

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

CRIMINAL APPLICATION NO.200 OF 2020

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|---------------------------------------|---|
| 1. Harish @ Hariprasad Krishna Shetty |] |
| Aged 50 Years, |] |
| Residing at A/202, Balaji Heights |] |
| Ramdeo Park Road, Opp.Ramdeo |] |
| Park, Mira-Road(E), |] |
| District Palghar-401107 |] |
| |] |
| 2. Mr.Padnabha Krishna Poojari. |] |
| Aged 41 years, Occ.Business, |] |
| Residing at C-401, "B" Wing, |] |
| New Chandan Avenue CHS Ltd. |] |
| Mora-Bhayander Road, Next to |] |
| Jai Petrol Pump, Mira Road(E) |] |
| Mira Bhayander, Thane-401 107 |] |
| |] |
| 3. Ramesh Doomanna Shetty |] |
| Aged 49 Years, residing at |] |
| B-201, Manali Bhakti CHS Ltd. |] |
| Mashacha Pada Road, Kashe Gaon |] |
| Mira-Road(E), Dist.Palghar-401107 |] |
| |] |
| 4. Uday Koraja Shetty |] |
| Aged 42 years, Occ.Business, |] |
| Residing at Hotel Durga Prasad, |] |
| Sahar Road, Koldongri, Opp.Vijay |] |
| Nagar Society, Andheri(E), |] |
| Mumbai-400069. |] |

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5. Kiran Sundar Anchan]
 Aged 45 years, Occ.Business,]
 Residing at Room No.402, Raj]
 Palace, "B" Wing, Majas Wadi,]
 Shayari Nagar, Mumbai-400060] Applicants.

Vs.

1. Salim Abdul Rehman Shaikh]
 Residing at Rashida Manzil,]
 Kalina Kolivari Village,]
 Santacruz(E), Mumbai-400 029]
]
 2. The State of Maharashtra]
 (at the instance of MIDC]
 Police Station, Mumbai.)] Respondents.

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Mr. Meghshyam Kocharekar for Appellant.

Mr K.V.Saste, APP for State.

None for respondent no.2.

.....

**CORAM: Nitin W. Sambre &
 R.N.Laddha, JJ.**

DATE: 26 June, 2023.

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Order (Per Nitin W. Sambre, J.) :

In this Application, quashing of FIR is sought mainly on

the basis of legal submissions.

2. The Applicants are facing prosecution vide crime no.517 of 2019 for the offences punishable u/ss 325, 326, 397, 504, 506(II), 145 r/w 34 of the Indian Penal Code.

3. It appears that the complainant initially approached the Investigating Officer and lodged a complaint which the I.O. registered as non-cognizable offence vide N.C. No.2217 of 2019, dated 27.6.2019, for an incident which, occurred on the intervening night of 27.6.2019.

4. After N.C. was recorded, it appears that the respondent/complainant has caused Advocate's notice dated 5.11.2019 addressed to the Sr.P.I. of the respondent alleging cognizable offence.

5. As a sequel of the above crime, FIR No.517/2019 came to be registered.

6. While questioning the legality of the aforesaid, Mr Kocharekar, learned Counsel for the Applicants, invited the attention of this Court to the provisions of Section 155 of Cr.P.C. According to him, sub-section(2) of Section 155 of Cr.P.C. puts an embargo on the power of the Investigating Officer to investigate non-cognizable cases. According to him, the aforesaid legal provision fell for consideration before the Apex Court as well as this Court in the matter of; **1) Vishwajit P. Rane Vs. State of Goa & Ors.¹ and 2) Keshav Lal Thakur Vs. State of Bihar²**, wherein it is held that once a non-cognizable offence is recorded by the I.O. it is not open for him to register the crime on the basis of the same genesis of the offence and make the same cognizable.

7. Though served, none appears for respondent

1 2010 SCC OnLine Bom 1022.

2 (1996)11 SCC 557.

no.2/Complainant.

8. Mr.Saste, the learned APP would urge that even though the charges in the NC and FIR are similar, the FIR clarifies the situation based on the notice issued by the Legal Practitioner and justifies the registration of an offence against the Applicants. He states that the detailed narration of the Advocate's notice discloses a cognizable and serious offence, despite an earlier NC registration. Therefore, an offence was registered and investigated. He contends that the contents of the complaint, which formed the basis for registering the offence, removes the Applicant's case from the scope of sub-section (2) of Section 155 of Cr.P.C.

9. We have appreciated the said submissions. Section 155 Cr.P.C. 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 cognizable case, notwithstanding that the other offences are non-cognizable.”

10. Language of sub-section (2) of Section 155, puts an embargo on the right of the Investigating Officer to investigate NC offence unless authorised by an order of Magistrate. Similar issue fell for consideration before the Apex Court, in the matter of **Keshav Lal Thakur (supra)**. In para 3 of the judgment, the Court made the following observations.

“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 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.PC 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. The Division Bench of this Court in Goa further considered the judgment in the case of ***Vishwajit P. Rane*** (supra). In para 20 of the judgment, while relying on the observations made in para 3 of the Keshav Lal Thakur, this

Court has observed thus:

20. A Police Officer is not entitled to investigate a noncognizable offence without an order of a Magistrate as required by sub-section(2) of Section 155 of the said Code of 1973. When a query was made by this Court, the Intervenor appearing in person categorically stated that no such order under sub-section (2) of Section 155 of the said Code of 1973 was passed. On this aspect it will be necessary to consider the decision of the Apex Court in the case of Keshav Lal Thakur v. State of Bihar, (1996)11 SCC 557. In paragraph 3 of the said decision, the Apex Court has observed thus:

“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 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.PC 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.”

12. In the aforesaid background, what can be inferred is if a police officer has formed an opinion that an offence is non-cognizable after its disclosure to him by taking an entry to that effect in the Record as contemplated under Section 155(1) of Cr.P.C., it is not legally permissible to take cognizance of the same information again at a later stage based on a fresh complaint with the same contents.

13. As far as the case in hand is concerned, the fact remains that the incident was of 26.6.2019, and on the intervening night of 27.6.2019, the NC came to be recorded at the behest of the very complainant, i.e. respondent no.2, with NC

No.2217. After the NC was registered based on the Advocate's notice, containing the same allegations, an FIR no.517/2019 was registered on 13.11.2019 for the offences punishable u/s 325, 326, 397, 504, 506(II), 145, 34 of IPC came to be registered on 13.11.2019.

14. Once the police officer has formed an opinion that the very genesis of offence disclosed immediately after the incident does not fall within the scope of a cognizable offence, the subsequent issuance of a lawyer's notice does not take the case of respondent no.2 out of the clutches of sub-section (2) of Section 155 of Cr.P.C. In such eventuality, the remedy available to respondent no.2 was to approach the Magistrate on the basis of the initiated NC for the issuance of appropriate directions for carrying out an investigation u/s 156(3) Cr.P.C.

15. In the aforesaid background, we are of the view that the

case of the Applicants is covered by the judgment in the matter of **Keshav Lal Thakur (supra)** and the embargo in sub-section (2) of Section 155 of Cr.P.C.

16. As a result, the prosecution of the Applicants vide Crime No.517 of 2019 has to be held to be not sustainable. That being so, the present petition stands allowed in terms of prayer clause (b).

17. It is clarified that this order shall not come in the way of the respondent in approaching Magistrate Court for redressal of his grievance.

18. The Application is accordingly disposed of.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]