

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. OF 2009
(Arising out of SLP(Crl.) No. 4543 of 2008)

SHARIFF AHMED & ORS. ... Appellant(s)

Versus

STATE (NCT OF DELHI) ... Respondent(s)

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Dr.ARIJIT PASAYAT,J.

Leave granted.

A very short point of is involved in this petition. The question is whether the court can direct that the Investigating agency has to focus on any particular offence and do the investigation accordingly. In the instant case by order dated 9.7.2007 the learned Metropolitan Magistrate, Patialia House directed the Investigating Officer to add Section 307 in the present case and investigate the matter properly. The said order was challenged before the High Court in Criminal M.C. No. 428/2008. The High Court held that the course adopted by the learned Metropolitan Magistrate was permissible in law.

Learned counsel for the appellant submitted that the

view taken by the High Court is contrary to the law as settled by this court in a series of cases. Learned counsel

for the State submitted that the law in the point has been settled by a series of decision starting from

State of Bihar and Anr. Vs. J.A.C.Saldanha and Ors. 1980 (1) SCC 554 Para 10

S.M.Sharma Vs. Bipen Kumar Tiwari 1970 (3) SCR 946 Para 12

Abhinandan Jha & Ors. Vs. Dinesh Mishra (AIR 1968 SC 117) Para 16

King Emperor Vs. Khwaja Nazir Ahmad 1944 LR IA 203 Para 11;

and One of the latest cases being M.C.Abraham and Anr. Vs. State of Maharashtra and Ors. JT 2002 (10) SC 482

In the said case, the contention before this Court was that the High Court was in error in exercising jurisdiction under Article 226 of the Constitution at the stage when the Additional Chief Judicial Magistrate who had jurisdiction to entertain and try the case, had not passed upon the issues before him, by taking upon itself the appreciation of evidence involving facts about which there was an acrimonious dispute between the parties and giving a clean bill to the suspects against whom the first information report was filed.

In this connection this court relied upon the observations of the Privy Council in King Emperor Vs. Khwaja Nazir Ahmad : 1944 LR 71 IA 203, which reads thus:-

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it

should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then".

Reference was also made to the observations of this Court in *S.M. Sharma Vs. Bipen Kumar Tiwari* : (1970) 3 SCR 946, wherein this Court observed:

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that

the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal power".

This Court held in the case of *J.A.C. Saldanha* (supra) that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. It has been held as follows:

"Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the

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offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under section 190 of the Code of Criminal Procedure, its duty comes to an end. On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.

In the instant case the investigation is in progress. It is not necessary for us to comment

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on the tentative view of the investigating agency. It is the statutory duty of the investigating agency to fully investigate the matter and then submit a report to the concerned Magistrate. The Magistrate will thereafter proceed to pass appropriate order in accordance with law. It was not appropriate for the High Court in these circumstances to issue a direction that the case should not only be investigated, but a charge sheet must be submitted. In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc., the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency.”

In view of what is stated in MC.Abraham's case (supra) the order of High

court is clearly unsustainable and is set aside. We make it clear that we have not expressed any opinion on the merits of the case. It is brought to our notice by learned counsel for the State-respondent that the charge sheet has already been filed under Section 307, IPC. But that was in compliance with this court's order. It is open to the Investigating Officer to file the charge sheet afresh on the basis of the material collected during investigation.

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The appeal is allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
((ASOK KUMAR GANGULY)

New Delhi,
Aapril 24, 2009.

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