

(Rajendra Singh Yadav & Ors. vs. State of M.P. & Anr.)

7.2.2017

Shri Rajeev Sharma, counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent No.1/State.

Shri O.P. Singhal, counsel for the respondent No.2.

This petition under Section 482 of Cr.P.C. has been filed calling in question the legality and propriety of the order dated 11.9.2014 passed by JMFC, Bhind in Complaint Case No. (B.F.)/2014.

The necessary facts for the disposal of this application are that a complaint was filed by the respondent alleging that a threat to kill was extended to her as well as the complainant was humiliated and insulted by the applicants by calling her by caste.

It appears from the order dated 11.9.2014 that a direction was given to the police to submit the report and on 8.1.2014 the enquiry report was received from the police Station Dehat, District Bhind mentioning that the offence is alleged to have been committed by the applicants. On the basis of the police report as well as the allegations made in the complaint the Magistrate directed the Police Station Dehat District Bhind to register the offence against the applicants as well as to file the charge sheet after completing the necessary investigation.

It is contended by the counsel for the applicants that although in exercise of powers under Section 156 (3) of Cr.P.C. the Magistrate can always direct for registration of FIR but he cannot take away the discretion of the police not to file the closure report by directing specifically that only the charge sheet has to be filed.

Per contra, the counsel for the respondents submit that once the police had already come to a conclusion that the applicants have committed an offence then the Magistrate did not commit any legal mistake in directing the police to file the charge sheet after completing the necessary investigation.

Heard the learned counsel for the parties.

From the order dated 11.9.2014, it is apparent that the Magistrate had directed the police to register the FIR. So far as this part of the order is concerned, it is well within the jurisdiction of the Magistrate and this part of the order is perfectly in accordance with law. However, the latter part of the order by which the Magistrate has directed the police to file the charge sheet appears to be beyond his jurisdiction. Registration of the FIR and filing of the charge sheet are two different things. Merely a FIR has been registered would not *ipso facto* mean that in all the circumstances the police has to file the charge sheet. After the FIR is lodged, it is for the police to investigate the matter and if after completing the investigation if the police comes to a conclusion that no offence is made out then the police is well within its right to file the closure report subject to approval by the Court concerned after hearing the complainant. In the present case, the Court has not taken the report of the police as a final report. The Magistrate has also directed the police to conclude the necessary investigation. Thus, it is clear that even the Magistrate was of the view that the report which has been submitted by the police is not based on the complete investigation and it is required to be completed. Under these circumstances directing the police to file the charge sheet only, necessarily

means that the Magistrate by passing this order has taken away the jurisdiction of the police not to file the closure report, if circumstances so warranted. Under these circumstance this Court is the view that the latter part of the order by which a direction was given to the police to file the charge sheet was not in accordance with law, therefore, the second part of the order is hereby set aside.

It is further submitted that during the pendency of the petition the police has filed the charge sheet. It is the contention of the counsel for the applicants that the charge sheet has been filed in view of the specific and mandatory direction of the Magistrate to file the charge sheet. The police has not investigated independently and without considering the facts from the angle that whether the prima facie evidence is made out or not has filed the charge sheet under the compulsion of the order dated 11.9.2014.

Refuting the said submission, it is submitted by the counsel for the respondents that the police has filed the charge sheet after completing the investigation and it cannot be said that free and fair investigation was not done and it cannot be said that merely in the light of the direction given by the Magistrate, the police has completed the formalities of filing the charge sheet.

Whether the police had conducted free and fair investigation or it was filed in compliance of the order of the Magistrate is a complex question of fact. However, without commenting on the material as contained in the charge sheet, once this Court has come to a conclusion that by passing an order dated 11.9.2014 giving a specific direction to file the charge sheet, the jurisdiction of the police not to file the charge sheet was taken away, then under these

circumstances it would be appropriate to quash the charge sheet also and to modify the order dated 11.9.2014 directing the police to file the final report (either closure report or the charge sheet). It is directed that before deciding to file the final report (either closure report or the charge sheet), the police shall not get prejudiced by the order of the Magistrate which was passed on 11.9.2014 as the same has already been quashed by this Court. Consequently, the further proceedings in Criminal Case No.89/2015 pending before the Court of Special Judge, Bhind against the applicants in consequence of the charge sheet are also hereby quashed.

Let the police file the final report (either closure report or the charge sheet) after re-appreciating the entire material which has been collected by it during the investigation and while doing so if the police so desires may also collect the additional evidence.

With aforesaid observations, this petition is **disposed off**.

(G.S. Ahluwalia)
Judge

(alok)