



2026:AHC:182437

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 140 of 2020

Jeetu Soni

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Abhishek Kumar Saroj, Bipin Kumar Pal, Brijesh Kumar Prajapati, Mahesh Kumar, Maheshwari Prasad Srivastava, Rajeev Kumar Saxena, Rajesh Kumar, Surendra Kumar Singh, Vinod Kumar Upadhyay
Counsel for Respondent(s)	: Anand Kumar Mishra, G.A., Rajiv Kumar Mishra

A.F.R.

Court No. - 73

HON'BLE SANDEEP JAIN, J.

1. Heard Sri Brijesh Kumar Prajapati and Sri Bipin Kumar Pal, learned counsel for the petitioners.

2. The instant petition under Article 227 of the Constitution of India has been filed with a prayer to set aside the impugned order dated 15.07.2019 passed by the learned Sessions Judge, Auraiya, in Criminal Revision No. 48 of 2019 (Satendra @ Chunmun Vs. Jeetu Soni and another).

3. The factual matrix of the case, in brief, is that the complainant-petitioner, Jeetu Soni, lodged an F.I.R. on 18.03.2015 at 20:30 hours at Police Station Bidhuna, District Auraiya, which was registered as Case Crime No. 163 of 2015, under Section 307 I.P.C., against respondent nos. 2 Satendra @ Chunmun and 3 Narain. In the F.I.R., it was alleged that the complainant, along with his father and brothers, was returning home after closing his jewellery shop, then respondent nos. 2 and 3 came on a red-coloured Pulsar motorcycle and, with an intention to kill his brother Anil Soni, fired at him, causing firearm injury to him. The occurrence was allegedly committed on account of previous enmity.

4. The injured, Anil Soni, was medically examined on 18.03.2015, and a firearm injury was found on his person. The statements of the injured as

well as the complainant were recorded under Section 161 Cr.P.C., wherein they supported the prosecution version and specifically stated that the incident had been committed by respondent nos. 2 and 3. However, the Investigating Officer submitted a final report. Upon issuance of notice, the complainant filed a protest petition.

5. The learned Judicial Magistrate, Auraiya, vide order dated 10.01.2019, accepted the protest petition filed by the complainant-petitioner took cognizance under Section 190(1)(b) CrPC and summoned respondent nos. 2 and 3 to face trial for the offence punishable under Section 307 I.P.C. The said order was challenged by accused Satendra alias Chunmun by filing Criminal Revision No. 48 of 2019 (Satendra @ Chunmun Vs. Jeetu Soni and another). The learned Sessions Judge, Auraiya, vide impugned order dated 15.07.2019, allowed the revision, primarily on the ground that the learned Magistrate had not recorded a specific finding that, on the basis of the material available in the case diary, an offence under Section 307 I.P.C. was made out against the accused.

6. The revisional court was of the opinion that the learned Magistrate had not followed the procedure prescribed by law and, accordingly, remanded the matter to the learned Magistrate for fresh consideration in the light of the observations made in the revisional order. Aggrieved by the said order, the complainant-petitioner has preferred the instant petition under Article 227 of the Constitution of India.

7. Learned counsel for respondent nos. 2 and 3 is not present and no counter affidavit has also been filed on behalf of the respondents.

8. I have perused the material available on record.

9. The Apex Court in the case of ***Rakesh and Another vs. State of Uttar Pradesh and Another (2014) 13 SCC 133***, held as under:

"6. If we are to go back to trace the genesis of the views expressed by this Court in Gopal Vijay Verma [Gopal Vijay Verma v. Bhuneshwar Prasad Sinha, (1982) 3 SCC 510 : 1983 SCC (Cri) 110] , notice must be had of the decision of this Court in H.S. Bains v. State (UT of Chandigarh) [(1980) 4 SCC 631 : 1981 SCC (Cri) 93 : 1980 Cri LJ 1308] wherein it was held that after receipt of the police report under Section 173,

the Magistrate has three options: (H.S. Bains case [(1980) 4 SCC 631 : 1981 SCC (Cri) 93 : 1980 Cri LJ 1308] , SCC p. 635, para 6)

“6. ... (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) **he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report;** (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.”

The second and third options available to the Magistrate as laid down in H.S. Bains [(1980) 4 SCC 631 : 1981 SCC (Cri) 93 : 1980 Cri LJ 1308] have been referred to and relied upon in subsequent decisions of this Court to approve the action of the Magistrate in accepting the final report and at the same time in proceeding to treat either the police report or the initial complaint as the basis for further action/enquiry in the matter of the allegations levelled therein. Reference in this regard may be made to the decision of this Court in Gangadhar Janardan Mhatre v. State of Maharashtra [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] . The following view may be specifically noted: (SCC pp. 773-74, para 9)

“9. ... **The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also.** [See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306] (SCC p. 140, para 16).]”

(emphasis supplied)

10. The Apex Court again in the case of **Vishnu Kumar Tiwari vs. State of UP and Another (2019) 8 SCC 27**, held as under:-

“20. In *Gangadhar Janardan Mhatre v. State of Maharashtra* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , this Court reiterated that **the Magistrate can, faced with a final report, independently apply his mind to the facts emerging from investigation and take cognizance under Section 190(1)(b), and in this regard, is not bound to follow the procedure under Sections 200 and 202 of the Code for taking cognizance under Section 190(1)(b).** It was, however, open to the Magistrate to do so.

21. In regard to the filing of protest petition by the informant who filed the first information report, it is important to notice the following discussion by this Court: (*Gangadhar Janardan Mhatre case* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] , SCC pp. 772-74, paras 6 & 9)

“6. There is no provision in the Code to file a protest petition by the informant who lodged the first information report. But this has been the practice. Absence of a provision in the Code relating to filing of a protest petition has been considered. This Court in *Bhagwant Singh v. Commr. of Police* [*Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] stressed on the desirability of intimation being given to the informant when a report made under Section 173(2) is under consideration. The Court held as follows: (SCC p. 542, para 4)

‘4. ... There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.’

9. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and

issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See *India Carat (P) Ltd. v. State of Karnataka* (1989) 2 SCC 132 : 1989 SCC (Cri) 306]. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in *Bhagwant Singh* case [*Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in

the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard."

(emphasis supplied)

11. The Apex Court in the case of **Sonu Gupta vs. Deepak Gupta and Others (2015) 3 SCC 424 (By 3 Judges)**, held as under:-

"8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

9. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

(emphasis supplied)

12. The Apex Court again in the case of **State of Gujarat vs. Afroz**

Mohammed Hasanfatta (2019) 20 SCC 539, held as under:-

"39. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the court is not required to weigh the evidentiary value of the materials on record. The court must apply its mind to the allegations in the charge-sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The court is also not required to embark upon the possible defences. Likewise, "possible defences" need not be taken into consideration at the time of issuing process unless there is an ex facie defence such as a legal bar or if in law the accused is not liable."

13. From the above decisions of the Hon'ble Apex Court it is clear that, upon submission of a police report before the Magistrate, one of the courses open to the Magistrate is to take cognizance of the offence under Section 190(1)(b) of the Code and issue process, even where the police report concludes that no case is made out against the accused. While taking cognizance under Section 190(1)(b) of the Code, the Magistrate is not required to follow the procedure prescribed under Sections 200 and 202 of the Code. It has further been held that, at the stage of taking cognizance and issuing summons, the Magistrate is required to apply his judicial mind only for the purpose of determining whether a prima facie case is made out for proceeding against and summoning the accused persons. At this stage, the Magistrate is neither required to consider the defence version, materials, or submissions advanced on behalf of the accused nor to undertake a detailed evaluation of the merits of the materials or evidence available on record.

14. The injury report of the injured, Anil Soni, clearly discloses that he had sustained a firearm injury. Apart from the medical evidence, the statement of the injured Anil Soni was recorded under Section 161 Cr.P.C., wherein he stated that on 18.03.2015, after closing his jewellery shop situated in Sarafa Market, he was returning home along with his father and brothers Situ, Satyendra and Mukesh. When they reached near the vacant plot of Ashok Verma, he heard someone abusing him. On turning back, he saw the accused persons, namely, Narain and Chunmun,

on a red-coloured Pulsar motorcycle. Thereafter, Chunmun fired at him and attempted to snatch his bag, but, having failed in his attempt, fled from the spot. He further stated that the incident occurred at about 7:00 p.m. and he recognised the accused persons by their voices as well as in the light available at the spot from bulb and vehicles.

15. The injured further stated that about one to two months prior to the occurrence, the accused persons had assaulted his younger brother and, on account of the said previous enmity, they attempted to commit his murder. He stated that he had sustained a firearm injury on his left leg below the hip. He further stated that he had duly recognised the accused persons, namely, Narain and Chunmun, and that he, along with his relatives, attempted to apprehend them, but were unsuccessful.

16. The Investigating Officer also recorded the statement of the complainant-petitioner, Jeetu Soni, who corroborated the statement of the injured Anil Soni.

17. Thus, from the material available on record, it is apparent that there was sufficient material available in the case diary disclosing the commission of an offence punishable under Section 307 I.P.C. At the stage of summoning, the defence version of the accused is not required to be examined or adjudicated upon. The learned Magistrate, after considering the material available on record, including the injury report and the statements of the injured and the complainant recorded under Section 161 Cr.P.C., rightly declined to accept the final report and proceeded to summon the accused persons to face trial for the offence punishable under Section 307 I.P.C. in exercise of power vested under Section 190(1)(b) CrPC.

18. In the facts and circumstances of the case, this Court finds that the learned revisional court has erred in interfering with the order passed by the learned Magistrate whereby the accused persons were summoned to face trial for the offence punishable under Section 307 I.P.C. The order passed by the learned Magistrate does not suffer from any illegality or perversity warranting interference by the revisional court.

19. In view of the above, the impugned order dated 15.07.2019 passed by

the learned Sessions Judge, Auraiya, in Criminal Revision No. 48 of 2019, is hereby set aside. The order dated 10.01.2019 passed by the learned Judicial Magistrate, Auraiya, whereby respondent nos. 2 and 3 have been summoned to face trial for the offence punishable under Section 307 I.P.C., is hereby affirmed.

20. Accordingly, the instant petition under Article 227 of the Constitution of India stands ***allowed***.

(Sandeep Jain,J.)

September 1, 2026

Mayank