

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).1275/2006

(From the judgement and order dated 24/02/2006 in SBCRLMP No. 62/2006
& SBCRLMPNo. 63/2006 & SBCRLMP No. 1510/2006 of The HIGH COURT OF
RAJASTHAN BENCH AT JAIPUR)

SURINDER NATH KAPOOR & ANR.

Petitioner(s)

VERSUS

STATE OF RAJASTHAN & ORS.

Respondent(s)

(With appln(s) for urging addl. grounds and office report))

Date: 12/03/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s)

Mr. Alok Kr. Sengupta, Sr. adv.

Mr. B.D. Sharma,Adv.

For Respondent(s)

Mr. Pallav Sishodia, Adv.

Mr. Hemant Sharma, Adv.

Mr. D.N. Mishra,Adv.

Mr. Naveen Kr. Singh, Adv.

Mr. Mukul Sood, Adv.

Mr. Shashwat Gupta, Adv.

Mr. Aruneshwar Gupta,AAG for State

UPON hearing counsel the Court made the following

O R D E R

We have heard counsel for the parties.

The grievance of the petitioners is that after a final report was submitted by the police, the Magistrate has ordered further investigation without going into the factual controversies. Section 173(8) of the Code of Criminal Procedure is quite clearly contemplated that it is not mandatory for the Magistrate to accept the report of the police. He may ask for further investigation if not satisfied with the investigation already carried out. It is submitted on behalf of the petitioners that further investigation is now being carried out under the orders of the Home Minister for the State by a different investigating agency. We find no illegality if that is being done. Ultimately, it will be for the Magistrate to consider the final report submitted by the investigating agency and pass further orders.

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- 2 -

It is also well settled that where the same offence is the subject matter of a police report as also a complaint case, the Magistrate must first dispose of the case on police report and only if he decided not to take cognizance on the police report, he shall proceed to examine the complainant applying the procedure under Section 200 Cr.P.C. and examine the witnesses. It is apparent from the facts of this case that so far the final report submitted by the police is concerned, the same has neither been accepted nor rejected since further investigation has been ordered. It is only after the

final orders are passed in the police case that the Magistrate can proceed to deal with the complaint case having regard to the provisions of Section 210 Cr.P.C. In the

instant case, if the Magistrate has asked the complainant to produce his evidence in the complaint case without disposing of the police case that may not be proper. It will be appropriate for him to first deal with the police case and only thereafter if occasion arises, the Magistrate may proceed to consider the complaint filed by the complainant.

With these directions, the special leave petition is disposed of.

(Ajay Kr. Jain)
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Court Master
t Master

(Vij

Cour