

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.2640 OF 2021

Anderson Mark Richard
Adult, British National, Profession:
formerly Service – Regional Approvals
Manager, Asia Pacific, Offshore
Petroleum Industry Training Organization
(OPITO), residing at 154, Craigton Road,
Aberdeen, Scotland,
United Kingdom, AB157UE

...Petitioner
(Original Accused)

Versus
State of Maharashtra
(At the instance of the Sahar Police
Station in LAC No.39 of 2018)

...Respondent

Mr. Shine Mohammad a/w Mr. Dinesh Kadam, Mr. Mahesh Ahire,
Mr. Ravi Mishra and Mr. Siddhant Dhavale i/b MZM Legal LLP, for
the Petitioner.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

API – Abhijeet Jadhav, Shivaji Park Police Station, Mumbai, is present.

ASI – Rane, Sahar Police Station, Mumbai, is present.

***CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.***

DATE : 12th DECEMBER 2022

ORDER ((Per Revati Mohite Dere, J.) :-

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives service on behalf of the respondent –State.
3. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, the petitioner seeks quashing of the FIR bearing LAC No. 39 of 2018 registered with the Sahar Police Station, Mumbai, for the alleged offences punishable under Section 6 of the Indian Wireless Telegraphy Act, r/w Section 20 of the Indian Telegraph Act, 1885.
4. Learned Counsel for the petitioner submits that the FIR itself was not maintainable, inasmuch as, the sections alleged are admittedly non-cognizable offences. He submits that the FIR has been lodged by the police in gross violation of the mandatory statutory

provision, as mandated under Section 155(2) of the Code of Criminal Procedure ('Cr.PC'). He submits that admittedly, no permission has been taken from the concerned Magistrate, prior to the registration of the aforesaid FIR and as such the FIR and the proceeding consequent thereto, be quashed and set aside. To buttress his submission, the learned counsel for the petitioner relied on the judgment of the High Court of Kerala at Ernakulam in the case of *Haneefa and Ors v/s State of Kerala and Anr*¹.

5. Learned APP does not dispute the legal position.

6. Perused the papers. The petitioner until November 2020, was a Senior Executive of Offshore Petroleum Industry Training Organization (hereinafter referred to as 'the said Company'), a non-profit company, incorporated under the laws of Scotland, having its registered office at Scotland. The said Company is stated to be a global training and certification body of the oil and gas sector, owned by the industry itself. It is further stated that the said Company is the

1 CRL. MC No. 3267 of 2014 decided on 6.12.2022

primary body responsible for the standards in the oil and gas industry, particularly in emergency response and training leading dialogue with Industries and Governments. It is stated that the said Company sets industry standards for safety, skills, training and workforce development, which includes certifying and accrediting locally based training centers to provide the same. The said Company has several training centers operating across 45 countries, training more than 2,50,000/- people. One such training centre is located at Jano Training Centre, Asija Estate, Patharewadi, Marve Road, Malad (West), Mumbai, Near the Naval Area. It is stated that the petitioner was employed with the said Company from March 2014 to November 2020 and was regularly attending the training centers for the purpose of carrying out audits. According to the petitioner, as per the Company protocol, he was carrying a Satellite Phone which was supposed to be switched off during his stay and was to use the same, only in case of emergency. According to the petitioner, he never used the Satellite Phone, though he was permitted to use it, in case of emergency. It appears that after completing his training, the petitioner

whilst leaving the country on 27th October 2018, was detained at the Mumbai International Airport, for the alleged violation of Section 6 of the Indian Wireless Telegraphy Act r/w Section 20 of the Indian Telegraph Act. Pursuant thereto, the police registered the aforesaid FIR, as against the petitioner and after investigation filed the charge-sheet.

7. It is not in dispute that both the sections with which the petitioner is charged, are non-cognizable offences. The same is also not disputed by the learned APP. It is also not in dispute that the said Satellite Phone was not used by the petitioner, for training purposes.

8. Be that as it may, the fact remains, whether the police could not have registered an FIR in question and consequently, filed the charge-sheet in the said case. As noted above, both the offences with which the petitioner is charged, are non-cognizable offences.

9. In this context, it would be apposite to reproduce Section 155 Cr.PC, which deals with the information received with respect to

the non-cognizable cases and the investigation to be done in such cases. Section 155 Cr.PC reads thus;

“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.”

10. A perusal of Section 155(2) Cr.PC would reveal that when information relating to a non-cognizable offence is received, the police officer cannot commence with the investigation, without securing an order from the concerned Magistrate. Under Section 155(2) Cr.PC., the concerned police must obtain a order from a Magistrate having

power to try the case or commit such a case for trial. Thus, it is clearly evident that Section 155(2) Cr.PC prohibits not only an investigation but even commencement of the investigation by the police without an order from the Magistrate, where the case relates to a non-cognizable offence.

11. Admittedly, the same has not been done by the police i.e. the appropriate orders have not been obtained from the concerned Magistrate, as required under Section 155(2) Cr.PC. Having regard to the same, the police could not have lodged the FIR, much less, filed a charge-sheet. Neither the Court could have taken cognizance of the charge-sheet. Infact, the concerned Magistrate ought to have perused the charge-sheet and the sections applied before taking cognizance of the charge-sheet. Having regard to the aforesaid, the petitioner's case is squarely covered by clause – (4) of para 102 of the judgment of the Apex Court in the case of *State of Haryana and Ors v/s Bhajan Lal and Ors*². The relevant clause – (4) read thus;

“102 ”

2 1992 Supp (1) SCC 335

- (4) *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(2) of the Code.”*

12. The petition is accordingly allowed and the FIR bearing LAC No. 39 of 2018 registered with the Sahar Police Station, Mumbai, and consequently the proceeding pending before the learned Additional Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, being C.C. No.2998/PS/2018, are quashed and set-aside.

13. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

14. All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.