State Of Maharashtra vs Sharadchandra Vinayak Dongre on 7 October, 1994

Equivalent citations: 1995 AIR 231, 1995 SCC (1) 42, AIR 1995 SUPREME COURT 231, 1994 AIR SCW 4301, 1995 (1) SCC(SUPP) 702, 1995 CRIAPPR(SC) 63, 1995 SCC (CRI) 16, (1995) SCCRIR 362, 1995 (1) IJR 220, 1994 (6) JT 562, (1995) 1 CRIMES 635, 1995 CRILR(SC&MP) 114, (1995) 1 CHANDCRIC 99

Bench: R.M. Sahai, N.P Singh

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
SHARADCHANDRA VINAYAK DONGRE

DATE OF JUDGMENT07/10/1994

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
SAHAI, R.M. (J)
SINGH N.P. (J)

CITATION:
1995 AIR 231 1995 SCC (1) 42
JT 1994 (6) 562 1994 SCALE (4)438

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by DR. ANAND, J-- Leave granted.

2. On 23-8-1985, officers of the Prohibition and Excise Department of the State of Maharashtra along with the officers of the Sales Tax and Income Tax Departments carried out surprise raids at

the brewery of M/s Doburg Lager Breweries Pvt. Ltd., a company incorporated under the Companies Act at Satara. Searches were also made at the office of the respondent on 26-81985 and 4-10-1985. The raids were conducted on the ground that offences had been committed by the respondent relating to manufacture and selling of beer without payment of excise duty. On 22-11-1985 cases were registered against the respondent under Sections 65(b), (d), (e); 661(1)(b); 72; 75(c); 77(b); 79; 82(1); 83 and 108 of the Bombay Prohibition Act, 1949.

3. After the registration of the cases against the respondents investigation was carried out and on 21-11-1986, five charge-sheets were filed before the Chief Judicial Magistrate, Satara. Simultaneously, the prosecution also filed two applications before the CJM. In the first application, it was stated that though the nature of the offence was a continuing one and therefore there was no delay in filing the charge-sheet but if for any technical reason it appeared to the court that there was some delay in filing the same then, considering the nature and gravity of the offence, the delay may kindly be condoned. In the second application, the prosecution inter alia stated that the bulk of the evidence had been recorded and filed along with the charge-sheet, some evidence against some of the accused persons, who had not been sent up for trial, was yet to be collected and therefore permission was sought to make "further investigation" and collect further additional evidence in respect of the offence and to file an "additional charge-sheet" within six months from the date of the application. On 21-11-1986, the CJM took cognizance of the offence and issued process against the respondents. While the second application was kept pending for orders, the application for condonation of delay was allowed on 21- 11-1986 itself. The respondent challenged the order of the Chief Judicial Magistrate dated 21-11-1986 in the High Court and sought quashing of the same in exercise of the inherent powers to the High Court under Section 482 CrPC. The case of the respondents before the High Court was that the learned Chief Judicial Magistrate could not have condoned the delay in launching the prosecution without notice to the respondents and permitting them to have their say. The order of the Chief Judicial Magistrate dated 21-11-1986 was also assailed on the ground that the court could not take cognizance of the offence on an "incomplete police report"

and therefore, it had no jurisdiction to issue the process against the respondents.

4. The High Court found that the Chief Judicial Magistrate, on 21-11-1986, had allowed the application for condonation of delay in filing the charge-sheet, without recording any reasons and without hearing the respondents and behind their back. The High Court further found that the Chief Judicial Magistrate was aware from the application filed by the prosecution that the charge-sheet was 'incomplete' and as such, it could not have taken cognizance of the offence and it had no jurisdiction to issue the process against the respondents. The proceedings, including the issuance of process, were accordingly quashed.

5. In our view, the High Court was perfectly justified in holding that the delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay. However, having come to that conclusion, it would have been appropriate for the High Court, without going into the merits of the case to have remitted the case to the trial court, with a direction to decide the application for

condonation of delay afresh after hearing both sides. The High Court however, did not adopt that course and proceeded further to hold that the trial court could not have taken cognizance of the offence in view of the application filed by the prosecution seeking permission of the Court to file a "supplementary charge- sheet" on the basis of an "incomplete charge-sheet" and quashed the order of the CJM dated 21-11-1986 on this ground also. This view of the High Court, in the facts and circumstances of the case is patently erroneous.

6.Section 173(2) of the Code of Criminal Procedure provides that as soon as investigation 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 case;

(d) whether any offence appears to have been communicated and, if so, by whom;

(e) whether the accused has been arrested;whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section

170.

7. The purpose of the submission of the police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1)(b) CrPC provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) CrPC. Merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take

cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

8. In the instant case, the Chief Judicial Magistrate was obviously satisfied with teh sufficiency of the material placed by the prosecution before him with the report for taking cognizance of the offence and he therefore proceeded further after taking cognizance and directed the issuance of process against the respondents. The prayer of the investigating agency seeking permission to further investigate and submit a "supplementary charge-sheet" could not vitiate the cognizance taken by the Chief Judicial Magistrate nor denude him of his jurisdiction to take cognizance of the offence. The High Court while quashing the order dated 21-11-1986, did not record any finding to the effect that the exercise of discretion by the Magistrate in taking cognizance of the offence and issuing process was in any way improper or that the cognizance was taken on the basis of the material on which no reasonable person could have taken cognizance. The High Court quashed the order only because it was influenced by the application filed by the prosecution seeking permission to record additional evidence and file a "supplementary charge-sheet" and from that it inferred that the report filed by the prosecution was 'incomplete'. High Court even overlooked the fact that the application filed by the prosecution had not even been allowed by the Chief Judicial Magistrate and had been only adjourned for orders. We cannot persuade ourselves to accept the view of the High Court that if the investigating officer terms a police report as 'incomplete', it takes away the jurisdiction of the Magistrate to take cognizance of the offence, even if in the opinion of the Magistrate, the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report or the charge-sheet by the investigating officer and it is for him to decide whether the report and the material on which it is based, is sufficient for him to take cognizance or not. It is pertinent to notice that the police report submitted before the Chief Judicial Magistrate, did not even say that it was an 'incomplete' charge-sheet or police report. The High Court was, therefore, not at all justified in opining that since the charge-sheet on the prosecution's own showing was 'incomplete', the Chief Judicial Magistrate could not have taken cognizance and quashed the order of the CJM taking cognizance of the offence. We may also record at this stage that Shri Dholakia, the learned Senior Counsel appearing for the appellant submitted before us that apart from the material already filed with the police report/charge-sheet, on the basis of which the Chief Judicial Magistrate took cognizance on 21-11-1986, the State does not intend to file any further material by way of any supplementary charge- sheet before the trial court. The statement of Shri Dholakia, adequately protects the interest of the respondents. In view of the statement of Mr Dholakia, we are relieved of the necessity to deal with the effect of Section 173(8) CrPC in this case.

9.Since the Chief Judicial Magistrate condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties. It is after the decision of the application for condonation of delay that the Chief Judicial Magistrate shall proceed further in the matter. The finding of the High Court that the CJM could not take cognizance of the offence on the basis of 'incomplete' police report, for the

reasons already recorded, is, however, set aside. The Chief Judicial Magistrate shall proceed further in accordance with law after deciding the application seeking condonation of delay. Nothing said herein above, shall, however, be construed as any expression of opinion on the merits of the case.

10. The appeal succeeds in part in the above terms.