Randhir Singh Rana vs The State Being The Delhi ... on 20 December, 1996

Equivalent citations: AIR 1997 SUPREME COURT 639, 1997 (1) SCC 361, 1997 AIR SCW 356, 1997 CRILR(SC MAH GUJ) 378, (1997) 1 KER LT 73, 1997 CRILR(SC&MP) 378, 1997 WLC(RAJ)(UC) 60, 1997 CRIAPPR(SC) 43, 1997 UP CRIR 248, (1997) ILR (KANT) 2637, (1997) 12 OCR 466, (1997) 65 DLT 207, (1997) 2 GUJ LR 1709, (1997) 2 RECCRIR 297, (1997) 1 SCJ 35, (1997) 1 CURCRIR 128, (1997) 2 CRICJ 122, (1997) 1 SUPREME 278, (1998) 36 ALLCRIC 487, (1997) 1 BLJ 1112, (1997) 2 ALLCRILR 693, (1997) 24 CRILT 637, (1997) 1 EASTCRIC 528, (1997) 1 PAT LJR 49, (1997) 1 CRIMES 58

Bench: G.N. Ray, B.L. Hansaria

PETITIONER:
RANDHIR SINGH RANA

Vs.

RESPONDENT:
THE STATE BEING THE DELHI ADMINISTRATION.

DATE OF JUDGMENT: 20/12/1996

BENCH:
G.N. RAY, B.L. HANSARIA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T HANSARIA, J.

A peep into a little grey area of the criminal law has become necessary in this appeal, as we have been called upon to decided as to whether a Judicial Magistrate, after taking congnizance of an offence on the basis of a police report and after appearance of the accused in pursuance of the process issued, can order of his own further investigation in the case. That such as power is available

to police after submission of charge-sheet is no longer a debatable question in view of sub-section (8) of section 173 (in Chapter XII:

> Information to Police and their Powers to Investigate) of the Code of Criminal Procedure, 1973 (hereinafter referred to as `the Code'). It is also not in dispute that before taking of cognizance under section 190 (Part of Chapter XIV:
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> Conditions Requisite for Initiation of Proceedings), the Magistrate may himself order investigation, as contemplated by sub-section (3) of section 156 of the Code. Further, in exercise of power under section 311 finding place in Chapter XXIV (General Provisions as to Enquiries and Trials), the court may at any stage of an inquiry, trial or other proceedings under the Code summon any person as a witness if his evidence appears to be essential to the just decision of the case. But in the present appeal the learned Magistrate ordered for further investigation after the appellant had made his appearance and the case was otherwise ready for considering the question whether charge should be framed or appellant should be discharged.

2. There having been no direct authority of this Court on the question, it was required to be examined as a matter of first principle, with the assistance of some related decisions of this Court and that of the High Court on the issue at hand. In view of the importance of the point, we had requested Shri Sudhir Walia, a penal Advocate of the State of Punjab, to assist us as amicus curiae and he did so admirably. After the conclusion of the hearing, written submissions had also been filed on behalf of the respondent- Delhi Administration, which too we have perused.

3. Coming to the decision of this Court, reference may first be made to Abhinandan Jha v. Dinesh Mishra, 1967 (3) SCR 668 (479) in which it was held that even where on perusal of the police report to the effect that no case has been made out for sending up an accused for trial, it is not open to the Magistrate, despite his having certain supervisory powers in this regard, to direct the police to file a charge-sheet because that would amount to encroaching on the sphere of police. As in the present case the direction is not to file charge-sheet, what was stated by the two-Judge Bench has no direct application and cannot assist the appellant.

4. Shri Vasdev has, however, strongly pressed into service the summing up of law as to the powers of the Magistrate relating to ordering of investigation before and after taking congnizance as finding place in para 15 of Tula Ram v. Kishore Singh, 1977 (4) SCC 459, in which Fazal Ali, J. speaking for a two-Judge Bench culled out the following legal proposition in this regard:

> "1. That a Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking congnizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above."

The aforesaid does show that after cognizance has been taken and accused has made appearance pursuant to the process issued against him, the Magistrate was not conceded the power to order investigation. It may, however, be added that the point under consideration had not come up for direct examination in Tula Ram.

5. The decision in Ram Lal Narang v. State (Delhi Administration), 1979 (2) SCC 322, has laid down that despite a Magistrate taking cognizance of an offence upon a police report, the right of police to further investigate even under the old 1898 Code was not exhaustive and the police could exercise such right often as necessary when fresh information came to light. (This position is now beyond pale of controversy because of sub-section (8) of section 173 of the new Code.) But then a rider was added stating that after cognizance has been taken, then with a view to maintain independence of the magistracy and the judiciary, interests of the purity of administration of criminal justice and interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would "ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light". (Pages 337 and 378 of the Report).

6. Question posed by us was if for further investigation, the police should ordinarily take formal permission of the court, can the court on its own not ask for further investigation, if the same be thought necessary to arrive at a just decision of the case? That the courts are meant to advance the cause of justice cannot be doubted. It is really this need of a court of law which had led a Full Bench

of the Punjab and Haryana High Court in State v. Mehar Singh, 1974 Criminal Law Journal 970, to take the view that even after congnizance has been taken, court can order further investigation in exercise of inherent power, which was read in section 561A of the old Code, whose parallel provision in the new Code is section 422. As to this decision, it has to be pointed out that in terms both these sections have saved the inherent power of the High Court only; it is doubtful whether the said power can be said to inhere in subordinate criminal courts also.

7. Shri Vasdev took pains, and great pains at that, to contend that the Code has compartmentalised the powers to be exercised at different stages of a case, namely, at the time of cognizance, after cognizance is taken, after appearance of the accused, and after commencement of trial on charge being framed. Learned counsel urged, on the basis of decided cases of this Court, that the power of further investigation undoubtedly exists in the first stage, may exist at the second and section 311 permits to examine any witness during the course of trial. But at the third (intermediate) stage, this power has not been conferred on a court. All that has to be done at that stage is to look into the materials already on record and either frame charge, if a prima facie case is made out, or discharge the accused bearing in mind relevant provisions relating to the same incorporated in Chapter XVII of the Code, titled "The Charge". Of course, the discharge would not prevent further investigation by police and submission of charge-sheet also thereafter, if a case for the same is made out.

8. The decision pressed into service by Shri Vasdev in support of the aforesaid submission is the one rendered in D. Lakshminarayana v. V. Narayana Reddy, AIR 1976 SC 1672. Our attention has been, invited in particular to what has been stated in para 17 of the judgment, which reads as below:

> "17. Section 156(3) occurs in Chapter XII, under the caption:
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> "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrate". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-congnizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is

> empowered under Section 202 to direct, within the limits circumscribed by that section, a investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding."

Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

9. Shri Walia, who worked hard to assist the Court, referred us to the relevant part of the 41st Report of the Law Commission of India pursuant to whose recommendation sub-section (8) of section 173 was inserted in the new Code. But that also does not throw light on the question with which we are seized. Further, the learned counsel brought to our notice the Statement of Objects and Reasons, so also the Notes on the Clauses of the new Code; but there also we find no light. Of the decisions cited by Shri Walia, the one nearest to the point is of a learned Judge of Calcutta High Court in State v. Sankar Halder, 89 CWN 1063, in which it was held that a court is not debarred from making any order for further investigation under the provisions of section 173(8) of the Code. But then, that was not a case where cognizance had been taken and accused had appeared in pursuant to the process issued. Thus, the decision does not assist us to answer the question under examination.

10. The decision of this Court in State of Rajasthan v. Aruna Devi, 1995 (1) SCC 1, to which our attention was invited by Shri Datta, learned senior counsel appearing for the State, also is not helpful, because in that case the power of the police to make further investigation after cognizance was taken by the Magistrate had come up for examination. The point involved in present appeal, however, is relatable not to the power of the police to make further investigation but of the Magistrate to order for such investigation.

11. The aforesaid being the legal position as discernible from the various decisions of this Court and some of the High Courts, we would agree, as presently advised, with Shri Vasdev that within the grey area to which we have referred the Magistrate of his own cannot order for further investigation. As in the present case the learned Magistrate had done so, we set aside his order and direct him to dispose of the case either by framing the charge or discharge the accused on the basis of materials already on record. This will be subject to the caveat that even if the order be of discharge, further investigation by the police on its own would be permissible, which could even end in submission of either fresh charge-sheet.

12. The appeal stands allowed accordingly.