

Before M. M. Punchhi, J.

WAZIR SINGH AND OTHERS,—Petitioners

versus

BABU RAM,—Respondent.

Criminal Misc. No. 406-M-1983.

July 13, 1983.

*Code of Criminal Procedure (II of 1974)—Sections 169, 170 and 173—Police report filed before a Magistrate exonerating the accused—Magistrate agreeing with the Police report and discharging accused—Complaint filed subsequently by a complainant before Magistrate in respect of same offence—Magistrate—Whether can summon accused on such complaint.*

*Held, that the function of the Magistrate while dealing with a report under section 173 of the Code of Criminal Procedure, 1973, whether it be a report of the nature of section 169 or 170, is judicial and the nature of the order passed by the Magistrate discharging the accused can by no means, be called a judgment so as to conform to the standards of section 354 of the Code, unless it tends to end in acquittal or conviction of the accused. A mere order of discharge contradistinctly cannot be called a judgment, and if that is so, nothing stops the Magistrate from taking cognizance of the offence on a complaint after passing an order of discharge on the police report.*

(Para 5)

Bhuneshwar Prasad Sinha and others vs. The State of Bihar and another, 1981 Criminal Law Journal 795.

DISSENTED FROM.

*Application Under Section 482 Cr. P. C. praying that the petition may be accepted and the protest petition dated, 1st July, 1981 Annexure 'P-1' and the subsequent order of summoning of the petitioners by the Trial Court,—vide its order dated 14th July, 1982, Annexure 'P-2' and the order of dismissal of the revision petition by the learned Additional Sessions Judge,—vide its order dated 1st December, 1982, Annexure 'P-3' may be quashed against the petitioners.*

*It is further prayed that further proceedings in the court of Chief Judicial Magistrate Kurukshetra may be stayed till the disposal of the revision petition in this Hon'ble Court.*

Surjit Kaur Taunque, Advocate, for the Petitioner.

R. S. Cheema, Advocate, for the Respondent.

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**ORDER**

*Madan Mohan Panchhi, J. (Oral)*

1. The petitioners are aggrieved against a summoning order passed by the trial Magistrate who required of them to come and face an enquiry for offences under sections 341/506 and 323, Indian Penal Code. They have approached this Court under section 482 of the Code of Criminal Procedure.

2. The broad facts are these. An offence was allegedly committed and complainant-party was proceeding toward the police station to lodge a report. The accused-petitioners intercepted them and threatened them that if the matter was reported to the police they would be killed. In the process thereof, Wazir Singh petitioner allegedly caused a *lathi* blow to Swaran Singh. Keeping apart the earlier incident, the second incident was reported to the police. A case under sections 341/506/323, Indian Penal Code, was registered and investigated. Finally, the police submitted a report under sections 169/173 of the Code of Criminal Procedure. The learned Magistrate, agreeing with the same, discharged the accused on 1st July, 1981. On the same day, Babu Ram, an eye-witness cited in the aforesaid F.I.R., filed a complaint for the aforesaid offences.

3. The Magistrate took cognizance of the offences on the complaint and, after recording preliminary evidence, issued a summoning order against the accused-petitioners. The accused-petitioners approached the Court of Session unsuccessfully on the point that, after the discharge of the accused on the police report, no cognizance of the offence could be taken on a complaint. They approached this Court being aggrieved against the aforesaid order. But this Court too did not come to their rescue; for the Magistrate had yet to apply his mind whether to proceed against the accused or not and, in that event, the matter had been sent to another Magistrate for the purpose. The successor Magistrate then passed the impugned order giving rise to this petition.

4. Miss Taunque has broadly urged that when the Magistrate had passed the order of discharge in the police case, it would no longer be within his power to take cognizance of offences in respect to the same facts on which he has already expressed his opinion. Reliance was placed on a Single Bench judgment of the Patna

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High Court in *Bhuneshwar Prasad Sinha and others v. The State of Bihar and another* (1); in which the view taken was that until the order passed by a Magistrate in a judicial proceeding was set aside by a revisional Court, the sanctity of that judicial order has to be preserved. It was in these circumstances held that the Magistrate could not take cognizance on the basis of the complaint. But for the aforesaid Patna High Court judgment, there is no authority supporting the view.

5. It seems to me that the function of the Magistrate, while dealing with a report under section 173, whether it be a report of the nature of section 169 or 170, Code of Criminal Procedure, is judicial and the nature of the order passed by him would remain the same. Undoubtedly, such an order passed in exercise of judicial functions can, by no means, be called a judgment so as to conform to the standards of section 354 of the Code of Criminal Procedure, unless it tends to end in acquittal or conviction of the accused. A mere order of discharge contradistinctly cannot be called a judgment, and if that is so, nothing stops the Magistrate from taking cognizance of the offence after passing an order of discharge on a police report. Thus, with due respect to the Hon'ble Single Judge of the Patna High Court, I do not propose to follow his view as it would defeat the spirit and provisions of the Code.

6. It has then been contended that the complaint discloses no offence and the supportive preliminary evidence also does not disclose any offence. Specifically, it has been brought out that the blow allegedly caused by Wazir Singh to Swaran Singh PW is not supported by any medical evidence. Secondly, the threat allegedly given out was conditional and it was optional for the complainant-party to wriggle out of that threat by taking the alternative course suggested. And thirdly, there could be no wrongful restraint as the complainant party was only engaged in talking. As noted earlier, the matter is at the preliminary stages, so I do not propose to deal with these questions at this stage. The petitioners may, if so advised, raise these questions before the learned Magistrate at the pre-charge stage.

7. Lastly, it has been contended that the offences allegedly are trivial in nature and fall within the scope of section 95 of the Indian

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(1) 1981 Criminal Law Journal 795.

Penal Code. That matter too has to be raised before the learned Magistrate and not in a petition like the present one.

8. For the foregoing reasons, there is no merit in the petition which is hereby dismissed. Criminal Misc. No. 2666 of 1983 for production of documents stands disposed of by this order.

9. The parties through their counsel are directed to put in appearance before the learned Magistrate on the 29th July, 1983.

H.S.B.

Before D. S. Tewatia, J.

UNION OF INDIA,—Petitioner

versus

THE PRESIDING OFFICER AND ANOTHER,—Respondents.

Civil Writ Petition No. 7897 of 1976.

July 22, 1983.

*Industrial Disputes Act (XIV of 1947)—Section 2(j)—Post and Telegraph Department of the Government of India—Whether can be termed an industry under the Act—Employees of the Department—Whether can be termed as workmen.*

*Held*, that activities handled by the Post and Telegraph Department, historically speaking have been handled by the State in this country. Having regard to the importance of the communication to the successful coordination of the sovereign and regal functions of the State like defence of the country, maintenance of law and order etc., there is no escape from the conclusion that the activity carried on by the Post and Telegraph Department has as its dominant purpose the performance of sovereign and regal functions of the State. The ancillary activity of receiving deposit under various savings schemes, maintenance of accounts etc. is a very minor part of the activity of the department and by no stretch of reasoning could it be considered to be the dominant purpose behind the establishment of the department of Post and Telegraph. What is more, this activity is not severable from the dominant activity of the department in that the very man who is handling telegrams etc. is also at the same time receiving the deposits and maintaining the account. That person