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IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 17.03.2021  
CORAM  
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.5190 of 2021  
and Cr1.M.P.No.3332 of 2021

Ramesh

... Petitioner

Vs.

1. The State represented by  
The Inspector of Police,  
Walajapet Police Station,  
Vellore District.  
(Crime No.200 of 2019)
2. Saravana Kumar  
Co-operative Sub Registrar  
Superintendent  
Statistics Surveillance Team I  
Sholingur Assembly Constituency  
Vellore District.

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records quash the FIR in Crime No.200 of 2019 on the file of the 1<sup>st</sup> respondent police.

|                   |                                                                                            |
|-------------------|--------------------------------------------------------------------------------------------|
| For Petitioner    | : Mr.S.N.Udhaya Kumar                                                                      |
| For Respondents   | : Mr.M.Mohammed Riyaz<br>Additional Public Prosecutor<br>for R1                            |
| For Amicus Curiae | : Mr.V.C.Janarthanan<br>Mr.K.P.Anantha Krishnan<br>Mr.Sharath Chandran<br>Mr.Arun Anbumani |

ORDER

This petition has been filed challenging the FIR registered by the respondent police in Crime No.200 of 2019 under Section 102 The Code of Criminal Procedure,1973 (hereinafter referred as 'Cr.P.C.').

2.The case of the prosecution is that the petitioner was in possession of a sum of Rs.4,00,500/- and this was seized by the election squad during a routine check. The further case of the prosecution is that the petitioner was not able to give any explanation on the source of the money recovered from him. This seizure was made during the surprise check conducted during elections. Based on the complaint given



by the 2<sup>nd</sup> respondent, an FIR came to be registered under Section 102 Cr.P.C.

3.The learned counsel for the petitioner submitted that the petitioner had explained the concerned officer belonging to the squad that he had borrowed money from one Mr. Murugan for the purpose of construction of a house. The learned counsel further submitted that the petitioner also gave it in writing in a stamp paper. In spite of the same, the respondent police proceeded to register an FIR and the entire money was seized.

4.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that since the petitioner was not able to give a convincing answer as to the source of the huge amount of money and the purpose for which he was in possession of the same, the squad which was conducting surprise checks during election had seized the money and a complaint was given by the 2<sup>nd</sup> respondent, following which an FIR was registered under Section 102 Cr.P.C. The learned Additional Public Prosecutor further submitted that a report was forthwith submitted under Section 102(3) Cr.P.C to the learned Judicial Magistrate-II, Walajapet.

5.The learned Additional Public Prosecutor further submitted that the investigation has been completed and during the course of which, it was found that this money was sought to be used to bribe the voters and therefore a final report has been filed before the learned Judicial Magistrate-II, Walajapet against the petitioner, for an offence under Section 171-E The Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). The learned Additional Public Prosecutor submitted that the final report was filed on 18.01.2021 in FR.No.49 of 2021 and the same is yet to be taken cognizance by the Court below.

6.When this Court posed a question to the learned Additional Public Prosecutor as to how an investigation for non-cognizable offence was initiated without the permission of the learned Magistrate under Section 155(2) Cr.P.C., and how a final report came to be filed without such permission, the learned Additional Public Prosecutor brought to the notice of this Court the Explanation to Section 2(d) Cr.P.C.

7.For proper appreciation, Section 2(d) Cr.P.C., is extracted hereunder:

## 2. Definitions

(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



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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;

8.The learned Additional Public Prosecutor submitted that if after the completion of the investigation, the materials collected discloses the commission of a non-cognizable offence, the report submitted by the Investigation Officer will be treated as complaint under Section 2(d) Cr.P.C. and the Investigation Officer shall be deemed to be a complainant in that case. The learned Additional Public Prosecutor further submitted that once the Court takes cognizance of this report under Section 190(1) Cr.P.C., it will proceed further in accordance with Chapter XV of Cr.P.C.

9.Considering the importance of the issue involved in the present petition, this Court sought for the assistance of the Bar. The Bar readily assisted this Court and this Court had the advantage of hearing Mr.V.C.Janarthanan, Mr.K.P.Anantha Krishnan, Mr.Sharath Chandran and Mr.Arun Anbumani.

10.Mr.Arun Anbumani, learned Amicus brought to the notice of this Court, the judgment of the Hon'ble Supreme Court in the case of Keshav Lal Thakur vs. State of Bihar reported in 1996 11 SCC 557. The learned counsel specifically relied upon Paragraph No.3 of the judgment and the same is extracted hereunder:

3. We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. 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 CrPC. 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) 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



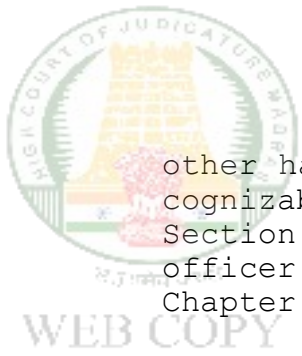
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mentioned that in view of the Explanation to Section 2(d) CrPC, which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' 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.The learned counsel relied upon the above judgment and submitted that where an investigation starts with a cognizable offence based on an FIR registered under Section 154 Cr.P.C, and ultimately the materials collected in the course of investigation discloses a non-cognizable offence, the Explanation to Section 2(d) Cr.P.C. can never be imported. The learned counsel submitted that the Explanation to Section 2(d) Cr.P.C. was brought in by the legislature to address a situation where the investigation commences on a suspicion of the commission of an offence, without the identity of a cognizable or non-cognizable offence and ultimately on the completion of the investigation, materials collected makes out a non-cognizable offence. It is only under those circumstances, the operation of Explanation to Section 2(d) Cr.P.C. will come into force.

12.Mr.V.C.Janarthanan, learned Amicus submitted that the Explanation to Section 2(d) Cr.P.C. cannot be used as a ruse to circumvent the mandatory prescription under Section 155 (2) Cr.P.C. The learned counsel submitted that it must be made clear that Explanation to Section 2(d) Cr.P.C. will only apply to those cases which strictly fall within the requirements of the explanation.

13.Mr. Sharath Chandran, learned Amicus submitted that the money seized by the election squad and for which no proper explanation is forthcoming from the person from whom it was seized, there must be some procedure to deal with the situation. The most appropriate procedure would be to register an FIR under Section 102 Cr.P.C., seize the money and report the same forthwith to the concerned Jurisdictional Magistrate. Without resorting to this procedure, the Police cannot proceed further and conduct an investigation. It is on the basis of this FIR, a report is ultimately submitted before the concerned Magistrate and thereby there is accountability at each stage right from seizure of the money till the filing of the Final Report. Once this procedure is followed, the police can investigate the complaint given by the election squad and at end of the investigation if no offence is made out and a report is filed to that effect, the money seized can always be returned to the person from whom it was seized, on orders of the learned Magistrate and the case can be closed. If on the

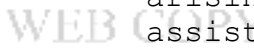


other hand, the investigation reveals the commission of a non-cognizable offence, like in the present case, Explanation to Section 2(d) kicks in and the final report filed by the police officer will be treated as a complaint and the procedure under Chapter XV of Cr.P.C. should be followed.

14.Mr.K.P. Anantha Krishnan, learned Amicus submitted that seizure of unaccounted money cannot in all circumstances be treated as a suspicion for the commission of an offence. The learned counsel by way of illustration submitted that if the police party during a routine check, intercepts a person and finds that the said person is carrying a large amount of cash, that will not give the power to the police to seize the money in exercise of Section 102 Cr.P.C. In other words, the learned counsel submitted that the seizure of money must be preceded by some complaint of an alleged or suspected stealing of money or being received on commission of an offence. The learned counsel insisted that there must be a basis for exercising the power of seizure under Section 102 Cr.P.C. and it cannot be exercised as a matter of routine by the police. The learned counsel submitted that in the present case there was a complaint given by the election squad who had seized the money and therefore, the police proceeded to register an FIR under Section 102 Cr.P.C. and investigated the case and ultimately found that it was for the commission of an offence, and accordingly a report was filed before the learned Magistrate. The learned counsel insisted that seizure of unaccounted money should not lead to a presumption of bribery in every case and there should be material collected during the course of investigation to come to such a conclusion.

15.The learned Additional Public Prosecutor in reply to these submissions once again placed reliance upon Sub Sections (1) and (3) of Section 102 Cr.P.C. and submitted that in the present case, the money was unaccounted, and it was seized by the election squad and a complaint was given to the police to investigate as to whether this money was purported to be used for the commission of an offence. Immediately thereafter, an FIR was registered under Section 102 Cr.P.C. and a report was submitted before the learned Magistrate in compliance with Section 102(3) Cr.P.C. On completion of the investigation, there were materials to show that the money seized was purportedly attempted to be used by the petitioner for commission of an offence under Section 171-E IPC. A report to that effect was also filed before the learned Magistrate. The learned Additional Public Prosecutor submitted that the facts of the present case squarely fall within the Explanation to Section 2(d) Cr.P.C. and the learned Magistrate will have to treat the report as a complaint and proceed further under Chapter XV of Cr.P.C.

16.The learned counsel for the petitioner submitted that liberty should be given to the petitioner to challenge the report if ultimately it is taken cognizance as a complaint and the Court below proceeds to issue process under Section 204 Cr.P.C. The learned counsel further submitted that the



17. Before this Court proceeds to decide the issue arising in the present case, this Court must acknowledge the assistance rendered by the learned Additional Public Prosecutor and also the learned Amicus which gave a lot of clarity to deal with this issue.

19. In the present case, the FIR was registered under Section 102 Cr.P.C. based on the complaint given by the election squad. Immediately after the registration of the FIR, a report was sent to the learned Magistrate on the seizure of the money thereby complying with Section 102(3) Cr.P.C. On the completion of the investigation, it is stated that materials were collected to prima facie constitute an offence under Section 171-E of IPC. The facts of the present case squarely fall within the Explanation to Section 2(d) Cr.P.C. In the present case, the FIR was not registered on the basis of the commission of cognizable or non-cognizable offence. The FIR was registered on the basis of the seizure of the money by the election squad which was unaccounted, and a complaint was given in that regard. On the completion of the investigation, if a non-cognizable offence is disclosed, obviously the report submitted by the Investigation Officer must be treated as a complaint by virtue of Explanation to Section 2(d) Cr.P.C. If on the other hand, the materials collected during the course of investigation disclose the commission of a cognizable offence and a report is filed before the concerned Court, it has to be proceeded further only under Section 173(2) of Cr.P.C. and Chapter XVII of Cr.P.C will apply.



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20. In the considered view of this Court, the prosecution has followed the correct procedure as provided under Cr.P.C and this Court does not find any illegality in the procedure adopted by the prosecution. It will now be left open to the Court below to take into consideration the report filed by the respondent police and satisfy itself as to whether the prima facie materials have made out the commission of an offence under Section 171-E of IPC. The Court below can thereafter proceed in accordance with Chapter XV of Cr.P.C. This process shall be completed by the learned Judicial Magistrate-II, Walajapet, within a period of four weeks from the date of receipt of copy of this order.

21. It is always left open to the petitioner to approach the court below seeking for the return of money by filing an appropriate application. If the complaint is taken cognizance and process is issued, it is left open to the petitioner to challenge the same if so advised.

22. This criminal original petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssr/kp

To

1. The Judicial Magistrate No.II, Walajapet.
2. The Inspector of Police,  
Walajapet Police Station,  
Vellore District.
3. The Co-operative Sub Registrar,  
Superintendent,  
Statistics Surveillance Team I,  
Sholingur Assembly Constituency,  
Vellore District.
4. The Public Prosecutor,  
Madras High Court, Chennai.

+1cc to Mr.S.C.Viswanath, Advocate, S.R.No.17507.

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and Cr1.M.P.No.3332 of 2021