

ABC 2019 (II) 15 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA
 (Uday Umesh Lalit & Indu Malhotra, JJ.)
 Criminal Appeal No.614 of 2019
 (@ out of SLP No.(s).814/2019)
 (From Madhya Pradesh High Court)
 Decided on 8 April, 2019

RAMSWAROOP SONI **- Petitioner(s).**

Versus

STATE OF MADHYA PRADESH & ANR. **- Respondent(s).**

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 173(2) – Indian Penal Code, 1860 – Sections 326 & 294 – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 3(1) & 10 – cancellation report – filed by the police – Directions by the magistrate – to file charge-sheet – Held, Judicial discretion used by the Magistrate does not fall in either of the three categories available to the Magistrate for disposal of a Final report filed by the police – Direction of filing charge-sheet is wholly unsustainable – Order passed by the CJM set aside – the matter was remitted back for fresh consideration – Appeal allowed. (Para 4)

(B) Code of Criminal Procedure, 1973 – Section 173(2) – cancellation report – stating that no offence is made out against the accused – Courses open to Magistrate – (a) He may accept the report in which case the proceedings would stand closed – (b) He may not accept the report and may take cognizance in the matter on the basis of such final report – (c) If he is not satisfied by the investigation, he may direct further investigation in the matter. (Para 3)

Law of relief :- Magistrate has no jurisdiction to direct the police to file a charge-sheet in a Final report (FR) filed by the police.

Held:- The law is well-settled that in case a final report is filed under Section 173(2) Cr.P.C. stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate:

(a) He may accept the report which was filed by the police in which case the proceedings would stand closed.

(b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police. a

(c) If he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter. (Para-3)

The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three b aforesaid categories.

In the present matter, the magistrate has issued directions directing the police to file charge-sheet under Section 326 and 294 IPC and also the provision of Section 3(1) and 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Such a c direction is wholly unsustainable.

We, therefore, allow this appeal and set aside the order passed by the Chief Judicial Magistrate and remit the matter back to the file of CJM, Vidisha, M.P. for fresh consideration and to pass appropriate d order in accordance with law. (Para-4)

Counsel:- For Petitioner(s): Mr. Vikrant Singh, Mr. Yogesh Tiwari, Mr. Sanjay K. Agrawal, Advs.

For Respondent(s): Mr. Amit Kumar, Mr. Sachin Pahwa, Mr. Vijay Pal Singh, Mr. Harsh Parashar, Mr. Aman Pandey, Advs. e

JUDGMENT

UDAY UMESH LALIT, J.: - Leave granted. f

1. In connection with CrI. Case No.2/2009 filed against the appellant for the offences punishable under Section 326, 294 IPC and Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, a Final Report under Section 173 g (2) of Cr.P.C. was filed on 20.06.2009 submitting that no offence was found to have been committed by the appellant.

2. The matter was thereafter taken up by the Chief Judicial Magistrate, Vidisha, M.P and following order was passed on 22.06.2013. h

“A.D.P.O. is presesnt for the State.

The case is fixed for order on closure.

Final report was present by P.S. Ajak, Vidisha on 20.06.2009 under Section 326, 294 of IPC and Section 3(1) (10) of S.C/S.T. Act was

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a registered against the Ramswarup Soni on the report of complainant Kishor Kumar. Since, sufficient evidence was not found by P.S. during the course of investigation, therefore, closure report was presented. The statement of complainant Kishore Kumar was recorded regarding aforesaid closure report. The complainant has stated in his statement that Police has deliberately not presented b charge-sheet, nor has lodged a report in a proper manner. Complainant has expressed his objection in allowing closure report.

c Case diary was perused. Sufficient evidence is available on the record to submit charge-sheet against the accused Ramswaroop Soni, in this situation, while rejecting aforesaid closure report, the SHO of P.S. Ajak is hereby directed to submit charge-sheet against the accused in the Court.

d A copy of this order be attached in the case diary and case diary be returned back to the Police Station. Remaining documents be filed in a bundle.”

e 3. The law is well-settled that in case a final report is filed under Section 173(2) Cr.P.C. stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate:

(a) He may accept the report which was filed by the police in which case the proceedings would stand closed.

f (b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police.

(c) If he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

g 4. The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three aforesaid categories.

h In the present matter, the magistrate has issued directions directing the police to file charge-sheet under Section 326 and 294 IPC and also the provision of Section 3(1) and 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Such a direction is wholly unsustainable.

We, therefore, allow this appeal and set aside the order passed by the Chief Judicial Magistrate and remit the matter back to the file

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of CJM, Vidisha, M.P. for fresh consideration and to pass appropriate order in accordance with law.

The appeal stands allowed in aforesaid terms.

Pending applications, if any, shall also stand disposed of.

Result:- Appeal allowed.

**ABC 2019 (II) 18 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA**

(Sanjay Kishan Kaul & Hemant Gupta, JJ.)

Criminal Appeal No. 1306 of 2013

(From Madhya Pradesh High Court)

Decided on 4 April, 2019

LAKHANLAL @ LAKHAN SINGH

- Appellant(s).

Versus

STATE OF MADHYA PRADESH

- Respondent(s).

Law Covered :- (A) Code of Criminal Procedure, 1973 – Section 360 – Indian Penal Code, 1860 – Sections 325 & 34 – Probation of Offenders Act, 1958 – Sections 3, 4 & 6 – Benefit of probation – Incident occurred more than thirty years back – no material on record that the appellant was involved in any other offence during the period – Held, the High Court erred in law in not granting benefit of probation – Appellant released. (Para 12 & 17)

(B) Interpretation of Statute – CrPC vis-à-vis Probation of Offenders Act – Applicability – the provisions of the CrPC are not excluded by the Probation of Offenders Act – Both the provisions are applicable in respect of the offenders before the Court on probation of good conduct for a period of one year. (Para 12)

(C) Code of Criminal Procedure, 1973 – Section 360 – Releasing an offender on probation – if the offender is less than 21 years of age or a woman not convicted of an offence not punishable with death or imprisonment for life – such offender can be granted benefit of probation on satisfaction of the court on the basis of parameters contained in Section 360. (Para 8)

(D) Code of Criminal Procedure, 1973 – Section 360 – Releasing an offender on probation Offender more than 21 years of age