

CRIMINAL REVISION

Present: The Hon'ble Justice S.P. Talukdar

Judgment on: 30.04.2010

C.R.R. No. 259 of 2009

Sri Gautam Kumar Biswas

Vs.

The State of West Bengal & Anr.

Point:

**Investigation:** A person approaching a Magistrate seeking redressal against certain police officers whether to be investigated by the police authority- Code of Criminal Procedure, 1973 S.202

Facts-

The petitioner, as complainant, claimed himself to be a T.V. Journalist. He further claimed that it is part of his official duty to be at the relevant spot where a disturbance took place over alleged illegal eviction of a tenant. The police intervened not only to disperse the crowd but according to the complainant, in the process humiliated and physically assaulted the petitioner/complainant and others. The police authority of the Kasba Police Station started a case as against the present petitioner and the said case, after completion of investigation, ended in charge sheet for the offences under Sections 341/323/324/354/506/34 of I.P.C. The present petitioner, Gautam Kumar Biswas, had also been charge sheeted as an accused in another case being Kasba Police Case No.167/2008 dated 7.7.2008. The report submitted by the Additional S.P. (Industrial), South 24-Parganas, dated 2nd December, 2008 before the learned Court of Magistrate reveals that the petitioner had been charge sheeted in Sonarpur Police Station Case No.114/2005 dated 27th March, 2005 as well.

Held:

It is not enough that justice is done. Justice must be manifestly shown to have been done. A person approaching a Court of Magistrate seeking redressal of his grievances against certain police officers does not ordinarily deserve to be shifted back to the police authority. Thus, technically, it may not be wrong to get the matter investigated by police authority, particularly by an officer of superior rank, but that by itself does not necessarily exclude the possibility of bias.

Para-29 and 30

Learned Trial Court is directed to give further opportunity to the petitioner to substantiate his grievances as ventilated in the petition of complaint, with oral/documentary evidence and after giving such opportunity, learned Court may pass necessary order in accordance with law. Para-33

Cases Cited:

Harihar Prasad vs. Emperor--- Vol.21, Criminal Law Journal Reports, page 343

Mewa Lal vs. Emperor----- Vol.21, Criminal Law Journal Reports, page 416

Musammat SHAMA & Anr. vs. Ejaz Ahmad & Ors. ----Vol. 21 Criminal Law Journal Reports page 649.

Devasikamani Mudaliar vs. Narayana Prasad---- A.I.R. 1926 Madras 288

Jagindar Singh vs. Agha Safdar Ali Khan-- A.I.R. 1928 Lahore 88,

Vikyamal Dakumal vs. Prakashsing Atmasingh & Ors--- 1971 CrI. L. J. 702

Ramakrishna vs. M. K. Patil & Ors---- 1978 CrI. L. J. NOC 45 (KANT).

-Cricket Association of Bengal & Ors. vs. The State of West Bengal & Ors. 1971 CrI. L. J. 1432).

Municipal Corporation of Delhi vs. Girdharilal Sapuru & Ors. ----1981 Criminal Law Journal 632.

A R. Antulay vs. Ramdas Srinivas Nayak & Anr-- (1984) 2 S.C.C. 500  
Taylor vs. Taylor, (1876) 1Ch D 426 and Nazir Ahmad vs. King Emperor,  
AIR 1936 Privy Council 253 (2)  
Jumuna Singh & Ors. vs. Bhadai Shah---- AIR 1964 Supreme Court 1541

For the Petitioner: Mr. Joymalya Bagchi

Mr. J. N. Chatterjee,

Mr. Debashish Banerjee.

For the Opposite Parties: Mr. Sudipto Moitra

Mr. Debabrata Chatterjee,

Mr. Amartya Panda,

Mr. Sandip Sarkar.

For the State: Mr. R. S. Chattopadhyay.

The Court:

The present petitioner, Sri Gautam Kumar Biswas, as complainant, filed an application before the learned Court of Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South). The same was registered as A.C. No. 2072 of 2008 under Section 200 of the Code of Criminal Procedure against the officers of the Kasba police station, being Opposite Party No.2 to 8 herein. The learned Court on receipt of the said complaint and taking into consideration the statements made by the complainant and his witnesses and on perusal of various documents and photographs furnished by and on behalf of the complainant directed Superintendent of Police, 24-Parganas (South), to depute a competent police personnel, not below the rank of Deputy Superintendent of Police, to enquire into the case under Section 202 of Cr.P.C. and to submit a report. The Additional Superintendent of Police (Industrial), 24-Parganas (South), thereafter, investigated into the matter, being directed by the Superintendent of Police, 24-Parganas (South) and he submitted a report under Section 202 of Cr.P.C.

2. The learned Court by order dated 10th December, 2008 dismissed the complaint under Section 203 of Cr. P.C.

3. Being aggrieved by and dissatisfied with the impugned order dated 10th December, 2008, the complainant, as petitioner herein, approached this court for setting aside of the said order.

4. Mr. Bagchi, appearing as learned Counsel for the petitioner, while referring to the backdrop of the present controversy submitted that the learned Court was not justified in directing an inquiry by a senior police officer when the allegations in the complaint were directly against some officers of the police station and that too, under the jurisdiction of the said police officer who investigated into the matter. Mr. Bagchi further mentioned that it was highly improper on the part of the learned Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South) to dismiss the complaint being swayed by a report under Section 202 of Cr.P.C. It was then submitted that there could be no scope for the Superintendent of Police to delegate the assignment in favour of another police officer and according to Mr. Bagchi, law does not permit such re-delegation. In course of his submission Mr. Bagchi mentioned that the report under Section 202 of Cr.P.C., which was accepted, does not reflect the actual state of affairs and

by relying upon such a report, learned Court had denied the complainant the scope for redressal of his grievance. On the other hand,

5. Mr. Moitra appearing as learned Counsel for the Private-Opposite Party, contended that law very well permits the learned Court to direct such inquiry under Section 202 of Cr.P.C. If such a report does not favour the complainant, the learned Court is left with no option but to dismiss the complaint under Section 203 of Cr.P.C. Mr. Moitra further submitted that the present petitioner did not raise any objection when the learned Court directed such inquiry by police authority under Section 202 of Cr.P.C. The petitioner did not even raise any objection when such a direction for inquiry by police was given nor as against the report, which was submitted before the learned Court. According to him, such belated approach on the part of the petitioner does not deserve any consideration whatsoever.

6. Mr. Chattopadhyay appeared as learned Counsel for the Opposite Party-State. Having regard to the nature of the dispute and the relief sought for, I do not think that the State, as an Opposite Party, could have had much role to play.

7. The material on records reveal that on 16th September, 2008 at about 12-30 hours some persons blocked/obstructed a road in protest against alleged illegal eviction of the inhabitants of the premises being No.47/2, Bosepukur Road, Kolkata. The present petitioner on receipt of such information over telephone rushed to the said spot. After reaching, the petitioner could find large number of protesters who were mostly local residents and many journalists, from both the print and electronic media.

While the petitioner was busy in collecting information, he found the Opposite Party No.2, being accompanied by his force, was already there. They rushed towards the protesters. While trying to disperse them, they hurt a few persons. Though there was large number of women amongst protesters, the police team did not have a single lady constable. The Officer-in-Charge of the Police Station was not in uniform. The petitioner and few others raised this point. The Opposite Party No.2 got annoyed and started assaulting the petitioner mercilessly. He was forcibly removed from the place of occurrence and was dragged all the way to Kasba Police Station. The petitioner was, thus, brutally tortured. The Opposite Party No.2 was heard shouting by saying "Aaj ekei maar" and "Eke agey dhar". The petitioner could not even indicate as to how did he sustain injuries at the time of his medical examination at M.R. Bangur Hospital. The petitioner

was released from the police station at about 4-30 A.M. Thereafter, he rushed for his own medical treatment. He filed a written complaint before the Kasba Police Station and thereafter, before the Superintendent of Police, 24-Parganas (South) on 16th September, 2008 but it did not yield any result. The torture inflicted upon the petitioner by the Opposite Party was photographed by other journalists. In absence of any proper response on the part of the police authority, the petitioner had no choice but to file a petition of complaint before the learned Court of Additional Chief Judicial Magistrate, Alipore, being A.C. No.2072 of 2008. Learned Court in response to the said application directed the Superintendent of Police to get the matter inquired under Section 200 of the Code of Criminal Procedure by an officer not below the rank of Deputy Superintendent of Police. The Additional S.P. (Industrial), 24-Parganas (South) after conducting an inquiry submitted a report on 3rd December, 2008. By an order dated 10th December, 2008, the learned A.C.J.M., Alipore dismissed the complaint under Section 203 of the Code of Criminal Procedure.

8. Mr. Bagchi, as learned Counsel for the petitioner submitted that it is quite strange that the Learned Magistrate directed an inquiry by an officer of the Police Department when allegations made in the petition of complaint were against them only. It was not just and proper on the part of the learned Court to refer the matter for inquiry and learned Court ought to have held a judicial inquiry.

9. It was submitted that the police report dated 03.12.2008, for obvious reasons, has not been in favour of the present petitioner. The learned Court failed to act in a judicious manner and there could be no justification for dismissal of the complaint.

10. In the circumstances, the petitioner approached this court for setting aside the order dated 10th December, 2008.

11. Mr. Bagchi appearing as learned Counsel for the petitioner submitted that it had been an act of extreme impropriety on the part of the learned Trial Court to direct an inquiry under Section 202 of Criminal Procedure Code by a senior officer of the police in the concerned district. The allegations made in the petition of complaint being directed against some police personnel, in the best interest of justice the matter should have been inquired into by the learned Magistrate himself. Thus, the report dated 3rd

December, 2008 as submitted by the Additional Superintendent of Police (Industrial), 24-Parganas (South) and the orders consequent thereto, in the opinion of Mr. Bagchi, cannot pass the test of legal scrutiny.

12. Mr. Bagchi referred to the decision of the learned Single Bench of Allahabad High Court in the case of Harihar Prasad vs. Emperor, as reported in Vol.21, Criminal Law Journal Reports, page 343, in support of the contention that in dealing with a complaint against a police officer a Magistrate does not exercise a proper discretion in dismissing it under Section 203 of Criminal Procedure Code, on the mere report of a local investigation by a superior officer of police. His Lordship in the said case held that it was the duty on the part of the Magistrate to hear the witnesses himself on whom the complainant relies upon to establish the truth of the allegation and give his best consideration to their statements along with the report of the local investigation.

13. In the case between Mewa Lal vs. Emperor, as reported in Vol.21, Criminal Law Journal Reports, page 416, the learned Single Bench of the Allahabad High Court held that “where a complaint is made against an officer of police, it is improper to direct another police officer to conduct the investigation”. In such a situation, the learned Magistrate ought to have inquired into the matter himself or by another Magistrate.

14. The same view was taken by another learned Single Bench of the Allahabad High Court in the case between Musammat SHAMA & Anr. vs. Ejaz Ahmad & Ors. as reported in Vol. 21 Criminal Law Journal Reports page 649. The learned Court held that where a complaint is made against an officer of police, the Magistrate should himself conduct the investigation and not refer the matter for investigation to the superior officer of the accused.

15. In the case between Devasikamani Mudaliar vs. Narayana Prasad, as reported in A.I.R. 1926 Madras 288, it was held that “complaints against police officer should be handled with the greatest care. In such cases the complainant should be given every facility to prove his allegations”. In the case between Jagindar Singh vs. Agha Safdar Ali Khan, as reported in A.I.R. 1928 Lahore 88, the learned Court held that “sending a case to police for investigation is not desirable where a member of the police themselves is accused”. The Learned Single Bench of the Gujarat High Court in the case between Vikyamal Dakumal vs. Prakashsingh Atmasingh & Ors., as reported in 1971 CrL. J. 702, held that “in cases of complaints

against police officers, it would be unjust exercise of discretion to order for enquiry and report from another police officer belonging to the same police station even though he be superior in rank". While submitting that a court while administering justice has to be alert and watchful and the administration of justice should be conducted in such a manner as to preserve the people's confidence in it, Mr. Bagchi referred to the decision in the case between Ramakrishna vs. M. K. Patil & Ors., as reported in 1978 CrL. L. J. NOC 45 (KANT).

16. Mr. Bagchi further submitted that it is not always necessary for an aggrieved person to come and knock the door of this court being aggrieved by palpable wrong order. This court in proper cases can suo motu interfere with the orders of the Subordinate Court. (Ref: -Cricket Association of Bengal & Ors. vs. The State of West Bengal & Ors. 1971 CrL. L. J. 1432). There may be situations where non-interference by this court by suo motu exercise of power, may lead to glaring illegality. This finds support in the decision of the Apex Court in the case between Municipal Corporation of Delhi vs. Girdharilal Sapuru & Ors. as reported in 1981 Criminal Law Journal 632.

17. On the other hand, Mr. Sudipto Moitra, appearing as learned Counsel for the Private Opposite Party, submitted that once the Magistrate has exercised his discretion by issuing or refusing to issue process, it is not for this court or even the Supreme Court, to substitute its own discretion for that of the Magistrate to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

18. In the case between A. R. Antulay vs. Ramdas Srinivas Nayak & Anr., as reported in (1984) 2 S.C.C. 500, the Apex Court held that when it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. The Apex Court in the said case while referring to the decisions in the cases between Taylor vs. Taylor, (1876) 1Ch D 426 and Nazir Ahmad vs. King Emperor, AIR 1936 Privy Council 253 (2) held that while statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all.

19. It is well established that court should read the provision as it is and it is not for the court to rewrite it to suit its convenience or to read it in a manner as to render it to some extent otiose.

20. In the case between Jumuna Singh & Ors. vs. Bhadai Shah., as reported in AIR 1964 Supreme Court 1541, the Apex Court held when a Magistrate applies his mind not for the purpose of referring a petition of complaint for investigation under Section 156 (3) of Cr.P.C, and issues process, it cannot be said that it has not taken cognizance of the offence. In the present case learned Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure. Thereafter, the learned Court directed the Superintendent of Police, 24-Parganas (South) to get the matter inquired by an officer not below the rank of Deputy Superintendent of Police.

21. It may be necessary in this context to mention that Section 202 of the Code of Criminal Procedure does not permit the learned Court of Magistrate to direct any inquiry under Section 202 of the Code of Criminal Procedure. The police can only be directed to investigate under Section 202 of Cr. P.C. when the learned Magistrate upon examination of the complainant and his witnesses and on consideration of the relevant materials does not find any sufficient reason either for issuance of process nor does he think it proper to dismiss the complaint then and there.

22. The facts of the present case now need be analysed in the context of the aforesaid legal position. The present petitioner, as complainant, approached the learned Court of Magistrate with a petition of complaint wherein he ventilated certain grievances against some police officers of the Kasba Police Station in the district of 24-Parganas (South). The petitioner, as complainant, claimed himself to be a T.V. Journalist. He further claimed that it is part of his official duty to be at the relevant spot where a disturbance took place over alleged illegal eviction of a tenant. The police intervened not only to disperse the crowd but according to the complainant, in the process humiliated and physically assaulted the petitioner/complainant and others. He claimed that he knocked the doors of the various authorities for redressal of his grievances.

23. In absence of any proper response, he was left with no choice but to approach the court of learned Magistrate with the aforesaid petition of complaint.



24. The materials on record reveal that after considering the petition of complaint and upon examination of the complainant and his witnesses, learned A.C.J.M., Alipore directed the police authority to enquire. So far any direction upon police authority is concerned, the word used in Section 202 of Cr.P.C. is 'investigation' and not 'inquiry'.

25. Be that as it may, without taking a hyper technical approach, it may very well be said that the learned Court did not find the case to be entirely devoid of merits and thus, did not choose to dismiss the same. Learned Court also was not satisfied as to the existence of prima facie case so as to direct issuance of process under Section 204 of Cr.P.C. Learned Court, thus, while postponing the process, thought it necessary to get the matter further probed. This job was assigned to an officer not below the rank of Deputy Superintendent of Police.

26. From the materials available on record it transpires that the police authority of the Kasba Police Station started a case as against the present petitioner and the said case, after completion of investigation, ended in charge sheet for the offences under Sections 341/323/324/354/506/34 of I.P.C. The present petitioner, Gautam Kumar Biswas, had also been charge sheeted as an accused in another case being Kasba Police Case No.167/2008 dated 7.7.2008. The report submitted by the Additional S.P. (Industrial), South 24-Parganas, dated 2nd December, 2008 before the learned Court of Magistrate reveals that the petitioner had been charge sheeted in Sonarpur Police Station Case No.114/2005 dated 27th March, 2005 as well.

27. If not anything else, it is thus clear that the petitioner has been implicated in a number of police cases. This certainly indicates that all is not well as far as interaction between the petitioner and the police authority is concerned.

28. Technically speaking, it is within the power of a Magistrate to refer a complaint for investigation to the police under Section 202 of Cr.P.C. The question raised herein is not the legality but the emphasis is on the propriety of the impugned order. This is in the context of the fact that the petitioner has been charge sheeted as an accused in a number of cases. It is not impossible but highly improbable that in such a situation, the report under Section 202 of Cr.P.C. can win the heart of the petitioner.

29. How far the grievances of the petitioner are genuine is certainly a matter for adjudication. But to compel the petitioner or to push him back to the police authority may not be in the best interest of justice. It is not enough that justice is done. Justice must be manifestly shown to have been done.

30. A person approaching a Court of Magistrate seeking redressal of his grievances against certain police officers does not ordinarily deserve to be shifted back to the police authority. Thus, technically, it may not be wrong to get the matter investigated by police authority, particularly by an officer of superior rank, but that by itself does not necessarily exclude the possibility of bias.

31. Our administration of justice is essentially having the confidence and respect of the people as its foundation. In the present case, this court thinks it was not just and proper for the learned Court of Magistrate to direct the matter to be investigated by a police authority.

32. Significantly enough, the report under Section 202 of the Cr.P.C. as submitted by the Additional S.P. (Industrial), 24-Parganas (South), if read between the lines, reflects, perhaps unconsciously, the subconscious mind. While investigating into the petition of complaint in terms of the direction given by the learned Trial Court, there could be little reason or justification for the police authority to refer to the alleged involvement of the petitioner in other cases.

33. Thus, after taking into consideration all relevant facts and circumstances, I find it difficult to brush aside the grievances as ventilated on behalf of the petitioner. The impugned order dated 10<sup>th</sup> December, 2008 passed by the learned Additional Chief Judicial Magistrate, Alipore, 24-Parganas (South), is thus set aside. Learned Trial Court is hereby directed to give further opportunity to the petitioner to substantiate his grievances as ventilated in the petition of complaint, with oral/documentary evidence and after giving such opportunity, learned Court may pass necessary order in accordance with law. The application being C.R.R. No.259 of 2009 stands accordingly disposed of.

Send a copy of this judgment to the learned Court immediately for information and necessary action.

Criminal Section is directed to supply certified copy of the judgment to the parties, if applied for, as expeditiously as possible.

(S.P. Talukdar, J.)