

MHPU040820772024



SCC No. 73377/2024

Satyaki Savarkar Vs. Rahul Gandhi

Order Below Exh. 87

1. The complainant filed this application to direct the Vishrambag Police Station authorities to submit information concerning to the report from You Tube and direction to the accused not to delete the alleged defamatory video from the You Tube.

2. Complainant stated that, the Vishrambag Police Station had filed a report under section 202 of the Cr.PC. dated 27.05.2024 vide exh. 15. The police authority has stated in the report that, they have called information from the You Tube regarding the IP address, You Tube profile and e-mail ID and other necessary details concerning the You Tube channel authored and operated by the accused. The said information of the You Tube is awaited at the time of submission of the report vide section 202 of the Cr.PC. The police authority has also submitted that, after receipt of the report that would be filed on the Court. The information will have additional evidentiary value in establishing the guilt of the accused. Therefore, the complainant prayed to direct the police station to file report/information sought by You Tube channel and provide its copy to complainant. No prejudice will be caused to the accused if report is called. The complainant further prayed to direct the accused not to delete the alleged defamatory video uploaded by him. Lastly, he prayed to allow the application.

3. The accused replied at Exh. 87 and strongly objected to the application. Accused stated that, the Hon'ble Supreme Court in State of Bihar Vs. J.A.C. Saldanha, (1980) 1 SCC 554, 1 has held that in the absence of statutory authority a party cannot invoke extraordinary procedures or seek reliefs not contemplated by law.

4. The complainant has stated in his say on the cancellation of the show cause notice application that, the reasons given by the police regarding the information received from You Tube are irrelevant, as the complainant has also filed newspaper, clippings which according to him, suffice for the purpose. The complainant further states that, the police have verified him along with the witnesses and their affidavits; hence, there is allegedly nothing further left for the police to investigate, and the remaining exercise is merely a formality. Now, complainant cannot say that, the technical report from police authorities would serve as conclusive evidence against the accused. Complainant states in his say that there is nothing left for the investigation. No evidence was revealed or discovered by the I.O. during the investigation. Accused further submits that, the section 202 of the Cr.P.C. applies in private complaints (when a complainant directly approaches Magistrate under section 200 of the Cr.P.C). The Magistrate may enquire himself or direct investigation by police or any other person "for the purpose of deciding whether or not there is sufficient ground for proceeding". This is only a limited investigation for assisting the Magistrate in deciding whether process should be issued. It is not the same as police investigation under chapter XII that culminates in a final report under section 173(2) of the Cr.P.C. Section 173(8) of the Cr.P.C. does not apply to section 202 of the

Cr.P.C. proceedings, because there is no "police report" under section 173(2) of the Cr.P.C. in a private complaint. The said observation has been made in *Devarpalli Lakshminarayana Reddy v. Vs. Narayana Reddy* (1976) 3 SCC 252. The investigation under section 202 of the Cr.P.C is only for the limited purpose and it is different from investigation under chapter XII. The said observation has been made in *Kamalapati Trivedi Vs. State of West Bengal* AIR 1979 SC 777. A Magistrate cannot order police to submit a charge-sheet in a private complaint. The report under section 202 of the Cr.P.C. is only informative, not a report under section 173(2) of the Cr.P.C. Supplementary charge-sheet under section 173(8) of the Cr.P.C. arises only when police has already filed a report under section 173(2) of the Cr.P.C. That situation does not exist in an enquiry under section 202 of the Cr.P.C. Section 173(8) of the Cr.P.C. is not applicable to section 202 of the Cr.P.C. proceedings in private complaints. No supplementary report under section 173(8) of the Cr.P.C can be called in this private complaint. The complainant must prove his case by leading evidence. The Magistrate applied his mind and taken cognizance based on the report filed under section 202 of the Cr.P.C. Now the stage of "enquiry" ends. After cognizance is taken the role of section 202 of the Cr.P.C. enquiry ends. The Magistrate cannot keep on calling fresh reports repeatedly to improve complainant's case. Section 202 of the Cr.P.C enquiry is limited; once magistrate decides to proceed he cannot revert back to section 202 of the Cr.P.C. stage. The said observation has been made in *Rosy Vs. State of Kerala* (2000)2 SCC 230. Power under section 202 of the Cr.P.C. is only for preliminary satisfaction before process. It does not continue after cognizance. There is no concept for further report exists in section 202 of the Cr.P.C. report. Now, matter is for evidence. The role of I.O. in the enquiry of section 202 of the

Cr.PC. comes to end in after cognizance. The issuance of process is a serious matter and cannot be resorted to mechanically or in a routine matter. The said observation has been made in *Pepsi Foods Ltd. Vs. Special Judicial Magistrate*, (1998) 5 SCC 749; *Sunil Bharti Mittal Vs. CBI*, (2015) 4 SCC 609. In case diary IO has not mentioned about the report from You Tube was awaited. The Kerala High Court held in *Francis Savio Vs. State of Kerala* (1998 Cr LJ 4735) that after cognizance is taken in a private complaint and the plea of the accused is recorded, the Magistrate cannot call for a police report. The Allahabad High Court observed in *Badri Prasad and Ors. Vs. State of UP and Anr.* (2021) that once cognizance is taken by the Magistrate the police report cannot be called for again in a private complaint case. The predecessor of this Court has not observed in the order that any part of the investigation is still in progress or police required time to file further investigation report or granted any such permission. In *Abhinav Jha Vs. Dinesh Mishra*, AIR 1968 SC 1175 the Hon'ble Supreme Court held that a Magistrate cannot compel the police to file a charge sheet or further investigation report at the only instance of the complainant, particularly in a private complaint case. Accused relied on *Manoharlala Sharma Vs. Principal Secretary*, (2014) 2 SCC 532. It is submitted that this is a criminal proceeding under the IPC, and not a civil suit, and this Hon'ble Court has no jurisdiction to restrain or stay the personal liberty of the accused. Lastly he prayed to reject the application.

5. Heard both the Ld. Advocates of the parties. Perused the record and citations filed by the accused. It is seen that after filing of the complaint, verification statement of the complainant and two

witness was recorded. Thereafter, Court called a report under Sec.202 of Cr.PC. Thereafter, report is filed on record. After perusing the report and record, Ld. predecessor of this Court passed issue process order against the accused. In the order nothing was stated about the awaiting of the report under Sec.202 of Cr.PC. The report is considered only for finding whether there is sufficient grounds for proceeding against the accused. After considering the report the Court has issued process against the accused. The complainant has stated in his say at Exh.13 that nothing further left for the police to investigate. The complainant further stated in his say that reasons given by the police regarding information received from You Tube are irrelevant as the complainant has filed news paper, clippings which according to him, suffice for the purpose. No new evidence was revealed or discovered by the IO during the course of investigation. The report is filed only for assisting the Magistrate in deciding whether process should be issued. After submission of the report the enquiry ends. Thereafter Magistrate has to either dismiss the complaint under Sec.203 of the Cr.PC or to issue process against the accused. In this case the Magistrate has issued process against the accused after considering the report. A fresh report cannot be called under Sec.202 of Cr.PC after issuance of process. Now matter is for evidence of the complainant. At this stage, this Court cannot go back to pass any order under Sec.202 of Cr.PC. Now complainant has to lead his evidence and prove his case behind reasonable doubt. He cannot take the benefit of the Court order to collect the evidence against the accused. In private complaint police report cannot be called. After recording the plea of the accused. The citations relied by the accused applicable to this case.

6. The accused cannot be restrained from deleting the video. No personal liberty of the accused can be restrained. The complainant has filed the CD of the alleged defamatory video. That can be relied by the Court during trial. The complainant has filed on record the details about the alleged defamatory video. The citations filed by the accused are applicable to his contentions. Therefore, this Court finds that there is no merits in the application of the complainant and same is liable to be dismissed. Hence, I pass following order.

ORDER

Application at Exh. 87 is hereby rejected.

(Pronounced in Open Court)

Pune.

Date : 22/09/2025

(Amol Shriram Shinde)

Judicial Magistrate First Class,
Court No.9, Pune.