

Andhra High Court

Mutharaju Satyanarayan vs Government Of Andhra Pradesh And ... on 17 April, 1997

Equivalent citations: 1997 (2) ALD Cri 142

Author: Y B Rao

Bench: Y B Rao, Y Narayana

JUDGMENT Y. Bhaskar Rao, J.

1. This petitions is filed to issue a writ of Mandamus declaring the action of the first respondent herein in directing the Special Inspector-General of Police, C.B.C.I.D., to launch prosecution against the petitioner and consequently to declare P.R.C. No. 18 of 1989 on the file of the II Additional Munsif Magistrate, Chirala as illegal and void.

2. The brief facts of the case are that one Angadi Prabhakara Rao was a wanted criminal against whom three non-bailable warrants were pending execution. On 26-4-1985 the petitioner and some others having found him at a Beedi shop chased and caught hold of him. When he resisted and tried to escape, the Head Constable and Home Guard over-powered him and during that scuffle he received some injuries. Thereafter, he was taken to police station and was confined in lock-up at 9 p.m., on 26-4-1985. On 27-4-1985 he was found dead in police station. The Government of Andhra Pradesh issued G.O. Ms. No. 441, General Administration (General. B), dated 24-9-1985, appointing Sri M. Sreeramulu, retired District Judge as single Member Commission of Inquiry under the Commission of Inquiry Act, 1952 to inquire into the death of said Prabhakara Rao with reference to following terms :

(1) To find out the circumstances leading to the death of Sri Angadi Prabhakara Rao in police custody at Chirala town police station on 27-4-1985, (2) To identify the person, if any, responsible for the death of Angadi Prabhakara Rao, and (3) To point out lapses on the part of any authority or person or persons, if any, in connection with this incident.

3. The Commission of Inquiry has conducted inquiry and submitted its report to the Government. The report of the Commission of Inquiry was placed before the State Legislative Assembly. It was stated that instructions have been issued to the Director-General and Inspector-General of Police, Hyderabad to place the Circle Inspector of Police, Sri D. Sreedhara Reddy, and the Sub-Inspector of Police, Sri M. Satyanarayana Rao (the petitioner) under suspension, initiate departmental enquiry against them and launch prosecution against them. The Commissioner of Land Revenue, Hyderabad was also instructed to place Sri V. Subba Rayudu, Mandal Revenue Officer under suspension. The Government of Andhra Pradesh by its order dated 15-7-1986 directed the Special Inspector-General of Police, C.B.C.I.D., to launch prosecution against erring officers. The Inspector of Police and the writ petitioner were placed under suspension and departmental enquiry was initiated.

4. The Special Inspector-General of Police (Crimes), C.B.C.I.D., entrusted the case for investigation to the Deputy Superintendent of Police, C.B.C.I.D., vide his proceedings dated 21-8-1986. The Deputy Superintendent of Police suo motu registered a case in crime No. 139 of 1986 under Sections 342, 330, 302 and 218, I.P.C., against D. Sreedhar Reddy, Inspector of Police, the writ petitioner and the Executive Magistrate, Chirala, V. Subbarayudu and took up investigation. During the course

of investigation, it was found that Angadi Prabhakar Rao's death was natural, expert medical evidence was not placed before the Commission of Inquiry, no offence under Section 302 or 304, I.P.C. was established against any police officers, over-whelming evidence recorded revealed that neither the deceased nor his mother was either beaten or tortured while they were in police custody on 26th and 27th April, 1985, Angadi Prabhakar Rao was beaten with sticks at the time of apprehension by the Head Constable and Jakkaraiah and the Inspector of Police and the petitioner are guilty of manipulating the records for which they are punishable under Section 218, I.P.C. Report of the investigating officer was sent to the Special Inspector-General of Police, who in turn sent it to the Chief Secretary to Government seeking instructions for the disposal of the case. On 31-3-1988, this Court in W.P.M.P. Nos. 1333/88 and 1334/88 in W.P. No. 1083/88 directed the Dy. Superintendent of Police to complete investigation within one month and submit the report of the case to the Magistrate and report compliance immediately thereafter. After perusing the letter of the Special Inspector General of Police, the Chief Secretary on 15-4-1988 issued proceedings to the effect that the Government have decided that there is no need to deviate from the earlier course of action decided and reported to the Legislative Assembly., and the Director General and the Inspector-General of Police are requested to proceed with the prosecution of the officers without any further delay. Thereafter, a charge-sheet under Sections 324, 354, 342, 330, 218 and 302 read with 34, I.P.C., was filed by the Deputy Superintendent of Police, C.I.D., Hyderabad and it was taken cognizance of by the II Additional Munsif Magistrate, Chirala in P.R.C. No. 18 of 1989. All the facts gathered during investigation and as reflected in the letter dated 1-12-1987 were not mentioned in the charge-sheet. Only an eclipsed version was given basing on the report of the Commission of Inquiry, which cannot be treated as a report under Section 173(2) of Cr.P.C. Assailing the said action, this writ petition is filed.

5. The learned counsel for the petitioner contended that the Government has no power to interfere with the discretion of the investigating authority in filing the report before the Magistrate and to dictate the investigating authority to file charge-sheet even though no case is made out against the accused during investigation. According to Section 173(2) of Cr.P.C., after completion of investigation, the investigating agency has to submit the report to the Magistrate, which is not done in this case. On the other hand, after completion of investigation, the report was sent to Special Inspector-General of police, who in turn, referred the matter to the Chief Secretary and the Chief Secretary after going through the report directed to file charge-sheet, which is not valid, against the principles of law and justice and in violation of provisions of the Code of Criminal Procedure. He further contended that the act of forming opinion as to whether a case is made out to file charge-sheet on the basis of material collected during investigation, is exclusively within the jurisdiction of the investigating authority and the superior officers and no other officer can interfere with the powers of investigating agency and direct them to file charge-sheet. Otherwise, it amounts to directing investigating agency to file charge-sheet though there is no evidence on record to show that accused are prima facie guilty of the offence alleged, which is violative of fair and just procedure guaranteed under Art. 21 of the Constitution.

6. It is further contended that the Magistrate has got power to direct the investigation authority to conduct further investigation and that the superior officers at the most, will have the power to direct further investigation.

7. The learned Government Pleader contended that investigation in this case has been conducted properly and according to the procedure laid down in the Code of Criminal Procedure. As per Section 36 of Cr.P.C., the superior officers can conduct investigation or can give directions for proper conducting of investigation. The superior officers can also change the opinion formed by the investigating officers after going through the material collected during the course of investigation, including the medical evidence. The action of the superior officers cannot be said to be bad when they take action under Section 36 read with 156 and 173 of Cr.P.C. The Government has got the power of superintendence, according to Section 4 of the Police Act, which includes supervision of all acts of police done during the course of investigation. By virtue of the power of superintendence, the Government can take any opinion on the basis of material collected during investigation. On the basis of the report of the Commission of Inquiry, sheet is required to be filed.

8. In view of the above contentions, the important question of law that arises for consideration is :

"Whether the Government has got power and jurisdiction to interfere with the discretionary power of the investigating authority and direct it to file a report even if in the opinion of the investigating authority no case is made out against the accused ?"

9. It is apt to refer to the relevant provisions of the Code of Criminal Procedure to deal With the above question. Chapter XII of the Code deals with the information to the police and their powers to investigate. Section 154 of the Code provides that substance of every information relating to commission of cognizable offence given to officer in-charge of police station shall be entered in a book as prescribed by the State Government. In respect of the information relating to commission of non-cognizable offence given to officer in-charge of police station, the substance thereof shall be entered in a book and the officer in-charge of police station shall refer the informant to the Magistrate and he shall not investigate the case with the order of a Magistrate having power to try such offence, according to Section 155 of the Code. Section 156 contemplates that any officer in-charge of police station may investigate any cognizable case without the order of a Magistrate, that no proceeding of a police officer in such a case shall be called in question on the ground of want of power and that any Magistrate empowered under Section 190 may order investigation as above-mentioned. Section 157 of the Code prescribes the procedure for investigation. Section 161 empowers the police officer making investigation to examine witnesses. Section 164(1) of the Code provide that any Metropolitan or Judicial Magistrate may record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, whether or not he has jurisdiction in the case, before the commencement of inquiry or trial. Section 167(1) says that whenever any person is arrested and detained in custody and if it appears that investigation cannot be completed within twenty four hours, the officer in-charge of police station has reason to believe that the accusation is well founded, he shall transmit the copies of diary entries and forward the accused to the nearest Magistrate. The Magistrate may authorise detention of the accused in such custody as he thinks fit if he has jurisdiction to try the case. 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, 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 diary 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(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. After taking cognizance of the offence, the Magistrate will frame charge if the offence is triable by him.

10. 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 officers. 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 he comes to conclusion that there is prima facie case against accused for sending report. If there is no sufficient material, he has to send deferred report to the Magistrate. The officer in-charge of police station is empowered to conduct further investigation even after filling charge-sheet and file (sic) provides that the officer in-charge of police station or the superior officer has to investigate the offence, collect the evidence and has to file the police report. The power of investigation is entirely vested in the officer in-charge of police station. There is no provisions in the Code empowering any other officer, other than the officer in-charge of police station, to file the police report, except the superior officers. 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. 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 and for filing of deferred report. Thus, discretion is vested in the officer in-charge of police station to form an opinion that collected is sufficient to file the police report or not. The said opinion is subject to jurisdiction of Magistrate to take cognizance of the offence. Where a report is filed by the investigating officer stating that no offence is made out against the accused, still it is open to the Magistrate to take cognizance of the offence after examining the case diaries. But, he 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 subject to the control of the Magistrate. No others can interfere with the discretion of formation of opinion.

11. The case of the petitioner is that the report of the inquiry Commission was tabled before the House of Legislature Assembly and the Government assured the House that steps will be taken to prosecute the erring officers. Thereafter, the Government directed the Special Inspector General of Police to launch prosecution against the erring officer. The case was entrusted to the Special Inspector General of Police C.B.C.I.D., for investigation. The investigating officer registered case in Cr. No. 139/86 under Sections 342, 330, 302 and 218 I.P.C., against the petitioner and others. After completing investigation, the investigating officer submitted a report to the Special Inspector

General of Police. Who ultimately submitted it to the Chief Secretary to the Government of Andhra Pradesh. In the said report, it is specifically stated that the investigation by C.I.D., revealed that Angadi Prabhakar Rao was not tortured in the police station and he died of natural death and so no offence under Section 302, I.P.C. is made out against the petitioner and others. It is further stated that the case of the petitioners and others was not properly dealt with by the Commission of Inquiry in spite of availability of witnesses but the relevant documents were not produced before the Commission. On this report, the Chief Secretary to Government passed the following order on 15-4-1988 :

"After careful consideration of the report of the Special Inspector General of Police (Crimes) and also the remarks of the Director General and Inspector General of Police thereon. Government have decided that there is no need to deviate from the earlier course of action decided and reported with A.P. Legislature Assembly. The D.G.P. and I.G.P. is, therefore, requested to proceed with the prosecution of the officers without any further delay."

As per direction of the Chief Secretary, charge-sheet was filed by the investigating officer. Thus, the above facts show that though the investigating officer submitted a report that no case is made out against the petitioner and others, except for the offence under Section 218, I.P.C., the Government decided to proceed with the prosecution of the petitioner and others for the offence under Sections 342, 330, 302 and 218. I.P.C.

12. The learned counsel for the petitioner contended that the power of superintendence conferred on the State Government is not unfettered one, that the State Government cannot, under the guise of such power, direct the investigating agency to file charge-sheet and that it ought to have looked into the report submitted by the investigating authority. Now, we have to consider whether the Government by virtue of power of superintendent under Section 3 of the Police Act can direct the investigating authority to file charge-sheet, even though no offence is made out as per its report.

13. According to the provisions of the Code of Criminal Procedure, investigation will be conducted by the officer in-charge of police station or superior officer and as soon as the investigation is completed he has to submit a report to the Magistrate. In H. N. Rishbud v. State of Delhi, , the Supreme Court observed that the investigation usually starts on information relating to the commission of an offence given to an officer in-charge of a police station and recorded under Section 154 of the Code. After completion of investigation, the officer in-charge of the police station shall forward a report to the Magistrate empowered to take cognizance of the offence on police report, under Section 173 of the Code. As to the steps in investigation, the Supreme Court further observed at page 531; of Cri LJ :

"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) 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."

14. The question whether a Magistrate can direct the police to submit a charge-sheet, when the police, after investigation into a cognizable offence, had submitted a final report under Section 173 of the Code of Criminal Procedure, came up for consideration before the Supreme Court in Abhinandan Jha v. Dinesh Mishra, . In that case, the respondent therein lodged a first information report at Rajoun police station stating that he saw a thatched house of one Uma Kant Misra situated on the northern side of his house burning and the appellants therein running away from the scene. The police made an investigation and submitted a final report under Section 173(1) of the Code to the effect that the offence complained of was false. The Magistrate upon perusing the protest petition of the respondent herein and the police diary, directed the police to submit a charge-sheet against the appellant therein. When the appellants therein challenged that order, without success, before the Sessions Judge, Bhagalpur and thereafter before the Patna High Court, the High Court held that the Magistrate has jurisdiction to call for a charge-sheet, when he disagrees with the report submitted by the police under Section 173(1) of the Code. The Supreme Court had observed that the ultimate step in investigation is the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial and the submission of final report or charge-sheet depends on the nature of formation of such opinion. It further observed that the final step of formation of opinion is to be taken only by the police and by no other authority. The Supreme Court following the decisions in King Emperor v. Nazir Ahmed, AIR 1945 PC 18 : 1945 (46) Cri LJ 413; Rishbud's case (supra) and State of West Bengal v. S. N. Basak, , held that there is no power, expressly or impliedly conferred, under the Code, on Magistrate to call upon the police to submit a charge-sheet when they have sent a report that there is no case made out to send up an accused for trial. It held, in that connection, as under :

"The functions of the Magistracy and the police are entirely different, and though the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot impinge upon the jurisdiction of the police, by compelling the to change their opinion, so as to accord with his view."

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.

16. Now, we may refer to the decisions dealing with competency of investigating officers to conduct investigation of offences as per the procedure laid down in the Code of Criminal Procedure. In State of U.P. v. Surinder Pal Singh, 1989 SCC (Cri) 402 : 1989 Cri LJ 998, the Supreme Court was dealing with the competency of the Inspector of Police of Crime Branch, C.I.D., who was duly authorised by State Government in accordance with law, in investigating the offence covered by Section 5(1)(c) of the Prevention of Corruption Act against Dy. Superintendent of Police. The Supreme Court held that the investigation conducted by the Inspector of Police, Crime Branch, C.I.D., was not vitiated merely because he was not higher in rank to the Dy. Superintendent of Police.

17. In State of Kerala v. Kolakkadan Moosa Haji, 1994 Cri LJ 1288, the Supreme Court was considering the question whether a Magistrate while ordering under Section 156(3) of Cr.P.C., can direct the Inspector General of Police to conduct investigation. The Supreme Court observed that there is no provision in the Code of Criminal Procedure or in any other statute, which confers power on a Magistrate to direct any officer other than officer in-charge of a police station to conduct investigation. It, therefore, held that the order of Magistrate forwarding a complaint against police personnel, including D.I.G. of Police, filed before him to the Inspector General of Police to conduct investigation in exercise of power under Section 156, Cr. P.C., is without jurisdiction. Thus, it is clear that the investigation has to be conducted by the officer in-charge of police station as contained in the Code, but not by any other officer.

18. Turning to the question whether the Chief Secretary of the Government can direct the investigating officer to file charge-sheet, when investigation revealed that no case is made out against the petitioner, except under Section 218, I.P.C., the learned Government Pleader placed reliance on a decision of the Supreme Court in State of Bihar v. J. A. C. Saldanna, , for the proposition that the Chief Secretary's action in exercise of power under Section 3 of the Indian Police Act cannot be said to be without authority. In that case, while exercising power under Section 3 of the Indian Police Act, the Chief Secretary suggested for change of investigating machinery of cognizable offence in the circumstances disclosed by various reports and complaints and to direct the Inspector General, Vigilance to take over investigation. In those circumstances, the Supreme Court held that the investigation of an offence is the filed exclusively reserved for the executive through the police department, the superintendence over which vest in the State Government and that the action of the Chief Secretary could not be said to be without authority as he acted in public interest for vindication of truth in an unbiased manner. The Supreme Court referred to the principle, though it his not invoked it, laid down in Ex Parte Stephens, (1976) 3 Ch D 659 that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. That principle was approved by the Supreme Court in Patna Improvement Trust v. Smt. Lakshmi Debi, , and it spelt out the effect of the said principle thus :

"A general Act must yield to a special Act dealing with a specific subject matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way."

The principle laid down in Ex parte Stephen's case (supra) by the Chancery Division squarely applies to the facts of the present case.

19. In the present case, the question is whether the Chief Secretary can direct the investigation officer to file charge-sheet. The learned Government Pleader contended that there is power of superintendence under the Police Act conferred on the State Government and by virtue of that power the Chief Secretary of the Government can direct so. No doubt, the State Government is clothed with the power of superintendence under S. 3 of the Police Act. But, by virtue of the said power, can the Government or the Chief Secretary issue a direction to do a thing which is contrary to the provisions of the Code of Criminal Procedure. It is settled principle of law that no authority can give a direction contrary to law. In this case, the investigating officer's report revealed that no case has been made out, except the offence under S. 218, I.P.C., against the petitioner. The direction of the Chief Secretary for filing of charge-sheet for the offence, which are not made out, prima facie, as per the report of the investigating officer amounts to giving direction in contravention of the provisions of the Code. At the most, by virtue of the power of superintendence, the Chief Secretary or the State Government can direct the investigation officer to conduct further investigation as provided in S. 173(8) of Cr.P.C. It is settled principle of law that the report submitted by the Commission of Inquiry under the Commission of Inquiries Act cannot be treated as a police report under the provisions of Code of Criminal Procedure. Further, the Chief Secretary or the State Government has not considered this report and came to conclusion that there is a case for filing of charge-sheet. The Government Pleader has produced the original file containing the endorsement of the Chief Secretary that the Government after carefully considering the report of Special Inspector General of Police (Crimes) and the remarks of the Director General and Inspector General of Police have decided that there is no need to deviate from the earlier course of action decided and reported with the Legislative Assembly and requested the D.G.P. and I.G.P. to proceed with the prosecution of officers without further delay. The Government has perused the report of the Special Inspector General of Police and the remarks of the D.G.P. and I.G.P., thereon. Their report show that no case is made out against the petitioner and others and what prompted the Chief Secretary to direct the D.G.P. and I.G.P., to proceed with the prosecution of officers, i.e., filing of charge-sheet, etc., is not clear from the said endorsement. Only thing mentioned is that there is no need to deviate from the earlier course of action decided and reported to the Legislative Assembly. The report of the Commission of Inquiry was tabled before the Legislature and it was reported before it that the Government will proceed with the prosecution. The report of Commission of Inquiry is not a report by investigation officer. According to the provisions of the Criminal Procedure Code, the report of the investigating officer or superior officer is only the report of the investigation officer. Therefore, the direction of the Chief Secretary is contrary to the provisions of Cr.P.C. The authority exercising the power of superintendence under S. 3 of the Police Act, at the most, can direct the investigation officer to conduct further investigation as per S. 173(8) of Cr.P.C., but it cannot straightway direct the investigation officer to file charge-sheet, when no case is made out according to the report of investigating officer.

20. For the foregoing reasons, we allow the writ petition declaring the declaring the action of the first respondent in launching prosecution against the petitioner, except the offence under S. 218, I.P.C. as illegal and without jurisdiction and consequently quash the proceedings in P.R.C. No. 18/89 on the file of the IIInd Addl. Munsif Magistrate, Chirala.

21. Petition allowed.