

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

Judgment delivered on: October 1, 2015

+ **CRL.M.C. 4966/2014 & Crl. M.A. 17011/2014**

VIJAY KUMAR WADHAWAN Petitioner

Represented by: Mr. Tarun Goomber, Mr. Gaurav
Goswami and Mr. Pankaj Mendiratta,
Advocates.

Versus

STATE GOVT OF NCT OF DELHI & Anr. Respondents

Represented by: Mr. Mukesh Kumar, Additional Public
Prosecutor for State.
Mr. O.N. Sharma, Advocate for
Respondent No.2.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J.

CRL.M.C. 4966/2014

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.') has been filed for quashing the criminal proceedings against the petitioner in relation to FIR No.345/2012 registered at Police Station Amar Colony, New Delhi, under Sections 323 and 341 of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC').

2. Briefly stated, FIR in question was registered on a written compliant dated 22.09.2012 made by one B.K. Kapoor, who alleged that on 21.09.2012 at about 5.00 PM, the petitioner was putting flower pots

and bricks on the road blocking the smooth flow of vehicles and when the complainant asked him not to so obstruct the road, petitioner started shouting at the complainant. When the complainant himself tried to clear the said obstructions from the road, the petitioner not only stopped him but also assaulted him causing injuries on his left arm and left hand. Thereafter, the complainant came to the Police Station and narrated the aforesaid incident. Accordingly, Sub-Inspector Prakash, Investigating Officer of the case, took him to AIIMS Trauma Centre and got his MLC bearing No.330978 done, wherein the nature of injuries was opined as 'simple blunt'.

3. After completion of investigation, charge sheet for offences punishable under Sections 323/341 IPC was filed on 21.11.2012.

4. Accordingly, vide order dated 15.03.2014, notice was framed under Section 323 IPC by the learned Metropolitan Magistrate, South East, Saket Courts, New Delhi, however, petitioner was discharged for the offence punishable under Section 341 IPC. The said order was challenged by the petitioner by way of Criminal Revision No.14/2014. The arguments propounded were that since the charge sheet had been filed for a cognizable offence as also for a non- cognizable offence and the charge having been framed only for a non- cognizable offence, the trial stood vitiated as the prior permission under Section 155 Cr.P.C. to investigate a non-cognizable offence was not taken. The Revisional Court vide its order dated 08.07.2014 while disposing of the same, modified the order dated 15.03.2014 to the extent that offence under Section 341 IPC was also made out against the petitioner.

5. Being aggrieved, the petitioner has impugned the aforesaid orders passed by the Courts below by invoking the inherent powers of the High Court.

6. Learned counsel appearing on behalf of the petitioner submitted that offence under Section 323 IPC is non-cognizable and no permission had been taken from the Magistrate for carrying out investigation into non-cognizable offence. He submitted that simply because the case was registered for the offences under Sections 323/341 IPC, which are non-cognizable and cognizable offences respectively, the police could not investigate the offence which actually fell under Section 323 IPC which is a non-cognizable offence.

7. Learned counsel further submitted that the Revisional Court has over looked the principles that can be culled out from the decisions of the Supreme Court with regard to the scope and ambit of the powers in exercise of the revisional jurisdiction under Section 401 Cr.P.C. that powers of the Revisional Court are very limited and it does not function as a court of appeal and therefore, cannot re-appreciate the evidence.

8. In support of his submissions, the learned counsel has relied upon the case of ***S. Ajit Singh Vs. The State(Delhi), 1990 (1) C.C. Cases 66 (HC)***, wherein this Court held as under:-

“4. I have heard the arguments advanced by learned counsel for the petitioner and learned counsel for the State and have given my careful consideration to all the circumstances involved in this petition. It has been argued on behalf of the petitioner that the offence under Section 287 IPC was actually non-cognizable and therefore the police could not investigate this case without seeking permission of the learned Magistrate under Section 155 (2) of the Code of Criminal

Procedure. Simply because the case was registered under Section 338 IPC which is a cognizable offence, the police could not investigate the offence which actually fell under Section 287 IPC. He has cited some judgments which may now be noticed. In Jugal Kishore and another vs. State, 1972 Criminal Law Journal, 371, this Court held that offence under Section 504 IPC being a non-cognizable offence, a police officer had no power to investigate it unless he had obtained an order from a Magistrate for investigation in terms of Section 155 (2) Code of Criminal Procedure. Similarly in the case of Vasudev Vs. State 1984 Rajdhani Law Reporter, Vo. 14, 689, an offence under Section 146 IPC was investigated by the police and the challan was filed. This Court quashed the proceedings in that case also holding that the offence could not have been investigated without the orders of a Magistrate under Section 155 (2) of Code of Criminal Procedure. Although the facts of the present case are little different from the facts of the cases cited above, yet the argument of the learned counsel for the petitioner seems to be correct that when case is actually registered against an accused in respect of a cognizable offence, which actually is not made out and ultimately it is found that the offence was non-cognizable, it may mean give long hand to the police in first registering cases for cognizable offences which ultimately may not fall within the definition of such a case. Since actually the offence made out against the petitioner was covered by Section 287 IPC, it must be held that the police could not have investigated the offence without seeking appropriate permission from the Magistrate under Section 155(2) of Code of Criminal Procedure. The State has not filed any revision against the order of the learned Magistrate by which he held that actually the

offence was made out under Section 287 IPC and not under Section 338 IPC.

5. I am, therefore, of the view that since the offence was non-cognizable wherein the permission of the Magistrate for investigation under Section 155(2) of Code of Criminal Procedure was not obtained, the continuation of the criminal proceedings before the learned Magistrate would amount to an abuse of the process of the court. I, therefore, quash the proceedings against the petitioner in relation to FIR No.40 of 1986 of Police Station Anand Parbat.”

9. Also relied upon the case of ***Vidhu Sethi Vs. State and Anr., 2013 (3) JCC 177***, wherein the Co-ordinate Bench of this Court observed as under:-

“1. The petitioner is facing trial in a case filed under Section 138 of Negotiable Instrument Act. She has filed this Criminal Revision Petition feeling aggrieved by the order dated 03.09.2011 passed by learned Addl. Session Judge, Incharge South-West District, Dwarka, Delhi whereby he allowed the revision petition filed by the complainant thereby permitting the complainant to confront the petitioner/accused with statement of account, during her cross examination. This is the second revision petition filed in respect of the order as to whether petitioner can be confronted with the statement of account in her cross examination. This second revision petition is maintainable in view of the decision of Bombay High Court in the case Inayatullah Rizwi v. Rahimatullah & Ors. 1981 CriLJ 1398 wherein it was observed that:

“We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below become final, but when the Sessions Judge reverse the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.”

10. On the other hand, learned Additional Public Prosecutor for the State has controverted the submissions made by the learned counsel for the petitioner and submitted that in catena of judgments it is held that where the FIR had disclosed offences both cognizable and non-cognizable but the course of the investigation had resulted in the cognizance being taken only of a non- cognizable offence and the cognizable offence having been dropped, yet the proceedings would not stand vitiated as the bar of Section 155 Cr.P.C. would not be attracted.

11. The learned Additional Public Prosecution submitted that by way of the instant petition, the petitioner has impugned both the orders, i.e., the order dated 15.03.2014 passed by the learned Metropolitan Magistrate and the order dated 08.07.2014 passed by the learned Revisional Court.

12. He further submitted that the second revision is barred under Section 397 IPC. However, I do not find any merit in this submission as the settled law is that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Court or who is aggrieved by the same. Thus, the defeated party is not precluded from moving the High Court.

13. I have heard the learned counsel for the parties.

14. The short argument addressed before this Court is that charge sheet in this case had admittedly been filed under Sections 323/341 IPC, i.e., for both a cognizable and a non-cognizable offence; the petitioner had, however, been discharged for the cognizable offence, i.e., for the offence under Section 341 IPC and notice had been framed against him only for a non-cognizable offence, i.e., for the offence under Section 323 IPC; the procedure as mandated under Section 155 Cr.P.C., i.e., prior permission not having been taken by the Investigating Officer to investigate a non-cognizable offence, the trial in pursuance of such a charge sheet stands vitiated and the proceedings are liable to be quashed.

15. Before proceedings further, it would be relevant to look into the provisions contained in Section 190(1) Cr.P.C., which deals with cognizance of offences by the Magistrate. The same reads as under:-

“190. Cognizance of offence by Magistrate- (1)
Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence- (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed...”

16. Thus, cognizance can be taken by the Magistrate upon (a) receipt of a complaint disclosing facts constituting commission of an offence (b) upon a police report disclosing such facts or (c) on his own knowledge.

17. A bare perusal of Clause (b) above, would show that the Magistrate can take cognizance of any offence, irrespective of whether it is a

cognizable offence or a non-cognizable offence, upon a police report disclosing such facts as would constitute commission of an offence. The foundation of the jurisdiction of the Magistrate for taking cognizance of an offence does not depend upon the validity or otherwise of an investigation carried out by the police. It depends only upon the set of facts and circumstances placed before the Court, from which the Court comes to a conclusion that they constitute commission of an offence. It would, therefore, not be correct to say that cognizance of an invalid police report is prohibited necessarily in law and is, therefore, a nullity.

18. In **H.N. Rishbud and Inder Singh Vs. The State of Delhi, AIR 1955 SC 196**, the Full Bench of the Supreme Court *inter-alia* observed as under:

“11.A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190, Cr.P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance... ..”

While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial...

12.....If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice...”

19. Therefore, even if investigation was invalid for want of order of the Magistrate under Section 155(2) Cr.P.C., the police report based upon such an investigation is not nullified and does not become *non est* merely on account of this procedural lapse in the investigation and it is very much permissible for the Court to take cognizance even of a non-cognizable offence, on the basis of the evidence collected during such an investigation, unless some prejudice is shown to have been caused to the accused for want of requisite order under Section 155(2) of the Code.

20. Assuming that provisions of Section 155(2) Cr.P.C. are mandatory and the police report based upon facts discovered during such an investigation cannot form the basis for taking cognizance under Section 190(1)(b) Cr.P.C., a cognizance can still be taken, on the basis of such a report, under Section 190(1)(a) Cr.P.C.

21. ‘Complaint’ has been defined in Section 2(d) Cr.P.C. as under:-

“2(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.”

22. Definition of ‘complaint’ given in the Code of Criminal Procedure, 1898, did not include the above referred explanation. The purpose of adding the explanation in the Code of Criminal Procedure, 1973, was to make it possible for the Court to take cognizance of a non-cognizable offence even on the basis of a police report, by treating it as a complaint. If the report made by a police officer is to be treated as a complaint, it is immaterial whether the investigation was carried out on receipt of information disclosing commission of cognizable as well as non-cognizable offence and during the course of investigation, commission of only a non-cognizable offence was found or it was carried out on the basis of complaint which disclosed commission only of a non-cognizable offence and was conducted without obtaining requisite orders from the Magistrate under Section 155(2) of the Code.

23. Section 190(1) Cr.P.C. does not say as to who can make complaint. The complaint can be oral and need not necessarily be in writing. It is also not necessary that the complaint should be made only by the victim of the crime. Since the Magistrate takes cognizance of the offence, the proceedings on taking cognizance would be initiated even though the persons who had committed the offence were not known at that time. The complainant can also be a public servant. The police officer, who is a public servant, is competent to make a complaint and there is nothing in law which prevents a Court from taking cognizance on a complaint made by a police officer, if it discloses the commission of an offence. There is no provision in the Code of Criminal Procedure, which prevents a

Magistrate from taking an invalid police report into consideration and taking cognizance on the basis of the facts disclosed in such a report. In fact, even before enactment of the Code of Criminal Procedure, 1973, it was held in a number of decisions including **A. Kanniah and Ors. Vs. State, AIR 1967 Madras 390**, **Kantilal Takhatmal Jain and Anr. Vs. State of Maharashtra, AIR 1970 Bombay 225** and **Public Prosecutor Vs. A.V. Ramiah" 1958 Cr.L.J. 737**, that where a police officer carries investigation into a non-cognizable offence without the order of the Magistrate and files a charge sheet, such a charge sheet can be treated as a complaint. The judicial pronouncement has been given statutory recognition by adding the explanation to the definition of complaint in the Code of Criminal Procedure, 1973.

24. Moreover, the explanation attached to this Section clearly presupposes a situation that where initially a charge sheet has been filed for both a cognizable as also a non-cognizable offence and thereafter the proceedings in the cognizable offence are dropped, the same shall be deemed to be treated as a complaint and the police officer by whom such a report is made shall be deemed to be the complainant. This is clearly so in the instant case. Proceedings for the cognizable offence having been dropped/discharged, the charge sheet has to be treated as a complaint under Section 2 (d) Cr.P.C. and the police officer who has filed the charge sheet has to be treated as the complainant. It was on this complaint that cognizance under Section 323 IPC had been taken which the Magistrate was empowered to do so under Section 190 (1) (a) Cr.P.C.

25. Sub-clause (4) of Section 155 Cr.P.C. *inter alia* reads as follows:

“(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, notwithstanding that the other offences are non-cognizable. The bar of Section 155 (2) of the Code is not attracted.”

26. Under Section 460 Cr.P.C., there are certain category of irregularities which do not vitiate the proceedings, i.e., those proceedings which are erroneously done but in good faith. Such proceedings are not liable to be set aside on the ground that the Magistrate was not empowered to do so and clause (e) of Section 460 Cr.P.C. includes the power as under:-

“(e) To take cognizance of an offence under clause (a) or clause (b) of sub section (1) of Section 190.”

The aforestated legislative provisions clearly answer the queries of the petitioner.

27. Similar view was taken in ***Chaman Prakash Vs. State, 2007 (3) JCC 1983***, wherein the Coordinate Bench of this Court held as under:-

“8. I am not persuaded to accept the line of reasoning in the cases cited on behalf of the petitioner. Undoubtedly there are certain observations in those cases suggestive of the entire investigation being vitiated if the court discovering, at a later stage that no cognizable offence is made out. However each case had to be decided on the facts and attendant circumstances. In this case the court in the first instance did not accept the submission that only a non-cognizable offence was made out. Further Section 460 (2) lists out irregularities which vitiate the proceedings. A reading of this would show that if the Magistrate proceeds to make an order to investigate the

offence, under Section 155 into the incident which may turn out to be one involving a non- cognizable offence, that does not by itself vitiate the proceedings. This is further strengthened by 155 (4), which provides that if two offences, one non- cognizable, and the other cognizable, are alleged, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable. Such being the situation investigation and further proceedings in respect of an FIR, where eventually only non-cognizable offences can be pressed, would not vitiate the entire proceedings. There is no taint of illegality attached to the investigation. This aspect was not discussed in the judgments cited; they did not consider the impact and effect of Section 460, or Section 155 (4).”

28. In taking this view, I am fortified by the decisions of this Court in ***Ranbir Prakash Vs. State*, 27 (1985) DLT 242** and ***Narain Singh Vs. State (Delhi Administration)*, 1986 RLR 545**. Similar view was taken in ***Chaman Prakash (supra)*, *Dr. Kamal Kishore Kalra Vs. State (NCT of Delhi)*, 151 (2008) DLT 546, Crl. M.C. No. 642/2009** titled as ***Nawal Kishore Vs. The State***, decided on 11.12.2009 and ***Crl. M.C. No. 3484/2009*** titled as ***Rajeev Rastogi & Ors. Vs. State***, decided on 06.01.2010.

29. The cognizance on a complaint filed by a public servant, in discharge of his official duties can be taken without examining him and other witnesses. Hence, the cognizance taken in this case cannot be said to be bad in law.

30. So far as the issue raised qua scope and ambit of the powers in exercise of the revisional jurisdiction under Section 401 Cr.P.C. is concerned, the same can be exercised only in exceptional cases where the

interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice.

31. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice, with regard to all facts and circumstances of each particular case.

32. Interference in exercise of the powers under Section 397 read with Section 401 Cr.P.C. is limited only to exceptional cases, when it is found that order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the Trial Court has no jurisdiction to try the case or where the Trial Court has illegally passed the order.

33. So far as offence punishable under Section 341 IPC is concerned, it is defined under Section 339 IPC, which reads as under:-

“339. Wrongful restraint – Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.”

34. Coming back to the case in hand, perusal of the complaint establishes that the complainant was trying to remove obstruction from the road when he was stopped and physically assaulted by the petitioner. It is recorded by the learned Revisional Court that while the complainant was removing illegal obstruction, he was stopped by the petitioner, meaning thereby, that he was restrained from proceedings in directions for removing flower pots and he was also assaulted. Accordingly, the learned Revisional Court opined that it is clear that offence under Section 339 IPC punishable under Section 341 IPC is also *prima facie* made out and the learned Trial Court was not legally correct in discharging the petitioner

from offence under Section 341 IPC on the basis of improper reading of the complaint and not considering the charge sheet while discharging the petitioner under Section 341 IPC.

35. So far as inherent jurisdiction under Section 482 of the Code of Criminal Procedure is concerned, in a catena of judgments, the Apex Court has discussed the nature and scope of inherent powers conferred upon this Court. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redressal of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly and with caution.

36. In view of the above settled legal position and the facts and circumstances of the case, order dated 15.03.2014 passed by the learned Metropolitan Magistrate taking cognizance of a non-cognizance offence, i.e., under Section 323 IPC needs not be interfered with.

37. So far as the order dated 08.07.2014 passed by the learned Revisional Court modifying the order dated 15.03.2014 to the extent that

offence under Section 341 IPC is also made out against the petitioner is concerned, having examined the impugned judgment, it appears that evidence has been appreciated in the right perspective. Moreover, no illegality much less irregularity has been detected in the findings of the learned Revisional Court warranting interference at the end of this Court.

38. For the reasons stated above, I am of the considered view that the petitioner must face trial for the offences punishable under Sections 323/341 IPC.

39. In view of the above discussion, the present petition is dismissed.

Crl. M.A. 17011/2014

With the dismissal of the petition noted above, the instant application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

**OCTOBER 1, 2015
Sb/RS**