

Investigation and Trials of Cross Cases

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Abstract: Criminal acts are injurious and dangerous for the existence of the civil society. Any criminal wrong, though, may be committed against an individual but it affects the whole society. If we take the theory of 'social contract' the individuals have surrendered their rights and delegated powers to state government with the condition that state may ensure them security and peace. Any act which disturb the order and peace of the society make the citizens apprehensive to their security and peace and make the existence and authority of the state questionable. Therefore, prevention and detection of crime is the prime duty of the state (Government). To carry out this prime duty State has constituted Police Department and imposed duty upon them to prevent, detect, investigate the crime and to produce the culprits before the courts to punish. Section 154, Cr.P.C, made it mandatory to officer in charge of a police station to reduce into writing information, received in the police station house, related to the commission of a cognizable offence.

Keywords: Cross Cases, Investigation, Trials

I. INTRODUCTION

Police has no option but to reduce into writing information received in the Police station related to a cognizable offence. Refusal for the same is a grave dereliction of his official duties. But many a time it happens that more parties may involve in one occurrence and their version may different to each other and there may be allegations and counter allegations making separate case against each party. Thus it results in registration of two FIR of the same incident or an FIR and complaint cases. In such as situation it became challenging to ascertain the truth. Today it a general tendency among public or we can say it become a fashion that in every other case there will be another cross version of the same incident either be in form of a separate FIR or a separate Complaint Case. Though some times the cross version represents the truth but in most cases the cross version are found to be false, they have been raised only to impede speedy trial or to defeat prosecution and secure acquittal by making the trial complicated and confusing.

II. DEFINING POLICE CASE, COMPLAINT CASE AND CROSS CASE

The term Police Case and Cross Case is however not mentioned under the Code of Criminal procedure. Section 2 (r) of the Code defines a police report which means a report forwarded by a police officer to a Magistrate under Sub Section (2) of Section 173. To understand what a police case means we need to go through the definition provided by the code for the term "Complaint". Section 2 (d) of the Code define Complaint as an allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether Known or un Known, Has Committed, has committed an offence, but does not include a Police Report. The section further explains that a report made by a police officer in case which he discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and police officer by whom such report is made shall be deemed to be the Complainant.

Thus accordingly a Police case is a case, instituted by Police on behalf of the complainant through filing a police Report (Challan or Charge Sheet) under Section 173 (2). And the two different versions of same incident resulting in to two criminal cases either on police report or otherwise than of police report are known as cross cases or counter cases.

III. POLICE REPORT AND CROSS CASE

When a case and a Counter case on conflicting information given by each of opposite party are registered by the police, separate reports under section 173, Cr.P.C. may be submitted by the police. In *Augustine, 1982 Cr.L.J. 1557, (FB) (K); (Thami., 1965 Ker.L.J 697, Overruled)* it was observed that investigating officer is expected to file charge-sheet only for the case where offence appears to have been committed, and having sufficient evidence to send the case for trial. It is open to the aggrieved party to prefer a private complaint for being tried as a counter case. Under the provisions of the code of the Criminal Procedure it is contemplated that investigating officer should himself assess the evidence collected during the investigation and he must form his Opinion regarding the complicity of a particular person in respect of the offence alleged. Police officer is empowered to release the accused on execution of bond with or without sureties and submit a final report under Section 169, Cr.PC., when the evidence is deficient, as well as to forward the accused, in custody, under section 170, Cr.P.C., to the Magistrate, when the evidence is sufficient and the accused is failed to furnish security in a bailable offence. Neither the Court nor the Complainant can challenge that power to force a police officer to submitted charge-sheet. In a rival and conflicting version of the occurrence and injuries have been caused on both sides, the investigating officer can form his opinion as to which of the parties has committed of what offence and to decide whether both or any one or more to be charge-sheeted to face the trial and against whom final report under Section 169, Cr.PC., is to be forwarded. Party aggrieved from such action of non-filing charge-sheet may file a Private complaint under Section 190,

Cr.PC. to the Magistrate or a Protest Petition requesting Magistrate to reject the final report and to take the cognizance of offence alleged and issue process. Such Complaint or Protest Petition will form counter case to the charge sheet filed by the police and may be tried as such. In *Union Public Service Commission v S. Pappiah*,¹ the Supreme Court of India observed that while dealing with a situation arises out of the report of the police under section 173 (2)(i), stating that no offence is made out Magistrate can adopt one of the three courses i.e (1) he may accept the report and drop the proceedings, (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, cognizance of the offence and issue process, (3) he may direct further investigation to be made by the police under sub-section (3) of section 156, Cr.P.C. Dealing with the first option of dropping the proceedings the Supreme court further observed. 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 Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report so that he can make his Submission to persuade the Magistrate to cognizance of the offence and to issue process.

IV. TRIAL OF CROSS CASES

In *Kewal Krishan v Suraj Bhan and another.*,² The Supreme Court of India ruled that procedure for trial of counter Cases - One complaint case and another police case (on police report) arose out of the same transaction there may be a risk of two courts coming to conflicting findings. To obviate such risk, it is ordinarily desirable that the two cases should be tried separately but by the same Court. Cross cases should be heard by the same Judge in quick succession and judgment should not be pronounced until both cases are heard.³ Each case has to be decided on the basis of evidence recorded in it and the evidence recorded in the one case cannot be basis for judgment of the other case.⁴ Though both the cases were tried as case and the counter case, it was not open to the Magistrate to make reference to the case diary in another case. the material in one case cannot be referred to and relied upon in another. Magistrate accepted the report of police and ordered cancellation of FIR Magistrate may take cognizance of the offence and issue process in a complaint case on similar facts and allegations. Principles of Res Judicata do not apply to criminal proceedings. Explanation to section 300, Cr.PC. The dismissal of a complaint, or the discharge of the accused, is not acquittal for the purpose of this Section makes the Position very clear on this point. In *M.P V Mishrilal*,⁵ in relation the

trial of Cross Cases the Hon'ble Supreme court has held as that it would have been just fair and proper to decide both the cases together by the same Court in View of the guidelines devised by this Court in *Nthilal's* case. The Cross – cases should be tried by the same court irrespective of the nature of offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if the cross cases are allowed to be tried by two separate courts there is likelihood of conflicting judgments. In *Nathi Lal & ors v State of UP*,⁶ the procedure to be followed in such a situation has been succinctly describe by the Supreme Court that the fair procedure to adopt in a matter like the present where there are cross cases is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be Influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.

V. CONCLUSION

This is to be kept in mind that there is no provision in Cr P C or in the Evidence Act dealing exclusively with trial of cross cases. There may be two FIR of the same incident with different versions but there can be no 2nd FIR and consequently there can be no fresh investigation on receipt of every subsequent investigation in respect of the same cognizable offence⁷. The practical reasons for adopting a procedure that such cross cases shall be tried by the same court can be summarized as thus that:⁸

- (1) It staves off the danger to an accused being convicted before his whole case is before the court.
- (2) It deters conflicting judgments being delivered upon similar facts; and
- (3) In reality the case and the Counter case are, to all intents and purposes, different or conflicting versions of one incident.

¹ 1997 Cr.L.J 4636

² 1980 Cr.L.J. 1271

³ AIR 1954 Mad 442

⁴ *Naresh Rai v State of Bihar*, 1994 Cr.L.J. 978

⁵ (2003) 9 SCC 426

⁶ (1990) Supp SCC 145

⁷ *T.T. Antont v State of Kerala*, 2001 (3) Crimes 276 SC

⁸ *Sudhir v State of MP*, 2001 Cri L.J 1072