A

BHAGWANT SINGH

v,

B

COMMISSIONER OF POLICE AND ANR.

April 25, 1981

[P.N. BHAGWATI, AMARENDRA NATH SEN AND D.P. MADON, JJ.]

C

Criminal Procedure Code, 1973, ss. 154 and 173—First Information Report —The informant is entitled to hearing, when, on the basis of police report Magistrate prefers to drop the proceedings instead of taking cognizance of offence— Person injured or relative of the person who died in the incident complained of has no such right of hearing except a standing to appear before Magistrate the Magistrate, of his own discretion can issue notice to them for hearing.

D

Administrative Law—Natural justice—Difficulty in compliance with—Cannot be a ground to deny the opportunity of hearing.

In a criminal case where First Information Report is lodged and the police submits a report after completion of investigation initiated on the basis of such FIR that no offence appears to have been committed, on the question whether E in cases of this kind, the first informant or any relative of the deceased or any other aggrieved person is entitled to be heard at the time of consideration of the Report by the Magistrate and whether the Magistrate is bound to issue notice to any such person, the Court,

HELD : 1. When the report forwarded by the Officer-in-charge of a police station to the Magistrate under sub-section (2) (i) of section 173 comes up for F consideration by the Magistrate, one of two different situations may 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 do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of section 156 and require the police to make a further report. The report may on the other hand state G that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses : (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of section 156. Where, in either of these two situations, the H Magistrate decides to take cognizance of the offence and to issue process, the

informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceedings or takes the view that though there is sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose ; wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of section 154, sub-section (2) of section 157 and sub-section (2) (ii) of section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. The Court is 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 proceedings 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, and the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.[947G-H ; 948, 949A-C]

2. This Court cannot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. [949E-G]

Observation :

Even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.[949H, 950A]

A ORIGINAL JURISDICTION : Contempt Petition No. 4998 of 1983

IN

CRIMINAL WRIT PETITION No. 6607 of 1981

B Under Article 32 of the Constitution of India

Kapil Sibal, A.C. and *Ms. Madhu Singh* for the petitioner.

S.C. Maheshwari, G.D. Gupta and *R.N. Poddar* for the Respondents.

The Judgment of the Court was delivered by

C BHAGWATI, J. The short question that arises for consideration in this writ petition is whether in a case where First Information Report is lodged and after completion of investigation initiated on the basis of the First Information Report, the police submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceeding without D issuing notice to the first informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased. It is not necessary to state the facts giving rise to this writ petition, because so far as this writ petition is concerned, we have already directed by our order dated 28th November, 1983 that before any final order is passed on the report of the Central Bureau of E Investigation by the Chief Metropolitan Magistrate, the petitioner who is the father of the unfortunate Gurinder Kaur should be heard. Gurinder Kaur died as a result of burns received by her and allegedly she was burnt by her husband and his parents on account of failure to satisfy their demand for dowry. The circumstances in which Gurinder Kaur met with her unnatural F death were investigated by the Central Bureau of Investigation and a report was filed by the Central Bureau of Investigation in the court of the Chief Metropolitan Magistrate on 11th August, 1982 stating that in their opinion in respect of the unnatural death of Gurinder Kaur no offence appeared to have been committed. The petitioner was however not aware that such a report had been G submitted by the Central Bureau of Investigation and he, therefore, brought an application for initiating proceedings for contempt against the Central Bureau of Investigation on the ground that the Central Bureau of Investigation had not completed their investigation and submitted their report within the period stipulated by the Court by its earlier order dated 6th May, 1983. It was in H reply to this application for initiation of contempt proceedings that

the Central Bureau of Investigation intimated that they had already filed their report in the Court of the Chief Metropolitan Magistrate on 11th August, 1982 and the report was pending consideration by the Chief Metropolitan Magistrate. When this fact was brought to our notice we immediately passed an order dated 28th November, 1983 directing that the petitioner should be heard before any final order was passed on the report. There was no objection on the part of the respondents to the making of this order, but since the question whether in cases of this kind, the first informant or any relative of the deceased or any other aggrieved person is entitled to be heard at the time of consideration of the report by the Magistrate and whether the Magistrate is bound to issue notice to any such person, is a question of general importance which is likely to arise frequently in criminal proceedings, we thought that it would be desirable to finally settle this question so as to afford guidance to the courts of magistrates all over the country and we accordingly proceeded to hear the arguments on both sides in regard to this question.

A B C D

It is necessary to refer to a few provisions of the Code of Criminal procedure, 1973 in order to arrive at a proper determination of this question. Chapter XII of the Code of Criminal Procedure, 1973 deals with information to the police and their powers to investigate. Sub-section (1) of Section 154 provides that every information relating to the commission of a congizable offence, if given orally to an officer-in-charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it and sub-section (2) of that section requires that a copy of such information shall be given forthwith, free of cost, to the informant. Section 156 sub-section (1) vests in the officer-in-charge of a police station the power to investigate any cognizable case without the order of a magistrate and sub-section (3) of that section authorises the magistrate empowered under Section 190 to order an investigation as mentioned in sub-section (1) of that section. Section 157 sub-section (1) lays down that if, from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence

E F G H

upon a police report and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. But there are of the First Information Report lodged by him. No sooner he lodges the First Information Report, a copy of it has to be supplied to him, free of cost, under sub-section (2) of Section 154. If, two provisos to this sub-section. Proviso (b) enacts that if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case, but in such a case, sub-section (2) of Section 157 requires that the officer shall forthwith notify to the informant the fact that he will not investigate the case or cause it to be investigated. What the officer in charge of a police station is required to do on completion of the investigation is set out in section 173. Sub-section (2)(i) of Section 173 provides that as soon as investigation is completed, the officer in charge of a police station shall forward to the magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government setting out various particulars including whether, in the opinion of the officer, as offence appears to have been committed and if so, by whom. Sub-section (2)(ii) of Section 173 states that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. Section 190 sub-section (1) then proceeds to enact that any magistrate of the first class and any magistrate of the second class specially empowered in this behalf under sub-section (2) may take cognizance of any offence : (a) upon receiving a complaint of facts which constitute such offence or (b) upon a police report of such facts or (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. We are concerned in this case only with clause (b), because the question we are examining here is whether the magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased when he is considering the police report submitted under section 173 sub-section (2).

It will be seen from the provisions to which we have referred in the preceding paragraph that when an informant lodges the First Information Report with the officer-in-charge of a police

station, he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer in charge of the police station on the basis of the First Information Report lodged by him. on sooner he lodges the First Information Report, a copy of it has to be supplied him, free of cost, under sub-section (2) of Section 154. if. notwithstanding the First Information Report, the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case because it to be investigated. Then again, the officer in charge of a police station is obligated under sub-section (2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer in charge of a police station on the First Information Report is required to be communicated and the report forwarded to the Magistrate under sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the First Infomation Report must know what is the result of the investigation initiated on the basis of the First Information Report. The informant having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.

Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may 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 do one of three things : (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and

drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. 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. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant connot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We connot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report

A to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or reletives the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.

B

This is our view in regard to the question whlch has arisen for consideration before us. Since the question is one of general importance, we would direct that copies of this judgment shall be sent to the High Courts in all the States so that the High Courts may in their turn circulate this judgment amongst the Magistrates

C within their respective jurisdictions.

D M.L.A.