

Allahabad High Court

Yogendra Nath Tewari vs State on 6 November, 1963

Equivalent citations: AIR 1965 All 415, 1965 CriLJ 330

Author: D Mathur

Bench: D Mathur

ORDER D.S. Mathur, J.

1. This is a criminal reference by the Additional Sessions Judge of Azamgarh with the recommendation that the Magistrate's order dated 12-9-1901 be set aside and he be directed to return the complaint or report of the Superintendent of Police, Azamgarh, for presentation before the District Magistrate and/or such suitable orders as the High Court may deem proper to pass.
2. The material facts of the case are that Yogendra Nath Tewari, applicant, proceeded on leave and did not report for duty even though the leave was not extended and he was served with a notice to join his duties. The Superintendent of Police then made a complaint alleging that the applicant had committed an offence punishable under Section 29 of the Police Act. The complaint was addressed to and was taken cognizance of by the Additional Sub-Divisional Magistrate, Sadar, Azamgarh.
3. The applicant challenges the jurisdiction of the Additional Sub-Divisional Magistrate on the ground that the complaint was to be moved before and could be taken cognizance of by the District Magistrate only as laid down in Para 486 II of the U. P. Police Regulations. It was also contended that the provisions contained in this paragraph had not been followed with the result that the complaint could not be taken cognizance of by any Magistrate, not even District Magistrate. The applicant raised the above objection before the Additional Sub-Divisional Magistrate who rightly observed that the instructions contained in the Police Regulations were instructions meant for the police force which could not have the force of law, and that the procedure for the trial of criminal cases was laid down in the Code of Criminal Procedure. He thus held that he could take cognizance of the complaint. However, in view of the application of the accused he transferred the case to the file of the District Magistrate for disposal in accordance with the law.
4. The applicant preferred a revision before the Sessions Judge who attached weight to the Police Regulations and apparently was under the impression that these Regulations had the force of law. He, therefore, made the reference with the recommendation as already detailed above.
5. It was conceded by the learned Advocate for the applicant that there was no provision in the Code of Criminal Procedure under which District Magistrate alone could take cognizance of an offence under Section 29 of the Police Act. There thus exists no prohibition to the Additional Sub-Divisional Magistrate taking cognizance of this offence. On the other hand, there are provisions in both the Acts clearly showing that any Magistrate could take cognizance of offences under the Police Act. Section 190 (1), Criminal P. C. contains a general rule, namely, that except as thereafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate or any other Magistrate specially empowered in this behalf may take cognizance of any offence upon receiving a complaint, report in writing or information. The Magistrate can also take cognizance upon his own knowledge or suspicion that such offence has been committed. The Magistrate cannot, of course, take

cognizance of the offence if the taking of cognizance is barred under any provision of the Code of Criminal Procedure or any special law. There exists no bar to the taking of cognizance of the offence under Section 29 of the Police Act. Consequently Section 190 would give jurisdiction to the Magistrate as detailed thereunder to take cognizance of the above offence.

It had not been pleaded before the lower Courts that the Additional Sub-Divisional Magistrate was not a Magistrate who could take cognizance of the offence under Section 190, Criminal P. C. At present we can proceed with the assumption that the Additional Sub-Divisional Magistrate could under Section 190, Criminal P. C. take cognizance of the offence under Section 29 of the Police Act. If the facts are to the contrary, it shall be open to the applicant to raise such an objection as to jurisdiction before the trial Magistrate.

6. Section 1 of the Police Act defines "Magistrate of the District and also "Magistrate". Magistrate of the District is one who is invariably called District Magistrate. The word "Magistrate" , however, includes all persons within the general police-district, exercising all or any of the powers of a Magistrate. The Additional Sub-Divisional Magistrate was thus a Magistrate, though not the District Magistrate.

7. Section 29 of the Police Act lays down the punishment by providing that the offender shall be liable, on conviction before a Magistrate, to a penalty as detailed thereunder. In other words, any Magistrate can try an offence under Section 29 of the Police Act. This inference can also be drawn from Section 35 of the Police Act. When the Police Act makes a clear provision that the offence under Section 29 of the Act can be tried by any Magistrate, then the rules even if framed under Section 46 of the Police Act, cannot take away the jurisdiction of the Magistrate which was conferred on him by the Legislature, Any rule repugnant to the enactment is void and ineffective. It is a different thing that the rule may be treated as an administrative order for the guidance of Police Officers. Such a rule cannot have the force of law and, in any case cannot take away the jurisdiction of Magistrates conferred on them under the general law and also under Ss. 29 and 35 of the Act.

8. The Additional Sub-Divisional Magistrate could thus proceed with the trial. However, the order of transfer passed by him is clearly without jurisdiction. Under Section 528, Criminal P. C. he could transfer the case to a Magistrate subordinate to him and not to a Magistrate to whom the Additional Sub-Divisional Magistrate himself was subordinate. The order of transfer being without jurisdiction deserves to be set aside. It is a different thing that the Sessions Judge or District Magistrate as the case may be may suo motu or on the application of a party transfer the case to the District Magistrate for trial.

9. The reference in substance, fails and is rejected. However, the Magistrate's order dated 12-9-1981 is set aside to enable him to proceed with the trial in accordance with the law.