

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. Rev.P. No. 965/2003

%

Decided on: 27th July, 2010

R.C. Sharma

..... Petitioner

Through: Mr. Ajay Burman & Mr. Rajesh Samanotra,
Advs.

Versus

Central Bureau of Investigation

..... Respondent

Through: Vikas Pahwa, Additional Standing Counsel

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

A.K. PATHAK, J. (ORAL)

1. Petitioner was facing trial before the learned Special Judge, CBI for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short hereinafter referred to as "P.C. Act") arising out of RC No. 61(A)/03-DLI dated 28th October, 1993. The said case was registered by the CBI on the basis of complaint of one Shri Ashok Arora to the effect that the petitioner had demanded a sum of Rs.1,000/- from him towards illegal gratification for not demolishing his property. Trap was laid and petitioner was apprehended.

2. During the pendency of trial of aforesaid case Sh. Ashok Arora on 3rd March, 1994 made a complaint with the CBI that the petitioner along with his co-accused in this case had approached him and offered a sum of Rs.7,000/- as bribe in case he did not support the prosecution case and gave in writing that the petitioner had not demanded any bribe from him. On the basis of this complaint present RC No. 15(A)/94/ACB/DLI under Section 12 of the P.C. Act was registered by the CBI. After investigation, charge-sheet in the trial court has been filed against the petitioner and his co-accused, for the offences punishable under Section 120-B IPC read with Sections 193/201/214 IPC read with Section 511 IPC. Petitioner and his co-accused were summoned by the learned Metropolitan Magistrate for having committed the aforesaid offences.

3. On 17th May, 2001 learned Metropolitan Magistrate framed charges under Section 120B IPC read with Sections 193/201/214 IPC read with Section 511 IPC against the petitioner and his co-accused. Subsequently, on 29th October, 2001 CBI filed an application before the learned Metropolitan Magistrate praying therein that the charges framed be altered to Section 214 IPC read with Section 34 IPC. It may be noted that petitioner had also filed an application seeking his discharge. Both the applications have been disposed of by the impugned order dated 8th October, 2003. Application of the CBI for alteration of charges to Section 214 IPC read with Section 34 IPC has been allowed and pursuant thereof charge under Section 214 IPC had

been framed on 12th November, 2003. That is how petitioner is before this Court by this Revision Petition under Section 397 Cr.P.C.

4. Main contention of the learned counsel for the petitioner is that right from the beginning CBI was conscious of the fact that the offence under Section 12 of the P.C. Act was not made out on the basis of allegations contained in the complaint of Shri Ashok Arora and at best the offence under Section 214 IPC, which is a non-cognizable offence, was disclosed. Application filed by the CBI to alter the charges to Section 214 IPC supports this contention. In spite of this, CBI chose to register the FIR under Section 12 of the P.C. Act to obviate the proceedings as prescribed under Section 155 Cr.P.C. with regard to the investigation in a case disclosing non cognizable offence. Even after investigation it filed the charge-sheet under Sections 120B IPC read with Sections 193/201/214 IPC read with Section 511 IPC. He has further contended that for proceeding with the investigation of a non-cognizable offence the procedure as prescribed under Section 155(1) Cr.P.C. had to be followed which provides that whenever an information is received by an officer incharge of the police station regarding commission of a non-cognizable offence within the limit of his police station, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State may prescribe in this behalf and refer the informant to the Magistrate. Subsection 2 of Section 155 Cr.P.C. categorically debars a police officer to investigate a non-cognizable offence, without obtaining the order of a Magistrate competent to try or commit such case for

trial. This provision is mandatory in nature and any investigation conducted in violation thereof would be illegal. In nutshell his contention is that the offence disclosed, as per the complaint, was a non-cognizable offence and since the procedure as prescribed under Section 155(1) Cr.P.C. was not followed, the whole investigation was illegal and the FIR was liable to be quashed. Reliance has been placed on *Mam Chand and Ors. vs. State*, reported in 1999 (1) JCC (Delhi) 218, *Surinder Kamar vs. State*, reported in 64(1996) DLT 620 and *State of Haryana and Ors vs. Bhajan Lal and Ors.*, reported in 1992 Supreme Court Cases (Crl.) 426.

5. As against this, learned counsel for the respondent has contended that initially case was registered for a cognizable offence, therefore, procedure as prescribed under Section 155 Cr.P.C. was not to be followed. In any case, at the most, this can be called a procedural irregularity not sufficient enough to quash the proceeding and discharge the petitioner.

6. I have considered the rival contentions of both the parties and have perused the record. In the facts of the present case it is clear that the offence disclosed as per the complaint was with reference to a non-cognizable offence. This is fortified from the fact that during the pendency of the trial CBI itself filed an application for altering the charge to Section 214 IPC alone, which is a non-cognizable offence. In *Bhajan Lal's case (supra)* it has been held that where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

without an order of a Magistrate as contemplated under Section 155(1) Cr.P.C. In Mam Chand's case (supra) FIR was registered under Sections 324/34 IPC in spite of the fact that injured had sustained only abrasions on his right hand, left knee and two linear scratches (superficial) on the left thigh, which even did not require stitches. Injuries were opined by the doctor as 'simple' in nature. On these facts, Magistrate framed charge under Sections 323/34 IPC against the accused. In the above factual matrix, learned Single Judge of this Court held that the investigations commenced by the police for a non-cognizable offence was without jurisdiction and that the Magistrate could not have taken cognizance upon the submission made in the challan filed by the police after investigation and framed the charge under Sections 323/34 IPC. Relevant it would be to refer to paras 9 and 10 of the judgment:-

"9. As noted above, according to the opinion of the Doctor on the MLC, the injuries found on the body of the complainant were simple in nature, which clearly shows that the alleged injuries inflicted by the petitioners were neither sufficient in the ordinary course of nature to cause death nor were likely to cause death and, therefore, a case under Section 324 IPC could not be made out against the petitioners. Thus, at best it was a case only for an offence under Section 323 read with Section 34 IPC for which the petitioners have been charged. Admittedly, no order as contemplated under Section 155(2) of the Code was obtained by the police before undertaking investigation in the case. In Rupan Deol Bajaj vs. Kanwar Pal Singh Gill, 1996 Cr.L.J. 381 and Keshav Lal Thakur's case (supra), the Supreme Court observed that where the allegations in the FIR do not constitute a cognizable offence but constitute a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code and such investigations, if carried

out, would not be validated even by an order of the Magistrate obtained subsequently.

10. I do not find much substance in the contention urged on behalf of the State that since the FIR was registered under Section 324, I.P.C. and the said offence being cognizable, there was no bar in the police investigating in the case. Once, on the circumstances prevalent at the time of registration of the case, it is evident that a non-cognizable offence is not made out, permitting the police to first register a cognizable offence, carry out investigations and ultimately if it is found that a cognizable offence was not made out, would be giving a long rope to the police. The nature of the offence is to be gathered from the facts available at the relevant time and if there is a doubt as to whether a cognizable offence is made out or not, the police can report it to the Magistrate concerned and obtain appropriate orders. On the one hand, no prejudice will be caused to the prosecution by adopting a safer course and on the other it will eliminate the possibility of misuse of power by the police. This approach will also be in consonance with the spirit and intention of Section 155 of the Code.”

7. Similar view has been taken in Surinder Kumar’s case (supra). In this case also FIR was registered under Sections 308/323/34 IPC and after completion of investigation accused was sent up to face trial for having committed the offences under the aforesaid provisions. Learned Additional Sessions Judge framed charges against the accused for their having committed the offences punishable under Sections 308/34 IPC and 323/34 IPC. Accused challenged this order. A learned Single Judge of this Court came to the conclusion that offence punishable under Sections 308/34 IPC was not made out against the accused in the facts of the said case and accused were discharged and the proceedings under Section 323 IPC were quashed for non-compliance of Section 155 of the Cr.P.C. In para 9 it was held as under:-

“Coming to the second question as to whether the petitioners could be tried for an offence punishable under Section 323/34 Indian Penal Code, I find that the offence under Section 323 is a non-cognizable offence and investigation by the Police into the case involving non-cognizable offence is not permissible without permission of the Magistrate. Admittedly, no permission has been taken by the Police to investigate into the offence punishable under Section 323 Indian Penal Code. It is contended by Mr. Behl that as the FIR related to an offence not only under Section 323 Indian Penal Code but also under Section 308, there was no bar in the police investigating the case. In my opinion, the argument has no basis. When the case is actually registered against an accused in respect of both cognizable and non-cognizable offences and ultimately it is found that the cognizable offence is not made out, it may mean giving long hand to the police in first registering cases for cognizable offences which ultimately may not fall within the definition of such a case. I am, therefore, of the view that the police having not taken permission of the Magistrate under Section 155(2) of the Code of Criminal Procedure, the proceedings against the petitioners under Section 323 cannot be continued.”

8. Facts of this case clearly demonstrate that as per the complaint, only the commission of a non-cognizable offence was disclosed and for this reason alone charge under Sections 214/34 IPC, which is a non-cognizable offence, has been framed. Procedure with regard to the investigation of a non-cognizable offence is prescribed under Section 155(1) of the Cr.P.C. which provides that whenever an information is given to an officer-in-charge of a police station of the commission of a non-cognizable offence, he shall enter or cause to be entered the substance of such information in a book to be kept by such officer in such form as the State may prescribe in this behalf and refer the informant to the Magistrate. Sub section 2 of the Section 155 creates

a legal bar for the police to investigate into a non-cognizable offence without obtaining an order from a competent Magistrate. This provision, in my view, is a mandatory provision and any violation thereof will be sufficient to invalidate the investigation so carried out in contravention to the said provision. Accordingly, I am of the view that the investigation carried out without permission of the Magistrate, in this case, would be hit by Sub section 2 of Section 155 of the Cr.P.C. and the proceedings against the petitioner under Section 214/34 IPC cannot be continued.

10. For the foregoing reasons, I quash the proceedings pending against the petitioner in so far as it relates to the offence punishable under Sections 214/34 IPC, thus, resulting in discharge of the petitioner.

11. Petition stands disposed of in the above terms.

A.K. PATHAK, J.

July 27, 2010

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