

A.F.R.

Neutral Citation No. - 2025:AHC-LKO:11410

Court No. - 14

Case :- APPLICATION U/S 482 No. - 2882 of 2016

Applicant :- Pradeep Kumar Maurya And Ors.

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Vinod Kumar Shahi, Abhishek Srivastava, Bal Keshwar Srivastava, Sanjeev Kumar Mishra

Counsel for Opposite Party :- Govt. Advocate, Osama Aziz (In Person)

Hon'ble Subhash Chandra Sharma, J.

1. List revised none appeared for the opposite party no. 2 even in the revised call though notice has properly been served.
2. Heard Sri Bal Kshwar Srivastava, learned counsel for the applicant as well as learned A.G.A. Sri Rajesh Kumar Singh and perused the material on record.
3. The present application has been filed by the applicants with prayer to quash the impugned charge sheet bearing no. 17 of 2011, 17-A of 2011 dated 27.08.2011 arising out of crime No. 419 of 2010, under Section 147, 323, 504, 353 IPC, Police Station Wazirganj, District Lucknow, pending in the court of learned Judicial Magistrate, Lucknow transferred thereafter in the court of Civil Judge (Junior Division) South, Lucknow (State of U.P. Vs. Mohd. Airaj Siddiqui and other)
4. Facts in brief are that the applicant no. 2 Mohd. Airaj Siddiqui lodged an F.I.R. as Crime No. 24 of 2009 under Sections 147, 323, 336, 504, 506 I.P.C. against the son of informant in the present case. In that case, he appeared before the learned court of Magistrate and moved bail application which was granted. While he was in judicial custody, the applicants in the present case Airaz Siddiqui, his father Jamerrudin and some other Advocates reached there and started abusing and also assaulted him with kicks and fists and *Danda* causing injuries to him. When

she came in rescue she was also beaten, regarding which present F.I.R. was lodged against the applicants as Crime No. 359 of 2010 under Sections 147, 323, 504, 427, 307, 308 I.P.C. During the course of investigation, the Investigating Officer made spot inspection and recorded the statements of witnesses and submitted final report no. 201/2010 in lack of evidence. In the mean time, investigation was transferred to C.B.C.I.D. and it was taken over by Inspector C.B.C.I.D. by the order of Sector Officer C.I.S.I. order No. C.I.S.-1(Miss)10 dated 26.11.2010. The Superintendent of Police C.B.C.I.D. cancelled the final report submitted by local police on 06.06.2011 and send a letter no. C.B. 447/10 dated 06 June 2011, mentioning that he has cancelled the final report no. 201/10 dated 08.09.2010 by local police and sending back with the letter with direction to file charge sheet in the court and then to submit compliance report at the Head Quarter. Subsequently, charge sheet was filed in the present case by C.B.C.I.D. under Sections 147, 323, 504, 353 I.P.C. against the applicants on which cognizance was taken by the learned court concerned. Being aggrieved with the order of cognizance and charge sheet present application was preferred before this Court.

5. It is submitted by learned counsel for the applicants that in this case once final report was submitted by the Investigating Officer it must have been sent to the court concerned having jurisdiction but after cancelling the final report Superintendent of Police has no authority to direct the Investigating Officer to file charge sheet. He has no power in this regard. He could only direct for further investigation as provided under Section 173(8) Cr.P.C. The Investigating Officer is the authority to form final opinion as to whether charge sheet or final report is to be filed in the case on the basis of material collected during the course of

investigation. Such final opinion cannot be formed by any other superior authority except the Investigating Officer/Officer In-charge of Police Station. He further submitted that in view of Section 36 of Criminal Procedure Code, any superior Police Officer may exercise the powers of Officer In-charge of Police Station and investigate the matter in that capacity and then he can form final opinion about filing of charge sheet or final report but being supervisory authority he has no such right. He can only indicate the shortcomings made by the Investigating Officer and direct him to further investigate in that direction and then to form opinion and file police report as required under Section 173(2) Cr.P.C. In this way, the order passed by Superintendent of Police dated 06.06.2011 cannot be said to be lawful by which he has directed the Investigating Officer to file charge sheet before the court against the accused persons and to submit compliance report at the Head Quarter. When the order passed by Superintending Authority is illegal, the charge sheet filed in compliance thereof will also be illegal. It is against the principles of fair investigation as enshrined under Article 21 of the Constitution of India, therefore, request to quash the charge sheet and entire proceedings of the case. He relied his arguments on the law as laid down by the Hon'ble Supreme Court in the case of State of ***Bihar Vs. J.A.C. Saldanhah..(1980) 1 Supreme Court cases 544; Abhinandan Jha Vs. Dinesh Mishra A.I.R. 1968, Supreme Court 117; and Mutharaju Satyanarayan Vs. Government of Andhra Pradesh and Others, 1997, Criminal Law Journal 3741 Andhra Pradesh.***

6. Learned A.G.A. though opposed the prayer for quashing of charge sheet but could not dispute the fact of cancellation of F.R. by Superintendent of Police on 06.06.2011 and direction by him to file charge sheet through letter to A.S.P./Sector Officer dated

06.06.2011 and consequent submission of charge sheet by Investigating Officer C.B.C.I.D. in compliance thereof. He could also not dispute the legal position as settled by the Supreme Court in the aforesaid cases.

7. The main question which emerges is whether Superintendent of Police after cancelling final report direct the Investigating officer to submit charge sheet and the charge sheet submitted in compliance of order passed by Superintendent of Police as aforesaid can be said to be lawful.

8. It has been well established that fairness is a facet of Article 21 of the Constitution of India. Such a fairness in action is also mandatorily to be followed in a criminal investigation. A right to a fair investigation is not only a constitutional right but a natural right as well. In ***Sathyavani Ponrani V. Samuel Raj, 2010 (4) CTC 833***, while dealing with fair investigation, the Madras High Court has held that the same is mandatory under Articles 14, 21 and 39 of the Constitution of India. The following paragraph would be apposite:

66.Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would in violation of Article 14 of the Constitution.

9. In ***Nirmal Singh Kohlon V. State of Punjab (2009) 1 SCC***

441, the Supreme Court further observed that:-

"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India."

10. In **Subramanian Swamy v. CBI, (2014) 8 Supreme Court Cases 682**, the Apex Court has ruled that any investigation into crime should be fair and should not be tainted. It has been further held that Rule of Law is a facet of equality under Article 21 of the Constitution of India.

11. In the present case the local police after investigation submitted final report no. 201/2010 dated 8.9.2010. In the meantime, investigation was transferred to C.B.C.I.D. and it took over the investigation. On 6.6.2011 Superintendent of Police C.B.C.I.D cancelled the final report no. 201 of 2010 dated 8.9.2010 and directed the Sector officer C.B.C.I.D to submit charge sheet very soon in the court and file compliance report to the Head Quarter. In compliance thereof charge sheets against the applicants were filed in the court and cognizance was taken.

12. Letter written by the Superintendent of Police C.B.C.I.D dated 6.6.2011 is quoted as under:

“गोपनीय/आवश्यक

श्री कृपाशंकर सिंह
अपर पुलिस अधीक्षक/खण्डाधिकारी
अपराध शाखा, अपराध अनुसंधान विभाग
खण्ड-सीआईएस-प्रथम।

कृपया अपने समसंख्यक पत्र दिनांक 06-06-2011 का अवलोकन करने का कष्ट करें, जिसके द्वारा प्रश्नगत प्रकरण में स्थानीय पुलिस द्वारा निर्गत अन्तिम रिपोर्ट संख्या-201/10 दिनांक 8-9-10 को निरस्त किये जाने का अनुरोध किया गया है।

उक्त संदर्भ में अवगत कराना है कि स्थानीय पुलिस द्वारा निर्गत अन्तिम रिपोर्ट संख्या -201/10 दिनांक 8-9-10 मेरे द्वारा निरस्त कर दी गयी है, जिसे

मूलरूप में वापस इस पत्र के साथ संलग्न कर भेजी जा रही है, तथा निर्देशित किया जाता है कि अभियुक्तों के विरुद्ध शीघ्रताशीघ्र आरोप पत्र माननीय न्यायालय में प्रेषित कर अनुपालन आख्या मुख्यालय उपलब्ध कराना सुनिश्चित करें।

संलग्नक:- उपरोक्तानुसार

ह० अपठनीय
(प्रकाश त्रिपाठी)
पुलिस अधीक्षक
अपराध शाखा, अपराध अनु० विभाग,
उ०प्र०, लखनऊ।

पत्र संख्या:- सी बी -447/10

दिनांक- लखनऊ जून 6, 2011”

13. Chapter XII of the Code deals with the information to the police and their powers to investigate the matter. On conclusion of investigation section 169 provides that if it appears to the officer in-charge of police station upon investigation that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of accused to a Magistrate, and accused is in custody he shall release him on his executing bond with or without sureties or direct him to appear before a Magistrate empowered to take cognizance of the case. Section 172 says that every police officer making investigation under this Chapter shall enter his proceedings in the investigation in a dairy day by day. Section 173(2) provides that as soon as the investigation is completed, the officer in-charge of police station shall forward a report in the form prescribed by the State Government, to the Magistrate empowered to take cognizance of offence on a police report. Section 173(3) provides that where a Superior Officer of the Police has been appointed under section 158, the report shall, in any case in which the state government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in-charge of the police station to make further investigation. Section 173(8)

provides that the officer in-charge of police station is empowered to forward a further report or reports regarding evidence obtained by him. After filing of further report, the Magistrate will exercise the jurisdiction for taking cognizance of the offence.

14. Section 36 of Criminal Procedure Code provides about the power of Superintending Authority of Police as under:

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

15. From the language used in Section 36 Cr.P.C. Superior Police Officer have also been conferred with the powers as Officer in-charge of police station, which infers that the Superior Officer of Police can also make investigation of the case. The legislative intendment of Section 36 of Cr.P.C. is that all the superior rank police officers above SHO including the Superintendent of Police should involve in supervising the investigation to ensure the integrity and quality. It is permissible for any Superior officer of police to take over the investigation from such officer in-charge of police station either suo motu or on the direction of the superior officer even that of the Government. When any police officer referred to in Section 36 conducts the investigation that cannot be called in question as without authority.

16. From the above provisions of the Code, it is clear that investigation has to be conducted by the officer in-charge of the police station or the superior officer. Upon conducting investigation, the officer in-charge of police station or the superior officer shall forward the accused, if he is under custody to the

Magistrate empowered to take cognizance of the offence if it appears to him that there is sufficient evidence or reasonable ground of suspicion. After conducting investigation, the officer in charge of police station or superior officer shall forward a report to the Magistrate after collecting the evidence. If there is no sufficient material, he has to send final report to the Magistrate.

17. The officer in-charge of police station is empowered to conduct further investigation even after filling charge-sheet, as provided under Section 173(8) after investigating the case and collecting the evidence. The power of investigation is entirely vested in the officer in-charge of police station. There is no provision in the Code empowering any other officer, other than the officer in-charge of police station, to file the police report, except the superior officer who has taken over the investigation himself. The Magistrate has also no power to direct the officer in-charge of police station to file a report, even though he can take cognizance of the offence on the basis of the report filed by such officer.

18. The important steps in the Code as to investigation by the officer in-charge of police station consist of formation of opinion by such officer as to whether the material collected is sufficient to place the case before the Magistrate against the accused for trial or for filing of final report. Thus, discretion is vested in the officer in-charge of police station to form an opinion that collected evidence is sufficient to file the police report or not. The said opinion is subject to jurisdiction of Magistrate to take cognizance of the offence. The Magistrate cannot direct the investigating officer to file the police report. Thus, whether there is prima facie case made out against the accused or not for filing report is within the jurisdiction of the investigating officer and superior officer conducting the investigation subject to the control of the

Magistrate. No other authority can interfere with the discretion of formation of opinion except Investigating Officer/Officer incharge of police station.

19. Under the Code investigation consists generally of the following steps: (1) Proceeding on the spot, (2) Ascertainment of facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence, (5) Formation of opinion. There is no provision permitting delegation of power regarding forming of opinion as to whether or not there is a case to place the accused on trial but only a provision entitling superior officers to supervise or participate under Section 36. A superior police officer exercising the powers under Section 36 can pass order for further investigation in a case. It infers that the superior officer of police if investigates the matter himself he may form the final opinion for filing of charge sheet or final report but while exercising his powers as supervisory authority he cannot form the opinion in this regard. It is exclusively in the domain of investigating officer/in-charge of police station. If being supervisory authority it appears to him that there are short comings or flaws in the investigation he can indicate those short-comings and flaws and direct the investigating officer to make further investigation on such points and then to form opinion but cannot form his own opinion either to send the charge sheet or final report and no such direction can be given by him.

20. In the case of **H.N. Rishbud v. State of Delhi 1955 CrLJ 526** the Supreme Court observed on page 531 as under:

“ Thus, under the Code investigation consists generally of the following steps: (1) Proceeding on the spot, (2) Ascertainment of 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) the 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 of the investigation and to be produced at the trial and (5) Formation of the opinion as to whether on the material collected there is case to place the accused before a magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under section 173..... It is also clear that the final steps in the investigation, viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in-charge of the police station.”

21. Para No.15 of the judgment in the case of **Mutharaju Satyananrayan vs. Government of A.P. and others 1997 Cri.L.J. 3741** is as under:

15. Thus, from the principles laid down in the above decisions, it is clear that no other authority, except the officer in-charge of police station, can form an opinion as to whether on material collected a case is made out to place the accused before the Magistrate for trial. If the officer in-charge of police station is of the opinion and submits a final report to the effect that no case is made out to send up the accused for trial, no other authority has power to direct him to change his opinion and file/submit a charge-sheet to the Magistrate. However, the Magistrate is under no obligation to accept the final report of the police, if he does not agree with the opinion formed by the police.

22. The powers of the police to make further investigation after lying final report is recognized under Section 173(8) Cr.P.C. that is

quoted as under :-

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

23. This Section confers express and specific power upon the officer incharge of Police Station to carry on further investigation even after the cognizance is taken by the court, while exercising of powers under Section 173(8) Cr.P.C. There is no right to direct the investigating officer for fresh investigation or re-investigation. If direction for further investigation is made the investigating officer will proceed further investigation, form his opinion on the material collected during the course of investigation. No authority can direct the Investigating Officer either to file charge sheet or final report therefore there is no power express or implied, conferred under the code on supervising authority of police to direct the investigating officer either to file charge sheet or final report and he cannot form his own opinion in this regard and direct the investigating officer to do the same.

24. To sum up, this Court is of the view that the formation of opinion by Superintendent of Police for filing charge sheet in the case and communicating his order to the investigating officer for compliance cannot be said to be inconformity with the provisions of law but it may amount to interference in the fair investigation of the case that is fundamental right of the accused as established under Articles

14, 21 and 39-A of the Constitution of India, therefore, charge sheet filed by investigating officer in compliance of illegal order passed by supervisory authority, the Superintendent of Police cannot be said to be legal. If prosecution is allowed to continue on such charge sheet filed in compliance of illegal order of supervising authority, it will amount to abuse of process of the court.

25. Accordingly, this application is ***allowed and*** the charge sheet alongwith entire proceedings of the case is, hereby, quashed.

Order Date :- 21.2.2025
Anurag Singh

(Subhash Chadra Sharma,J.)