

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.2894 of 2015

%27.04.2015

Between:

Guguloth Jagan. Petitioner

AND

The State of Telangana,

Rep. by Public Prosecutor,

and another. Respondents

! Counsel for Petitioner : Sri K.Venu Madhav

^ Counsel for Respondent No.1 : Addl. Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. 2013 MLJ (CrI) 629
2. (1996) 11 SCC 557

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2894 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A.1 seeks to quash the proceedings in C.C.No.94 of 2015 on the file of Judicial Magistrate of First Class, Manthani at Karimnagar.

2) On the report given by the *defacto* complainant, the Police of Koyyur P.S registered a case in Crime No.8/2015 and after investigation laid charge-sheet against A.1 to A.3 for the offences under Sec.290 and 324 r/w 34 IPC. The charge-sheet allegations are

that on 17.02.2015 at about 7:30 p.m, the complainant who is a resident of Ansanpalli Thanda and an auto driver found that there was no current in his ward. There are two wards in his Thanda and each having one transformer. Three months back transformer in his ward was burnt and ever since current was supplied from the transformer of the other ward. Due to heavy load, sometimes fuse of the transformer goes off and the people of complainant's ward would go and fix a new fuse. Hence on finding that there was no current in his ward, the complainant went to the transformer located in Ward No.8 to check whether fuse wire was burnt. While he was checking the transformer, A.1 to A.3 came there and objected him for drawing current from their transformer and asked him to get the transformer in his ward repaired and abused him in filthy language and threw him on the ground and bet him with hands and fists and also dragged him on the C.C road and thereby skin was peeled and he suffered bleeding injuries.

3) Learned counsel for petitioner/A.1 sought for quashment on the main plank of argument that even if the charge-sheet allegations are uncontroverted, the prosecution is not maintainable for the reason that even according to the I.O, the injuries suffered by the complainant are simple in nature and admittedly in this case the accused have not used any weapon or instrument for causing injuries to the complainant and they only allegedly bet him with hands and legs and dragged him on the road and that being so, an offence under Sec.323 IPC may at best be maintainable but not Sec.324 IPC and since the offences under Sec.290 and 323 IPC are non-cognizable offences, the police cannot investigate those offences without permission of the Magistrate under Sec.155(2) of Cr.P.C. Since the investigation completed and charge-sheet was laid without such permission, the entire proceedings are vitiated and thereby the accused deserve quashing of proceedings.

4) Learned Additional Public Prosecutor opposed the petition on the submission that originally the case was registered under Sec.290 & 324 IPC i.e, for cognizable offence and investigation was conducted

and charge-sheet was laid for the same offences and in such an event, even if at later stage it is found that the offence committed was only a non-cognizable offence, by that count, the proceedings will not be vitiated.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** As can be seen from the charge-sheet, on receiving the report from the complainant, the police registered a case in Crime No.8/2015 under Sec.290 and 324 IPC. Sec.290 is admittedly a non-cognizable offence but Sec.324 is a cognizable offence. Under Sec.155(4) Cr.P.C, where a case relates to two or more offences of which atleast one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are cognizable. Perhaps going by this provision, the Investigating Officer thought that since one of the offences in FIR is a cognizable offence, he can proceed with the investigation without the necessity of obtaining permission from the concerned Magistrate.

Then Sec.324 IPC reads thus:

“Section 324 - Voluntarily causing hurt by dangerous weapons or means: *Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

The High Court of Madras in a decision reported in ***Chitravel vs. State*** happened to explain the offence under Sec.324 IPC as follows:

“Para 21: *In Criminal Law, it is not essential that the manner of use of the weapon must be such as is likely to cause death. The object of Section 324 of I.P.C. is to make a simple hurt more grievous one and as such liable to a more severe punishment. For an offence*

*under Section 324 of I.P.C. the prosecution has to prove (i) that the Accused caused by his act bodily pain, disease or infirmity to the complainant; (ii) that he did such act intentionally or with knowledge that it would cause the pain, etc.; (iii) that it was unprovoked and (iv) that the accused caused it by means of an instrument for shooting, stabbing or cutting; or by an instrument, which used as a weapon is likely to cause death; or by means of fire, etc.. There can be a conviction even in the absence of a wound certificate or the opinion of a medical officer where the oral evidence is safe and reliable in providing the nature of the weapon used as per decision in **State v. Haridasan MANU/KE/0126/1977 : (1978) Cri L J 1204 (Ker).**”*

7) Thus to complete an offence under Sec.324 IPC, one of the essential requirements is that the assailant has to cause bodily pain, disease or infirmity to the victim by means of an instrument for shooting, stabbing or cutting or by instrument which used as a weapon is likely to cause death or by means of fire etc. When the facts of instant case are read out from the FIR, the accused have not used any instrument or other substance to cause the injuries suffered by the victim. Therefore, even if the FIR and charge sheet allegations are uncontroverted, the offence under Sec.324 IPC is not made out but the offence under Sec.323 alone could be made out. The offence under Sec.323 IPC as well as 290 IPC are non-cognizable offences for whose investigation the procedure is contemplated under Sec.155 Cr.P.C. Sec.155 Cr.P.C reads thus:

“Section 155 - Information as to non-cognizable cases and investigation of such cases:

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, 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 Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may

exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

8) So in the instant case, the police ought to have followed the procedure contemplated under Sec.155 Cr.P.C. However, the police have registered the case as one under Sec.290 & 324 IPC and investigated the matter and laid charge-sheet for the offences under Sec.290 & 324 IPC. Hence the question is whether the act of I.O is legally sustainable. It may be noted that in a given case if from the report of a complainant, the police could not at the initial stage decide whether a cognizable offence or non-cognizable offence was committed and in such dilemma registered the case for the cognizable offence and then after investigation laid charge-sheet for the non-cognizable offence, such investigation will not be vitiated in view of the explanation given to the term complaint under Sec.2(d) of Cr.P.C, which reads thus:

“Section 2 – Definitions:

In this Code, unless the context otherwise requires,-

(a) xxx

(b) xxx

(c) xxx

(d) "complaint" means any 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 unknown, has committed an offence, but does not include a police report.

Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”

a) In such an instance, the report ultimately filed by the police though discloses a non-cognizable offence, still it can be deemed to be a complaint and cognizance can be taken by the Court. Or in a given situation, in a non-cognizable case the police conducts an

investigation after obtaining permission of the concerned Magistrate and files a report, the same also can be covered under the explanation to Sec.2(d) of Cr.P.C. However, it must be noted that the instant case is not of such a nature. As already discussed supra, the report of the *defacto* complainant clearly shows the commission of a non-cognizable offence under Sec.323 IPC since no instrument or other substance was used to cause the injuries. Hence at the very first instance, the police ought to have treated the report as a non-cognizable case and ought to have followed the procedure contemplated under Sec.155 Cr.P.C. Instead, knowingly the FIR was registered for the offence under Sec.324 & 290 IPC and investigation was completed and charge-sheet was laid. Therefore, I am constrained to hold that the investigation was hit by Sec.155(2) Cr.P.C. My view is fortified in a decision of Hon'ble Apex Court reported in ***Keshav Lal Thakur vs. State of Bihar***. Under similar circumstances, Hon'ble Apex Court allowed the appeal of the accused by observing as follows:

"Para 3: On the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore, the police could not have registered a case for such an offence under Section 154 Cr. P.C, Of course, the police is entitled to investigate into a non- cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) Cr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2(d) Cr. P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non-cognizable offence has been made out.

"Para 4: On the conclusions as above we allow this, appeal and quash the impugned proceedings."

b) In the light of above discussion, the proceedings in C.C.No.No.94

of 2015 on the file of Judicial Magistrate of First Class, Manthani at Karimnagar are liable to be quashed .

9) In the result, this Criminal Petition is allowed and the proceedings in C.C.No.No.94 of 2015 on the file of Judicial Magistrate of First Class, Manthani at Karimnagar are quashed against all the accused.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.04.2015

Note: L.R Copy to be marked: Yes / No

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