Supreme Court of India
Devarapalll Lakshminarayana ... vs V.Narayana Reddy & Ors on 4 May, 1976
Equivalent citations: 1976 AIR 1672, 1976 SCR 524
Author: R S Sarkaria
Bench: Sarkaria, Ranjit Singh

PETITIONER:
DEVARAPALLl LAKSHMINARAYANA REDDY & ORS.

Vs.

RESPONDENT:
V.NARAYANA REDDY & ORS.

DATE OF JUDGMENT04/05/1976

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
SHINGAL, P.N.
SINGH, JASWANT

CITATION:
1976 AIR 1672 1976 SCR 524
1976 SCC (3) 252
CITATOR INFO :
RF 1977 SC2401 (10)

ACT:
Code of Criminal Procedure 1973, Ss. 156(3) and 202-Investigations under-Difference between objects of Sec, 190(l)(a) "taking cognizance", meaning of.

HEADNOTE:
On receiving a complaint against the appellants, for allegedly Committing offences under ss. 147, 148, 307, 395, 448, 378 and 342, I.P.C., the Judicial Magistrate, F.C. Dharmavaram., forwarded it to the police under s. 156(3) Cr.P.C. for investigation The appellants filed an application in the High Court under s. 482 Cr.P.C. 1973, against the Magistrate's order, hut the same was dismissed. it was contended before this Court that the complaint included offences triable exclusively by the Sessions Court, and under s. 202(1) Proviso l(a), 1973, the Magistrate was prohibited from directing the police to investigate it, that he was bound to proceed with it himself before issuing process to the accused. The appeal was, inter alia, contested on the ground that . the powers conferred on the Magistrate under s. 156(3) of the Code are independent of

his power to send the case for investigation under s. 2021 af the Code . Section 156(3) can be invoked before the Magistrate takes congnizace of the case but s. 202 comes into operation only after he start; dealing with the com Plaint in accordance with the provisions of Chapter XV.

Dismissing the appeal of the Court,

^ HELD: (1) The power to order police investigation under , 156(3) different from the power to direct investigation conferred by s. '202(1). 'The.` two operate in distinct spheres at different stages. The first is exercisable at the re-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. An investigation under s. 202 is "for the purpose or deciding whether or not there is sufficient ground for proceeding". its not to initiate a fresh case on police report, but to assist the Magistrate in completing proceedings already instituted upon a complaint before him. The stage at which s. 202 could become operative was never reached in this case. [530-H; 531B]

(2) When on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under s. 200 and the succeeding sections in chapter XV of the Code of 1973 he is said to have taken cognizance of the offence within the meaning of s. 190(l)(a) . If instead of' proceeding under Chapter XV. he has in the exercise of his discretion, taken action of some other kind, he cannot be said to have taken cognizance of any offence. [526D-G]

Nirmaljit Singh Hoon . The State West Bengal ond Anr. [1973] 3 S. ,53, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No 219 of 1975 (Appeal by special leave from the judgment and order dated the 20th October, of the Andhra Pradesh High Court at Hyderabad in Criminal Misc. Petition No 1890 of 1975) P B Basi Reddy, and AV V Nair for the appellants. M R K Chaudhary and B K Kanta Rao for respondent No 1 P. Ram Reddy, and P Parameshwara Rao, for respondent Nos. 2 and 3 The Judgment of the Court was delivered by SARKARIA, J.-Whether in view of Clause (a) of the First Proviso to s, 22(1) of the Code of Criminal Procedure, 1973, a Magistrate who receives a complaint, disclosing an offence exclusively triable by the Court of Session, is debarred from sending the same to the police for investigation under s. 156(3) of the Code, is the short question is that falls to be determined in this appeal by special leave. The question arises in these circumstances:

Respondent 1 herein made a complaint on July 26" 1975 before the Judicial Magistrate, First Class, Dharamavaram against the appellants herein alleging that. On account of factions existing village Thippapalli the appellants formed themselves into an unlawful assembly, armed with deadly weapon, such as axes, spears and sticks, on the night of June 20" 1975 and entered the houses of several persons belonging to the opposite party, attacked the inmates and forcibly took way jewels,

paddy, ground-nuts and other valuables of the total value of two lakhs of rupees. It was further alleged that the miscreants thereafter went to the fields and removed parts of machinery worth over Rs. 40,000/-, installed at the wells of their enemies. On these facts it was alleged that the accused had committed offences under ss. 147, 148, 149, 307, 395, 448, 378 and 342 of the Penal Code. The offences under ss. 307 and 395 are exclusively triable by the Court of Session. The Magistrate on receiving the complaint forwarded ii to the Police for investigation with this endorsement:

> "Forwarded under s. 156(3), Cr. Procedure Code to the Inspector of Police, Dharmavaram for investigation and report on or before 5-8-1975."

The appellants moved the High Court of Andhra Pradesh by petition under s. 482 of the Code of Criminal Procedure, 1973 (which corresponds to s. 561-A of the old Code) praying that the order passed by the Magistrate be quashed inasmuch as "it was illegal, unjust and gravely prejudicial to the petitioners". The learned Judge of the High Court. who heard the petition., dismissed it by an order dated October 20, 1975.

Hence this appeal.

Mr. Basi Reddy appearing for the appellants contends that the High Court has afield to appreciate the true effect of the changes brought by the Code of 1973. According to the Counsel, under the new Code, is a complaint discloses an offence triable exclusively be court of Session, the Magistrate is bound to proceed with that complaint himself before issuing process to the accused. The point pressed into argument is that clause (a) of the first Proviso to s. 202(1), the new Code peremptorily prohibits the Magistrate, to direct investigation of such a complaint by the Police or any other person. The cases, Gopal Da v. State of Assam(l),. Jamuna Singh v. Bhadai She (2), referred to by the High Court are sought to be distinguished (1) (1961) A.I.R. 19(;1 S. C. 986 (2) [1964] 5 S S.C.R. 37.

on the ground that they were decided under the old Code, s.

21)2 of which did not provide for any such ban as has been expressly enacted in the 1st Proviso to s. 202 of the new Code.

As against this, Mr. Ram Reddy, whose arguments have been adopted by Mr. Chaudahry, submits that the powers conferred on the Magistrate under s. 156(3) of the Code are independent of his power to send the case for investigation under. s. 22 of the Code; that the power under s. 156 (3) can be invoked at a stage when the Magistrate has not taken cognizance of the case while s. 202 comes into operation after the Magistrate starts dealing with the complaint in accordance with the Provisions of Chapter XV. It is urged that since in the instant case, the Magistrate had sent the complaint for police investigation without taking such cognizance s. 202 including the ar enacted therein, was not attracted. In the alternative, it is submitted that the ban in the 1st Proviso to s. 202, becomes operative only when the Magistrate after applying his mind to the allegations in the com plaint and the other material" including the statement of the complainant and his witnesses, if any, recorded under s. 200,, is prima facie satisfied that the offence complained of is triable exclusively by the Court of Session. The point sough to be made out is that a mere allegation in the complaint

that the offence committed is one exclusively triable by the Court of Session, does not oust the jurisdiction of the Magistrate to get the case investigated by the police or other person. The word "appears" according to Counsel, imports a prerequisite or condition precedent, the existence of which must be objectively and judicially established before the prohibition in the 1st Proviso to s. 202 becomes operative. It is added that in the instant case,, the existance of this condition precedent was not, and indeed could not he established.

It appears to us that this appeal can be disposed of on the first ground canvassed by Mr. Ram Reddy.

Before dealing with the contention raised before us, it will be appropriate to notice the relevant provisions of the old and the new Code.

Section 156 of the Code of 1973 reads thus: "156(1). Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case Which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate, (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

This provision is substantially the same as s. 156 of the Code of A 1898, excepting that in sub-s. (1) for the words "Chapter XV relating to the place of inquiry or trial," the words "Chapter XIII" have been substituted.

Sections 200 and 202 of the 1898 Code and the 1973 Code, placed in juxtaposition, read as follows: 1898 Code s. 200: A Magistrate taking cognizance of an offence on complaint shall at once examine the complaint and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided as follows:-

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to .

examine the complainant before transferring the case under section 192;

(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties:

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and where the complaint is made in writing need not be reduced to writing. but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Sec. 202 Postponement of issue of Process:- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or 1973 Code s. 200: A Magistrate taking cognizance of an offence on complaint shall ex. mine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for enquiry or trial to another Magistrate under section 192;

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Sec. 202 Postponement of Issue of process:- (1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint;

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a Police officer. such person shall exercise all the powers conferred by this Code on an officer in-

charge of a Police-station. except that he shall not have the power to arrest without warrant.

(2A) Any Magistrate inquiring into a Case under this section may, if he thinks fit, take evidence of witnesses on oath.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

which has been made over to him under sec. 192, may if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made:-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complaint and the witnesses present (if any) have been examined on oath under Section 200. ` (2) If any inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainants to produce all his witnesses and examine them on oath. (3) If an investigation under sub-

> section (I) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer incharge of a police station except the power to arrest without warrant.

Before proceeding further, we may have a look at s. 190 of the new Code. This section is captioned "Cognizance of offences by Magistrates". This section so far as it is material for our purpose, n provides:

> "Subject to the provisions of this Chapter, any Magistrate of the First Class and any Magistrate of the second class specially empowered in this behalf may take cognizance of any offence-
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> (2) .....

It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with must take cognizance". The word "may" gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under s. 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

This raises the incidental question: What is meant by "taking cognizance of an offence`' by a Magistrate within the contemplation of s. 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of s. 190 and the caption of Chapter XIV under which ss. 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The was in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under s. 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of s. 190(l)(a). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under s. 156(3), he cannot be said to have taken cognizance of any offence.

This position of law has been explained in several cases by this Court. the latest being Nirmaljit Singh Hoon v. The State of West Bengal and anr(1).

The position under the Code of 1898 with regard to the powers of a Magistrate having jurisdiction, to send a complaint disclosing a cognizable offence-whether or not triable exclusively by the Court of

(1) [1973] 3 S.C.C. 753.

36-833SCI/76 Session-to the Police for investigation under s. 156(3)" remains unchanged under the Code of 1973. The distinction between a police investigation ordered under s. 156(3) and the one directed under s. 202, has also been maintained under the new Code; but a rider has been clamped by the 1st Proviso to s. 202(1) that if it appears to the Magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for in vestigation.

Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while s. 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power It order police investigation under s. 156(3) is different from the power to direct investigation conferred by s. 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-cognizance 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 s. 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under s. 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 s. 156(3). It may be noted further that an order made under sub-section (3) of s. 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under s. 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under s. 156 and ends with a report or chargesheet under s. 173. On the other hand s. 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 s. 202 to direct within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not here is sufficient ground for proceeding ". Thus the object of an investigation under s. 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.

In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under s. 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complaint or his witnesses under s. 200, Cr.P.C., which is the first step in the procedure prescribed under that Chapter. The question of taking the next step of that procedure envisaged in s. 202 did not arise. Instead of taking cognizance of the offence he has., in the exercise of his discretion, sent the complaint for investigation by police under s. 156.

This being the position, s. 202(1), 1st Proviso was not attracted. A Indeed, it is not necessary for the decision of this case to express any final opinion on the ambit and scope of the 1st Proviso to s. 202(1) of the Code of 1973. Suffice it to say, the stage at which s. 202 could become operative was never reached in this case. We have therefore in keeping with the well-established practice of the Court, decided only that much which was essential for the disposal of this appeal, and no more.

For the foregoing reasons, we answer the question posed" in the negative, and dismiss this appeal.

M.R. Appeal dismissed.