

CRIMINAL REVISION
Present:-The Hon'ble Justice Ashim Kumar Roy
Judgment On : 21-05-2010
C.R.R. No. 1244 of 2010
Mrinal Kanti Manna
versus
Smt. Chhabi Samanta & Anr.

POINTS

Quashing of FIR – FIR was lodged to counter blast the criminal case instituted against the de-facto complainant by the petitioner – FIR was registered much prior to the receipt of information – Investigation was not directed to be commenced by the Officer-in-Charge of that particular police station – In absence of a regular officer in charge, officer in charge of a police station who shall be – Code of Criminal Procedure 1973, S 154, 157, 2(o) 156(1), 156(2) .

FACTS

Invoking sec 482 of the code of criminal procedure , the petitioner has approached the Hon'ble High Court for quashing the first information report where he has been charged u/s 354/323/506 of the Indian Penal Code . FIR was not registered and investigation was not directed to be commenced by the Officer-in-Charge of that particular police station.

HELD

No question arises for quashing of the impugned FIR on the ground that same was lodged to counter blast the criminal case instituted against the de facto complainant by the petitioner and the allegations are absolutely false and harassing and the FIR was registered much prior to the receipt of information at the Camp Office. Those are essentially the defence of the accused and are pure question of facts, as such same cannot be gone into at this stage in exercise of revisional jurisdiction by this Court. Para 4

According to the provisions of Section 154 of the Code, every information relating to commission of cognizable offence when given to the Officer-in-Charge of a police station the same has to be reduced in writing and be signed by the informant and a specific case has to be registered which is called to be the First Information Report and according to the provisions of Section 157 of the Code of Criminal Procedure, if from information received, an Officer-in-Charge of a police station has reason to suspect the commission of any cognizable offence, shall either proceed himself or may depute any competent officer to proceed to the spot and to cause investigation into the information so received.

Para 7

The Officer-in-Charge of a police station is defined under Section 2 (o) of the Code of Criminal Procedure. According to such definition the Officer-in-Charge of a police station includes, when the Officer-in-Charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house, who is next in rank to such officer and is above the rank of constable or, when State Government so directs, any other police officer was present.

Para 7

No illegality has been committed by recording of the First Information Report or to cause investigation into the complaint made by the opposite party by the order of a police officer, who is next to the rank of the Officer-in-Charge and above the rank of constable, when the Officer-in-Charge of that particular police station was absent at the station house. Moreover, according to Section 156 (1) of the Code of Criminal Procedure, any Officer-in-Charge of a police station, may, without the order a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limit of such station would have power to enquire into or try under Chapter XXIII and according to Section 156 (2) of the Code of Criminal Procedure, 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 the section to investigate.

Para 7

CASES CITED :-

State of M.P. vs Ramesh C Sharma reported in 2006 (1) SCC cri 683 , it has been held by the supreme court that the breach of mandatory provisions relating to investigation has no consequence unless it is shown to have brought about a miscarriage of justice. Para 7

For Petitioner : Mr. Nirmal Kumar Manna
Mr. Kamal Krishna Manna

For State : Mrs. Krishna Ghosh

THE COURT. 1) Invoking Section 482 of the Code of Criminal Procedure, the petitioner has approached this Court for quashing of the First Information Report, where he has been charged under Sections 354/323/506 of the Indian Penal Code.

2. Mr. Nirmal Kumar Manna, the Learned Senior Counsel appearing on behalf of the accused/petitioner has urged the following points in support of the prayer for quashing;

(a)The FIR does not contain the basic ingredients of the offences alleged.

(b) Although no report in final form has been filed till date and having regards to the facts the entire proceeding is absolutely harassive in nature, still the Learned Magistrate has not dropped the case against the petitioner.

(c) The impugned proceeding is a counter-blast to the case earlier lodged by the present petitioner.

(d) The allegations are absolutely false.

(e) Although, according to the formal portion of the FIR, the information was received at the police station at 14.05 hours on 24th of May, 2006, but it

appears from the FIR and from the endorsement made on the complaint that the same was received at the Camp Office at 18.35 hours on 24th of May, 2006. Thus, before receiving the complaint at the Camp Office such complaint cannot be received at the police station.

(f) In this case a Sub-Inspector of Police not the Officer-in-Charge of that particular police station directed registration of the case and for causing investigation which is absolutely illegal and without jurisdiction.

On the other hand, the Learned Junior Government Advocate, Mrs. Krishna Ghosh vehemently opposed the prayer for quashing. At the very outset she pointed out earlier on the selfsame grounds the petitioners moved another criminal revision being C.R.R. No. 1106 of 2007 for quashing of the impugned First Information Report. However, this Hon'ble High Court by an order made on September 17, 2008 dismissed the said criminal revision.

3. I have given my anxious and thoughtful consideration to the rival submissions of the parties.

4. In my considered opinion no question arises for quashing of the impugned FIR on the ground that same was lodged to counter blast the criminal case instituted against the defacto-complainant by the petitioner and the allegations are absolutely false and harassive and the FIR was registered much prior to the receipt of information at the Camp Office. Those are essentially the defence of the accuseds and are pure question of facts, as such same cannot be gone into at this stage in exercise of revisional jurisdiction by this Court.

5. I have carefully gone through the impugned First Information Report. On the face of the allegations made therein and accepting the same as a whole to be true it cannot be said that no offence has been made out.

6. Now, the only point left for consideration whether this case should be quashed on the ground that the FIR was not registered and investigation was not directed to be commenced by the Officer-in-Charge of that particular police station. In this regard the Junior Government Advocate submitted before this Court that at the material point of time when the information was received at the police station since the Officer-in-Charge of that particular police station was not present there, the senior most Sub-Inspector, next to the rank of the Officer-in- Charge, who was then present at the police station

directed registration of the FIR and for causing investigation and there is no illegality in the matter.

7. In my opinion, the points so raised by the Learned Counsel of the petitioner is absolutely without any merit for the following reasons. According to the provisions of Section 154 of the Code, every information relating to commission of cognizable offence when given to the Officer-in-Charge of a police station the same has to be reduced in writing and be signed by the informant and a specific case has to be registered which is called to be the First Information Report and according to the provisions of Section 157 of the Code of Criminal Procedure, if from information received, an Officer-in-Charge of a police station has reason to suspect the commission of any cognizable offence, shall either proceed himself or may depute any competent officer to proceed to the spot and to cause investigation into the information so received. The Officer-in-Charge of a police station is defined under Section 2 (o) of the Code of Criminal Procedure. According to such definition the Officer-in-Charge of a police station includes, when the Officer-in-Charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house, who is next in rank to such officer and is above the rank of constable or, when State Government so directs, any other police officer was present. Therefore, in this case no illegality has been committed by recording of the First Information Report or to cause investigation into the complaint made by the opposite party by the order of a police officer, who is next to the rank of the Officer-in-Charge and above the rank of constable, when the Officer-in-Charge of that particular police station was absent at the station house. Moreover, according to Section 156 (1) of the Code of Criminal Procedure, any Officer-in-Charge of a police station, may, without the order a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limit of such station would have power to enquire into or try under Chapter XXIII and according to Section 156 (2) of the Code of Criminal Procedure, 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 the section to investigate. In the case of State of M.P. Vs. Ramesh C. Sharma, reported in (2006) 1 SCC (Cri) 683, it has been held by the Apex Court the breach of mandatory provisions relating to investigation has no consequences unless it is shown to have brought about a miscarriage of justice. Moreover, this is a case where this Court earlier rejected the petitioner's prayer for quashing of the First Information

Report in C.R.R. No. 1106 of 2007 on the selfsame grounds. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(**Ashim Kumar Roy, J.**)