

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 35 of 2017**

Miss Clara Rocha, d/o Mr. Alex Rocha, aged 40 years, Principal: St. Joseph Convent English Medium School : Link Road Bilaspur, Distt – Bilaspur (C.G.)

----Petitioner/Accused

Versus

1. State of Chhattisgarh, Through : Station House Officer, Police Station – Tarbahar, Bilaspur, Distt – Bilaspur (C.G.)

2. Miss Tanjeela Parveen, aged 16 years, Represented through : Mr. Rafique Ahmad, r/o Mr. Farid Ahmad, r/o Tanjeela Apartment Link Road, Bilaspur, Distt – Bilaspur (C.G.)

For Petitioner	: Mr. Anurag Dayal Shrivastava, Advocate.
For Respondent No. 1	: Mr. Sanjay Kumar Agrawal, Govt. Advocate.
For Respondent No. 2	: Mr. Mirza Kaiser Baig, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/05/2019

1. Petitioner is facing trial for commission of offence under Section 323 of the Indian Penal Code, 1860 (henceforth "IPC") on Istgasa under Section 190 of the Code of Criminal Procedure filed before the jurisdictional criminal court on 19.10.2016. She seeks to challenge the investigation of the alleged offence and charge sheet filed against her by the concerned police station solely on the ground that offence under Section 323 of the Indian Penal Code is non-cognizable offence and that cannot be investigated except by the order of the Magistrate by virtue of the provision contained in Section 155 (2) of the Cr.P.C. It is the case of petitioner that investigation of the said offence by the concerned police station without permission of the Magistrate is illegal and subsequent permission, if any, cannot cure illegality and also seeks quashment of the entire investigation as well as final report submitted against her by granting petition

under Section 482 of the Code of Criminal Procedure.

2. Respondent No. 1/State and respondent No. 2/ complainant have filed their reply stating *inter alia* that Chief Judicial Magistrate has granted permission to the police authority on 19.10.2016 to proceed in accordance with law upon submission of charge sheet and thereby accepted the Istgasa and thereafter cognizance has been taken against the petitioner/accused, as such, there is sufficient compliance of Section 155 (2) of the Cr.P.C. and this petition deserves to be dismissed.

3. Shri Anurag Dayal Shrivastava, learned counsel appearing for the petitioner/accused would submit that the provisions contained in sub-section 2 of Section 155 of the Cr.P.C. for asking the permission of the Court to investigate a non-cognizable offence, are mandatory in nature and unless that mandatory provisions are complied with and the permission is granted by the jurisdictional Magistrate to investigate offence under Section 323 of the IPC, no investigation could have been carried out by the concerned police station against the petitioner/accused and the subsequent permission, if any, would not cure the inherent illegality committed by the concerned police station and, therefore, it is liable to be struck down.

4. Per contra, learned counsel appearing for the respondents would specifically submit that learned Chief Judicial Magistrate has already permitted the police authority to proceed as per law having power to try such case on 20.10.2016, therefore, that would cure the illegality, if any, in light of provisions contained in Section 155 (2) of the Code of Criminal Procedure.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

6. In order to have the question examined, it would be appropriate to notice Section 155 (2) of the Cr.P.C., which states as under :-

“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 cognizable case notwithstanding that the other offences are non-cognizable.

7. A careful perusal of sub-section (2) of Section 155 of the Cr.P.C. would show that the said provision starts with the word that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case, as such, the provision is explicit and there is legislative injunction to the police officer not to investigate any non-cognizable offence without the order of the Magistrate having power to try such case, and once there is legislative injunction to the police authority not to investigate the non-cognizable case, it is the duty and responsibility of the police

officer to see that non-cognizable cases are not investigated without express order of the Magistrate having jurisdiction and power to try such non cognizable offences.

8. The aforesaid provision of obtaining the permission for investigation is a mandatory requirement and if there is non-compliance of the said provision, the investigation which is carried out by the police officer would be rendered illegal and void.

9. In the matter of **State of Haryana v. Bhajan Lal & others**¹, their Lordships of the Supreme Court have held, for the 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 held as under :-

“(102) (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute any 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.”

10. In the matter of **Keshav Lal Thakur v. State of Bihar**², their Lordships of the Supreme Court have held that offence under Section 31 of the Representation of the People Act, 1950 is a non-cognizable offence and, therefore, investigation for the said offence without order of the competent Magistrate under Section 155 (2) of the Cr.P.C. is illegal. Relevant paragraph of the report states as under:-

“ On the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore the police could

¹ 1992 Supp. (1) SCC 335

² (1996) 11 SCC 557

not have registered a case for such an offence under Section 154 CrPC. Of court, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) CrPC 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 Explanation to Section 2(d) CrPC, 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.”

11. Now, the question whether subsequent permission, if any, granted by the Magistrate at the time of filing of charge sheet would cure illegality if no order has been granted by the learned Magistrate under Section 155 (2) of the Cr.P.C.

12. The investigation of a non-cognizable offence by the police without the permission of the competent Magistrate is illegal, subsequent permission granted cannot cure the illegality as police officer has no jurisdiction to investigate non-cognizable offence without order of the Magistrate (See : ***Siddanagouda v. State of Karnataka***³).

13. The High Court of Madhya Pradesh in the matter of **Arum Kumar Bhargava v. State of M.P.**⁴ has held that charge sheet filed without the permission of the Magistrate would be quashed.

3 1998 Cri.L.J. 2162

4 (2001) 1 MPLJ 691

14. Reverting to the facts of the present case in light of the aforesaid settled legal position, in which it has been held that the provisions contained in Section 155 (2) of the Cr.P.C. is mandatory in nature and subsequent permission, if any, granted by the court to file charge sheet would not cure the illegality, it is quite apparent that in the instant case at the instance of police, no permission was obtained from the Magistrate having jurisdiction to try offence under Section 323 of the Indian Penal Code and police officer proceeded to investigate offence under Section 323 of the Indian Penal Code, such a course is wholly impermissible and contrary to the legislative injunction engrafted under Section 155(2) of the Cr.P.C. and which cannot be countenanced.

15. Consequently, investigation of offence under Section 323 IPC being a non- cognizable offence, by the Station House Officer, Police Station, Tarbahar without permission of the Magistrate and subsequent filing of charge sheet is in teeth of the provisions contained in Section 155 (2) of the Cr.P.C. and, therefore, the same is liable to be and is hereby quashed. As such, the entire prosecution against the petitioner being undeserving proceeding deserves to be and is hereby quashed.

16. Accordingly, Criminal Case No. 11528 / 2016 (State of Chhattisgarh and others Vs. Miss. Clara Rocha) pending in the Court of Judicial Magistrate, First Class, Bilaspur is hereby quashed.

17. The petition under Section 482 of the Cr.P.C. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

