

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 6555 of 2021

Petitioner :- Subodh Kumar Jain @ Subodh Jain

Respondent :- State Of U.P And Others

Counsel for Petitioner :- Virendra Kumar Srivastava,Rajesh Kumar Srivastava

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Deepak Verma,J.

Heard counsel for the petitioner and learned AGA for the State.

This writ petition seeks quashing of the first information report dated 9.3.2019 giving rise to Case Crime No. 168 of 2019 under Sections 392, 411 I.P.C., police station Sikandra, District Agra.

The facts of the case briefly are that the first information report alleged that on 9.3.2019, the first informant had gone to attend the Barat of his nephew to village Khandwai. At around, 2:30 p.m., he was resting in a room when an unknown boy, present in the room, suddenly got up and ran away with the bag in the hand of the first informant and thereafter mounted to a motorcycle driven by his associates and made good his escape. The bag contained Rs. 1.4 lacs in cash and some silver and gold jewellery as also the mobile phone of his nephew Gaurav Tomar, the mobile number being 6395142418.

The first contention of counsel for the petitioner is that the petitioner was not named in the F.I.R. It has also been submitted that the police after investigation arrested two persons, namely, Aakash son of Jagjit Singh and Manish @ Mangey. These two persons are said to have named Krishnkant and Mangey Lal as their accomplices. On 23.9.2019, the father of Aakash is said to have made a statement that Aakash had sold the snatched ornaments to the petitioner in his shop.

It is contended by counsel for the petitioner that on 27.6.2020, the four persons, namely, Aakash, Manish @ Mangey, Krishnkant and Mangey Lal were chargesheeted under Sections 392, 411, 34 I.P.C.. On the charge-sheet being filed, cognizance was taken by the Magistrate on 18.11.2020. Thereafter, the police came to the residence of the petitioner. The petitioner

filed an application whereupon information was called for by the Sessions Judge. The S.H.O. concerned submitted a report on 19.7.2021 that the petitioner was wanted in relation to the aforementioned crime No. 168 of 2019.

On the basis of the above facts, the argument of counsel for the petitioner is that once a charge-sheet had been filed and cognizance taken, the investigation came to an end. Thereafter it was not open for the police to carry on further investigation without the permission of the Magistrate concerned and since no such permission was ever sought, the action of the police amounted to harassment of the petitioner, beyond the authority of law. Hence this writ petition.

Learned A.G.A. on the other hand has submitted that there is no requirement of seeking any permission. The police has unfettered powers of investigation and that the investigation can continue even after the charge-sheet has been submitted and cognizance thereon had been taken. In case further material comes to light, it is always open to the investigating agency to file a supplementary report or charge-sheet as may be required and that the petitioner cannot complain to such action, which is within the statutory powers of the investigating agency.

In the context of the arguments raised at the bar, this Court is required to rule on the import of Section 173 of the Code of Criminal Procedure as also its various sub sections.

Sub-section-(2) provides that once the investigation is complete, the Officer-in-charge of the police station is required to forward to the Magistrate a report in the form prescribed. This report is to be forwarded to the Magistrate empowered to take cognizance. The communication is also to be sent in the prescribed manner, to the State Government.

Sub-section-(3) provides that in cases where the State Government has, by a general or special order, directed and appointed a superior officer under Section 158, the report shall be submitted to the Magistrate through such Officer. It also provides that pending the order of the Magistrate, such superior officer may direct the officer-in-charge of the police station to make further investigations.

The next sub-section which is relevant is Sub-section-(8) which reads as follows:-

"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"

In our considered opinion, it is the aforesaid cited provision which is relevant for the purposes of the case and upon its bare reading, it does not emerge that for the purpose of further investigation any permission of the Magistrate concerned is required. In fact on a plain reading of the said provisions what emerges is quite contrary to what has been argued by counsel for the petitioner.

The provisions of law provides that nothing precludes further investigation in respect of an offence after a report under Section 173 (2) Cr.P.C. has been forwarded to the Magistrate. It also provides that in case such further investigation is made and some evidence oral or documentary is obtained, a further or supplementary report shall be made to the Magistrate concerned in the manner prescribed and that the provisions of Sections 2 to 6 shall apply to such supplementary, additional or further report. In this connection, the position of law has been settled in the case of ***State of A.P. Vs. A.S. Peter, 2008 AIR SCW 637***. This judgement has held -

" Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge sheet is a statutory right of the police."

This law as it stands is that according to the language of Section 173 (8), it is implicit that a Police Officer can suo motu make further investigations in cognizable cases. Otherwise also, under Section 156 (1), he can carry on further investigation and in non cognizable cases, once the order of 156 (1) has been passed by the Magistrate, he cannot do so.

The case at hand pertains to a cognizable offence and, therefore, we are constrained to hold that submissions made by counsel for the petitioner are without substance.

The police has unfettered power of investigation and such investigation can continue even after the charge-sheet has been filed under Section 173 (2) Cr.P.C. and cognizance has been taken thereon. No permission of the Magistrate is required for carrying out further investigation even thereafter.

Accordingly, for the reasons stated above, and since the submissions of counsel for the petitioner found to be without substance, the writ petition fails and is dismissed.

Order Date :- 4.4.2022

RKM