Supreme Court of India
The State Of Uttar Pradesh vs Bhagwant Kishore Joshi on 17 April, 1963
Equivalent citations: 1964 AIR 221, 1964 SCR (3) 71
Author: K Subbarao
Bench: Subbarao, K.

PETITIONER:
THE STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
BHAGWANT KISHORE JOSHI

DATE OF JUDGMENT:
17/04/1963

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
DAYAL, RAGHUBAR
MUDHOLKAR, J.R.

CITATION:
1964 AIR 221 1964 SCR (3) 71
CITATOR INFO :
R 1968 SC1292 (5,7)
E&R 1970 SC1396 (6,7)
R 1984 SC 718 (21)
RF 1991 SC1260 (54)
AFR 1992 SC 604 (81)

ACT:
Criminal Trial--Investigation by Police Officer below the rank of Deputy Superintendent of Police--Previous permission of Magistrate not obtained--If proper investigation--Such omission if vitiated the trial--Prevention of Corruption Act, 1947 (2of 1947), s. 5A--Code of Criminal Procedure, 1898 (Act 5 of 1898), ss. 4 (1), 154, 157.

HEADNOTE:
The respondent was a booking clerk. He committed criminal breach of trust in respect of Rs. 49/1/0. On the receipt of the above mentioned information Superintendent of Police directed M, a Sub-Inspector of Police, to make an enquiry. Thereafter M verified the allegations contained in the information and examined the relevant railway records. On
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the basis of the information collected, he submitted a report. M made the first stage of investigation without obtaining the order of the Magistrate, 1st Class.1 Subsequently, M obtained permission of a Magistrate, 1st Class, to investigate into the case as required by s. 5A of the Prevention of Corruption Act. Thereafter. he made further investigation and submitted a charge sheet. The respondent was tried and convicted by the Special Judge under s. 5 (2) of Prevention of Corruption Act. On appeal the High Court set aside the conviction mainly on the ground that the first stage of the investigation was contrary to s. 5A of the Prevention of Corruption Act and the accused must be held to have been seriously prejudiced by the said contravention of the Act.

Held (per Subba Rao and Dayal, JJ.), that the first stage of investigation made by M, before obtaining the requisite permission. of the Magistrate, 1st Class, under s. 5A of the Act, was an "investigation" within the meaning of s. 4 (1) of the code of Criminal Procedure. M received through the report a detailed information of the offence alleged to have been committed by the accused with necessary particulars; he proceeded to the spot of the offence, ascertained the relevant facts by going through the railway records, and submitted a report. These acts constituted an investigation within the meaning of the definition of "investigation" under s. 4 (1) of the Code of Criminal Procedure and as such there was a contravention of s. 5A of the Prevention of Corruption Act.

Subsequently M rectified the earlier defect by obtaining the permission of the Magistrate, 1st Class, to investigate into the offence alleged to have been committed by the accused and in effect there was practically de novo investigation in strict compliance with the provision of Code of Criminal Procedure. In fact, the accused has not been prejudiced by the illegality committed by the Police in the first stage of investigation. The conviction of an accused cannot be set aside on the ground of some irregularity or illegality in the matter of investigation. there must be sufficient nexus either established or probabilized, between the conviction and the irregularity in the investigation.

H.N. Rishbud and Inder Singh v. State at Delhi, [1955] 1 S.C.R. 1150, relied on.

In re Nanumuri Anandayya, A.I.R. 1915 Mad. 312, In re Rangarajulu, A.I.R. 1958 Mad, 368 and The State Kerala v.M. ,1. Samuel I.L.R. 1960 Kerala 783, referred to.

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Mudholkar J.--In fact there was no defect. or irregularity in conducting the first stage of investigation. Investigation, in substance, means collection of evidence relating to the commission of offence for establishing, the accusation against the offender. It is open to a Police Officer to hold preliminary enquiry for ascertaining the

correctness of the information. Such preliminary enquiry does not amount to collection of evidence and so cannot be regarded as investigation.

H.N. Rishbud and Inder Singh v. State of Delhi [1955] 1 S.C.R. 1150, relied on.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 171 of 1961.

Appeal by special leave from the Judgment and order dated January 30, 1960, of the Allahabad High Court (Lucknow Bench) at Lucknow in Criminal Appeal No. 643 of 1960.

R.L. Mehta, G.C. Mathur and C.P. Lal, for the appellant. T.R. Bhasin, for the respondent.

1963. April 17. The Judgment of Subba Rao and Dayal JJ., was delivered by Subba Rao J. Mudholkar J., delivered a separate Judgment.

SUBBA RAO J.--This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad, Lucknow, Bench Lucknow setting aside that of the Special Judge (West), Lucknow, who convicted the accused-respondent and sentenced him to one year's rigorous imprisonment Under s. 5 (2) of the Prevention of Corruption Act (No. II of 1947), hereinafter called the Act. The case of the prosecution may be briefly stated: The respondent was a booking clerk at Saharanpur in the year 1955-56. Between October 22, 1955, and May 26, 1956, he committed criminal

74. breach of trust in respect of Rs. 49/1/0. On the said allegations the accused was sent up for trial before the Special Judge for offences under s. 5 (1) (c), read with s. 5 (2), of the Act. Before the Special Judge the prosecution filed a number of documents numbering up to 124 and examined 20 witnesses. The accused admitted before him that he had realized the amounts as alleged by the prosecution, but pleaded that he had no dishonest intention, and that the deficit found was due to inadvertance and oversight. The Special Judge considered the entire evidence and found that the evidence adduced by the prosecution established that the accused misappropriated the amounts received by him as a public servant. It was contended before him that the investigation of the case has been made by SubInspector Mathur, who under the law was not entitled to investigate the case, as he was below the rank of Deputy Superintendent and hence the trial was vitiated. The learned Special Judge held that the said Sub-Inspector did not conduct any investigation before he obtained the requisite permission from the appropriate authority and that even if he did it had not been established that the accused was prejudiced by such an enquiry. In the result he convicted the accused and sentenced him as aforesaid. On appeal by the accused, the High Court set aside the conviction mainly on the ground that the SubInspector Mathur made "Investigation" before he obtained the permission of the Additional District Magistrate (Judicial), Lucknow, to investigate the case and as the said investigation was in violation of the provisions of the Act, the accused must be held to have been seriously prejudiced by the said contravention of the Act. The High Court also

casually observed that it was inclined to take the view that the prosecution had not eliminated the reasonable possibility of the defence of the accused being correct. For the said reasons the High Court set aside the conviction of the accused and acquitted him. The State has preferred the present appeal against the said judgment of the High Court.

The only question that was argued before us is whether the High Court was right in acquitting the accused on the ground that the investigation made by Sub-Inspector Mathur before he obtained 'the permission of the Magistrate vitiated the entire trial.

Learned counsel for the State contended that the said Sub-Inspector only made a preliminary enquiry to ascertain the truth of the information received by him and, thereafter, after obtaining the requisite permission of the Magistrate he made an investigation of the offence and, therefore, there was neither illegality nor irregularity in the matter of investigation. In any view, the argument proceeded, the High Court went wrong in setting aside the conviction based on evidence without considering and coming to a conclusion whether the said irregularity, if any, had prejudiced the accused.

On the other hand, learned counsel for the accused- respondent, pressed on us to hold that the investigation was made in consistent disregard of the safeguards provided by the Legislature in such a case and therefore the Court. should, without any further proof, presume prejudice to the accused.

Before we consider the merits of the rival contentions it would be necessary to notice briefly the alleged irregularity-committed by the prosecution in the matter of investigation.

On April 26, 1956, A.N. Khanna, the Railway Sectional Officer, Special Police Establishment, Lucknow, sent report to the Superintendent of Police, Special Police Establishment, stating that he had received information through a source that the accused was in the habit of misappropriating Government money, giving 7 instances of the acts of misappropriations committed by him and informing him that if a proper investigation was made many more cases of misappropriation would come to light. Mathur, the Sub-Inspector of Police, Special Police Establishment, as P.W. 15 says that on the receipt of the said report, the said Superintendent of .Police directed him to make an enquiry; and he further says that on the basis of the information he checked the railway records, found that the information was correct and submitted a report accordingly. After he submitted the report, on October 8, 1956, the said Sub-Inspector applied to the Additional District Magistrate (Judicial), Lucknow, for permission to investigate the case. On October 19, 1956, the said Magistrate permitted him to investigate. Thereafter, he made further investigation, seized documents, took statements from witnesses and finally submitted a charge-sheet against the accused. The first question is whether the enquiry made by him before he obtained the permission of the Magistrate was "investigation" within the meaning of the provisions of the Code of Criminal Procedure. Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer incharge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Section 157 which prescribes the

procedure in the matter of such an investigation can be initiated either on information or otherwise. It is clear from the said provisions that an officer incharge of a police station can start investigation either on information or otherwise. Under s. 4 (1) of the Code of Criminal Procedure, "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer Or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf." This Court in H.N. Rishbud and Inder Singh v. The State of Delhi (1), described the procedure prescribed for investigation under Ch. XIV of the Code of Criminal Procedure thus:

> "Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a M agistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under section 173."

Did Mathur, the Sub-Inspector, make such an investigation before he obtained the permission of the Magistrate under s. 5A of the Act ? Ex. P-113 shows that Khanna, the Railway Sectional Officer, received through a source information that the accused was in the habit of misappropriating Government money by not accounting for the saleproceeds of blank paper and other tickets; it also indicates that the information received by the said officer was not vague, but contained precise particulars of the acts of misappropriation committed by the accused. On April 26, 1956 he sent a report of the information received to the Superintendent of Police, Special Police Establishment, Lucknow, indicating to him that if a proper investigation was made many more cases of misappropriation would come to light. On the receipt of the said report, the matter was entrusted to the said Mathur, a SubInspector of Police of the Special Police Establishment, Lucknow. As P.W. 20 he describes the steps he had taken pursuant to the information given in the said report. He verified the allegations contained in the information given by Khanna, saw the relevant railway records after taking the permission of the Station Master and found the information given to be correct.. On the basis of the information collected, he submitted a report. But the full details of the enquiry were not mentioned therein. He also did not prepare any case diary in respect of the said enquiry. The said report is not in the record. We may assume that the Sub-Inspector did nothing more than what he states he did in his evidence. Even so t e said police officer received a detailed information of the offence alleged to have been committed by the accused with necessary particulars, proceeded to the spot of the offence, ascertained the relevant facts by going through the railway records and submitted a report of the said acts. The said acts constituted an investigation within the meaning of the definition of "investigation" under s. 4 (1)of the Code of Criminal Procedure as explained by this Court. The decisions cited by the learned counsel for the State in support of his contention that there was no investigation in the present case are rather wide off the mark. In In re Nanumuri Anandayya a division Bench of the Madras High Court held that an informal enquiry on the. basis of a vague telegram was not an investigation within the meaning of s. 157 of the Code of Criminal Procedure.

In In re Rangarajulu (2), Ramaswami J., of the Madras (1) A.I.R. 1915 Mad. 312. (2) A.I.R. 1958 Mad. 368, 371-372.

High Court described the following three 'stages a policeman has to pass in a conspiracy case:

> ".....hears something of interest affecting the public security and which puts him on the alert; makes discreet enquiries, takes soundings and sets up informants and is in the second stage of qui vive or lookout; and' finally gathers sufficient information enabling him to bite upon something definite and that is the stage when first information is recorded and when investigation starts."

This graphic description of she stages is only a restatement of the principle that a, vague information or an irresponsible rumour would not in itself constitute information within the meaning of s. 154 of the Code or the basis for an investigation under s. 157 thereof. In The State of Kerala v. M.J. Samuel (1), a full Bench of the Kerala High Court ruled that,"it can be stated as a general principle that it is not every piece of information however vague, indefinite and unauthenticated it may be that should be recorded as the First Information for the sole reason that such information was the first, in point of time, to be received by the police regarding the commission of an offence." The full Bench also took care to make it clear that whether or not a statement would constitute the First Information Report in a case is a question of faCt and would depend upon the circumstances of that case. These and such other decisions were given in the context of the question whether an information given was the First Information within the meaning of s. 154 of the Code: they are not of much relevance in considering the question whether in a particular case a police officer has made an investigation of a cognizable offence within the meaning of s. 157 of the Code; that would depend upon the nature of the information received by the police officer, and the steps taken by him for (1) I. L. R, 1960 Kerala 783.

ascertaining the 'truth of the information and for detecting the crime.

In this case, the information received was clear and precise and the Sub-Inspector, on the basis of the said information, went to the spot to investigate into the truth of the allegations and indeed took some of the crucial steps to detect the crime. We, therefore, hold that the Sub- Inspector of the Police made investigation of the offence before obtaining the requisite permission of the Magistrate.

Section 5A of the Act reads:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank--

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(c) elsewhere, of a deputy superintendent of police, shall investigate any offence punishable under section 161, section 165, or section 165A of the Indian Penal Code or Under sub-section (2) of section 5 of this Act, without the order of a presidency magistrate or a magistrate of the first class, as the

case may be, or make any arrest therefore without a warrant ;"

It is manifest from the section that an officer below the rank of a Deputy Superintendent of Police cannot investigate an offence punishable under the provisions of the Act without the order of a Magistrate, First Class. The scope of the said section and the reason underlying the said provision and others were considered by this Court in The State of Madhya Pradesh v. Mubarak Ali (1). It was stated therein that s. 5A was inserted in the Act by Act 59 of 1952 to protect (1) [1959] supp. 2 S. C. R. 201.

public servants against harassment and victimization. This Court further observed therein that the said statutory safeguards must be strictly complied with, for they were conceived in public interest and were provided as a guarantee against frivolous and vexatious prosecution. The reason for the rule was given thus, at p. 208:

> "While in the case of an officer of assured status and rank, the legislature was prepared to believe him implicitly, it prescribed an additional guarantee in the case of police officers below that rank, namely, the previous order of a presidency magistrate or a magistrate of the first class., as the case may be..The magistrate's status gives assurance to the bona fide of the investigation ."

Notwithstanding the clear and express provisions of the statute, in the present case the Sub-Inspector made the investigation of the.offence alleged to have been committed by a public servant without obtaining the order of a Magistrate, First Class.. We hope and trust that investigations under the Act will be conducted in strict compliance with the provisions of the Act. But in this case the police officer realised his duty after he made some investigation of the offence and hastened to rectify the defect. After he verified the railway records in the light of the information received by him, he registered the case. Thereafter on October 8, 1956. he applied to the Additional District Magistrate (.Judicial), Lucknow, for permission to investigate the offence. Therein he stated that no Deputy Superintendent of Police was posted for the Lucknow branch of the Special Police J establishment. The Superintendent of Police in Eorwarding that application endorsed that statement nd further pointed out that he was busy with the supervision of other important cases and administrative duties. The Magistrate on October 19, 1956, on the basis of the said facts gave the necessary permission to the Sub- Inspector to investigate the offence. The Sub-Inspector thereafter made a detailed investigation, took statements, of witnesses, seized the relevant papers, got an investigation ,made, when necessary through other branches of the Special Police Establishment, and thereafter submitted the charge-sheet. In short, after taking the permission of the Magistrate, he started practically a fresh investigation in strict compliance with the provisions of the Code of Criminal Procedure. Indeed, no attempt has been made to point out any defect or contravention of the provisions of the Code of Criminal Procedure in the matter of investigation after the granting of the said permission. After the investigation, the accused was tried by the Special Judge. The prosecution examined 20 witnesses and filed 124 exhibits. The defence examined 3 witnesses. The learned Special Judge, on a careful consideration of the entire evidence, came to the conclusion that the prosecution had brought home the guilt of the accused.

In these circumstances the question is whether the High Court was justified in setting aside the conviction on the ground that the first stage of the investigation was contrary to the provisions of the Act.

The argument of the learned counsel for the respondent may be elaborated thus:Whenever there is a consistent disregard of the provisions of the Code of Criminal Procedure in the matter of investigation it must be held almost in all cases that it' has prejudiced the accused in the matter of trial, for otherwise it would enable a police officer below the rank of Deputy Superintendent of Police to make an investigation free from the statutory safeguards designed to prevent the abuse of police powers, to secure the necessary information and thereafter to take the requisite permission of the Magistrate and then to shape his investigation to achieve the desired result or to implement his scheme. No doubt this practice, if it exists, must be condemned; but the question is, does the infringement of the salutary provisions of the Act in the matter of investigation, without more, invalidate the trial ? If we accept the broad proposition advanced by the learned counsel, we would be disregarding the provisions of s. 537 of the Code of Criminal Procedure; we would be ignoring an honest body of compelling evidence on the basis of the dereliction of duty by the police. The question is not whether in investigating an offence the police have disregarded the provisions of the Act, but whether the accused has been prejudiced by such disregard in the matter of his defence at the trial. It is, therefore, necessary for the accused to throw a reasonable doubt that the prosecution evidence is such that it must have been manipulated or shaped by reason of the irregularity in the matter of investigation, or that he was prevented by reason of such irregularity from putting forward his defence or adducing evidence in support thereof. But where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation: there must be a sufficient nexus, either established or probabilized, between the conviction and the irregularity in the investigation.' In this case, as we have earlier pointed out, not only the trial was fair and the evidence convincing, but even the earlier defect was rectified by having practically a de novo investigation in strict compliance with the provisions of the Code of Criminal Procedure. We cannot, therefore, hold that the accused has been prejudiced by the illegality committed by the police in the first stage of 'the investigation, The High Court st:t: aside the conviction on the ground that there was a breach of the mandatory safe guards of the Act in that the first stage of the investigation was contrary to the provisions of the Act. But it did not consider the other question whether the said breach caused prejudice to the accused in the matter of' his trial. In doing so, the High Court ignored the provisions of s. 537 of the Code of Criminal Procedure. Having carefully gone through the record, for the reasons aforesaid, we are satisfied that no such prejudice has been caused to the accused. He had a fair trial and had his full say. We, therefore, set aside the order of the High Court and convict the respondent under s. 5 (2) of the Act and sentence him to one year's rigorous imprisonment.

MUDHOLKAR J.--I have perused the .judgment prepared by Subba Rao, 3., and I agree with him that the appeal should be allowed and the respondent who was a booking clerk at Saharanpur at the relevant time should be convicted and sentenced as proposed by him. I also agree that a mere irregularity in investigation would not be a ground for setting aside the conviction of an accused person unless the court is satisfied that the accused has been prejudiced by it. I, however, find it

difficult to agree with his conclusion that there was in fact a defect or irregularity in the investigation in this case.

For the purpose of dealing with this point it is not necessary to set out all the facts ,which fully appear in the judgment of my learned brother. I will, therefore, set out only those facts which have a bearing upon this point.

Upon receiving a report from the Railway Sectional Officer, Special Police Establishment, Lucknow, stating that he had received information through an undisclosed source that the respondent is in the habit of misappropriating Government money, the Superintendent of police, Special Police Establishment directed Sub- Inspector Mathur to verify the truth of the allegations made against the respondent. Mathur thereupon went to the Saharanpur railway station and with the permission of the appropriate authority went through certain railway records and submitted a report to his superior to the effect that the allegations made against the respondent appeared to be correct. It was thereafter that he obtained the permission of the Additional District Magistrate (judicial), Lucknow, to investigate into the case as required by s. 5A of the Prevention of Corruption Act and then proceeded to investigate the ease. The High Court held that what SubInspector Mathur did before obtaining the permission to investigate was nothing but investigation and that he had done something which is prohibited by s. 5A of the Prevention of Corruption Act. Therefore, according to the High Court the entire investigation was vitiated and consequently the respondent's conviction and sentence could not be sustained.

What is investigation is not defined in the Code of Criminal Procedure; but in H.N. Rishbud and lnder Singh v. The State q/Delhi (1), Ibis Court has described the procedure for investigation as follows:

> "Thus, under the Code investigation consists generally of the following steps':(1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consists of (a) the examination of various persons (including the (1) [1955] 1 S.C.R. 1150.
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> accused) and the reduction of the their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filling of a charge-sheet under section 173."

This Court, however, has not said that if a police officer takes merely one or two of the steps indicated by it, what he has done must necessarily be regarded as investigation. Investigation, in substance, means collection of evidence relating to the commission of the offence ? The Investigating Officer is, for this purpose, entitled to question persons who, in his opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect

and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled, to search the place of the offence and to search other places with the object of seizing articles connected with the offence. No doubt. for this purpose he has to proceed to the spot where the offence was committed and to. various other things. But the main object of investigation being to bring home the offence to the offender the essential part of the duties of an Investigating Officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation against the.. offender. Merely. making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. In the absence of any prohibition m the Code, express or implied, I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. No doubt, s. 5A of the Prevention of Corruption Act was enacted for preventing harassment to a Government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police. Where however, a Police Officer makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to visualise how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person. If no harassment to the accused results from the action of a Police Officer how can it be said to defeat the purpose underlying s. 5A ? Looking at the matter this way, I hold that what Mathur did was something very much short of investigation and, therefore, the provisions of s. 5A were not violated. Since no irregularity was committed by him there is no occasion to invoke the aid of the curative provisions of the Code.

Appeal allowed.