the Magistrate on the basis of a complaint to take cognizance of the offence alleged to have been committed by the accused even if he had already accepted the final form, the same having been filed by the police.

4. When the matter was listed before a two-Judge Bench of this Court, thinking that there is some divergence of views, it referred the matter to a three-Judge Bench. On examining the different provisions of the Code of Criminal Procedure as well as the decisions of this Court relevant on the question, we see no divergence in the matter. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of *Gopal Vijay Verma v. Bhuneshwar Prasad Sinha and Ors.*, whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding.

5. Mr. Maheshwari, the learned Senior Counsel appearing for the respondents, however, relied upon an earlier decision of this Court in *Abhlnandan Jha and others v. State of Bihar and another*, 1968 Cri LJ 97. In our view the said decision is not relevant for the purpose and in that decision this Court had merely stated that the Magistrate on receipt of the final form by the police cannot direct the investigating agency to file a charge-sheet inasmuch as the filing of charge-sheet is within the domain of the investigating agency. But the Magistrate has untrammelled power to direct further investigation into the matter or even to take cognizance on the basis of the materials produced even though the police might have filed the final form. The aforesaid decision, in our considered opinion, is not relevant on the point in issue. This being the position and on examining the impugned Judgment of the High Court, we have no hesitation to come to the conclusion that the High Court wholly erred in law in interfering with the cognizance taken by the Magistrate in the complaint proceeding, by shifting the materials and on coming to a conclusion by some conjectures which the High Court is not entitled to at this stage of the proceeding. We set aside the Impugned order direct the Magistrate to proceed with the pending criminal proceeding as expeditiously as possible.

6. The appeal stands allowed accordingly.