Calcutta High Court
Nurul Absar vs Abdur Rahaman And Ors. on 11 June, 1993
Equivalent citations: (1994) 1 CALLT 134 HC
Author: A K Dutta
Bench: A K Dutta
JUDGMENT Arun Kumar Dutta, J.

1. The instant revisional application under Section 401, read with Section 482 of the Code of Criminal Procedure, 1973 is directed against the order dated 17.4.89 passed by the Sub-Divisional Judicial Magisrate at Katwa in G.R. Case No. 84 of 1988, arising out the Mangolcot P.S. Case No. 10 dated 28.2.88, on the grounds and for the reasons set forth therein.

2. On F.I.R. being lodged by the petitioner-complainant before Mangolcot Police Station on 28.2,88 against the accused No. 1, Abdur Rahman, and 28 others for alleged offence punishable under Sections 147/148/149/325/326/307/379, I.P.C. and Sections 25/27 of the Arms Act on the allegations made therein, Mangolcot P.S. Case No. 10 dated 28.2.88 was registered. After completion of investigation in the case the Investigating Officer had forwarded a report to the learned Magistrate under sub-section (2) of Section 173 of the Code, being charge-sheet No. 29 dated 1.4.89, in which four of the twenty-nine accused persons, namely, Hebjur Rahman, Munshi Mohammad, Jiaur Rahman and Fakir Mohammad, had only been, sent up for trial for alleged offence punishable under Sections 302/34, I.P.C., and a prayer had been made for discharging the remaining twenty-five accused persons named in the F.I.R., in the circumstances stated therein. On the basis of the aforesaid chargesheet received by the learned Magistrate, he had taken cognizance of the aforesaid offence against the aforesaid four accused sent up for trial, and had discharged the remaining twenty-five F.I.R. named accused, as prayed for by the I.O., by his impugned order dated 17.4.89.

Being aggrieved by the aforesaid impugned order passed by the learned Magistrate discharging the remaining twenty-five F.I.R. named accused persons, the complainant has moved this Court in Revision there against on the grounds set forth in the application.

3. It had been contended by the learned Advocate for the petitioner complainant during the hearing that the learned Magistrate had passed the aforesaid impugned order dated 17.4.89 mechanically without any application of mind and without recording any reason whatsoever for discharging the aforesaid twenty-five accused persons, and without giving him (petitioner-informant) any opportunity of being heard. Referring the Court to the decision in Bhagwant Singh v. Commissioner of Police and anr., it had been submitted on behalf of the petitioner that it was obligatory for the learned Magistrate to give notice to him and provide him an opportunity to be heard at the time of consideration of the aforesaid police report forwarded under Section 173(2) of the Code.

4. It had been contended, on the other hand, by the learned Advocate for the accused-respondents that since the informant was informed by the I.O. about the result of the investigation, as indicated in the relevant chargesheet, the question of giving him further notice by the learned Magistrate did not arise. But to that I would at once note with a minute of dissent that in view of the aforesaid

decision of the Supreme Court, which is indeed the law of the land, there could be no mistaking that it was obligatory for the learned Magistrate to give notice to the petitioner-informant and provide him an opportunity of being heard at the time of consideration of the report before discharging the remaining twenty-five F.I.R. named accused, as he did, by passing the impugned order dated 17.4.89, irrespective of whether he (informant) had been informed by the I.O. about the result of the investigation or not. Their Lordships of the Supreme Court upon consideration of the relevant provisions of Sections 154(2), 157(2) and 173(2)(i) of the Code have clearly indicated therein that where the Magistrate, to whom a report is forwarded under sub-section (2) of Section 173 of the Code, decides that there is no sufficient ground for proceeding further and drop the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against the others mentioned in the First Information Report (as in the relevant case before us), the informant would certainly be prejudiced because the F.I.R. lodged by him would have failed of its purpose wholly or in part. Discussing about the recognition of the interest of the informant by the provisions contained in the aforesaid Sections 154(2), 157(2), 173(2)(ii) of the Code, Their Lordships have observed that 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 the culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the police under Section 173(2)(i) of the Code the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make submissions to persuade the Magistrate to take cognizance of the offence and issue process. It has accordingly been held by Their Lordships that in a case where the Magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 of the Code does not take cognizance of the offence and drop the proceedings or takes the view that there is no sufficient ground for proceedings against some of the persons mentioned in the First Information Report (as in the relevant case before us), the Magistrate must give notice to the informant and provide him an opportunity of being heard at the time of consideration of the report.

5. In view of the aforesaid decision of the Supreme Court there could be no mistaking that the impugned order dated 17.4.89 passed by the learned Magistrate discharging the remaining twenty-five F.I.R. named accused persons on the prayer of the Investigating Officer without giving notice to the informant and providing him an opportunity of being heard at the time of consideration of the report, in clear and utter violation of the aforesaid authority, suffers from gross incorrectness, impropriety and illegality calling for interference by this Court in Revision.

6. In the result, the instant revisional application succeeds. The impugned order dated 17.4.89 passed by the learned Sub-Divisional Judicial Magistrate, Katwa, be hereby quashed. The learned Magistrate is directed to give notice to the informant and provide him an opportunity of being heard at the time of consideration of the relevant report submitted by the Investigating Officer under Section 173(2)(i) of the Code afresh before discharging the remaining twenty-five F.I.R. named accused and dropping proceedings against them, as prayed for by the police thereunder.

7. Since the relevant proceedings had remained stayed in view of the stay granted by this Court on 9.6.89, the learned Magistrate is directed to proceed with the hearing in terms of this order, and

thereafter proceed with the trial of the case according to law with utmost expedition. The learned Magistrate shall seek to conclude the trial, as early as possible, preferably within a period of six months from the date of communication of this order. He shall also take note of the decision referred to above for his future guidance. Since the question raised in the proceedings is of general importance I direct that copies of this judgment be sent to all the Sessions Judges of this State for communication to the Judicial Magistrates subordinate to them for their information and future guidance. The Registrar, Appellate Side, should do the needful.

8. Let the Lower Court record, called for, be sent down to the Court below forthwith.