



2024:DHC:956



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29.01.2024

+ CRL.M.C. 5540/2023, CRL.M.A. 20900/2023, CRL.M.A. 20901/2023

KAMALJEET SINGH

..... Petitioner

Through: Mr. Vaibhav Sharma and Ms. Urvashi
Sharma, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Naval Kishore Jha, APP for State
with SI Anil, P.S. Najafgarh and SI
Ritu, P.S. Dwarka South.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Sections 482 and 483 Cr.P.C., the petitioner seeks to assail order dated 23.06.2023 passed by the learned M.M., Dwarka, New Delhi vide which charges have been framed against the petitioner and other accused persons for the offence under Sections 323/427/34 IPC.

2. Briefly, the FIR in the present case came to be registered on the complaint of one *Jitender Hallan* wherein he alleged that certain disputes arose between him and his business partners *Kamaljeet* and *Yashpal Sharma* and that on 04.12.2017, *Kamaljeet* and one *Pammy Solanki @ Pannu* reached the construction site and on instructions of the petitioner, complainant and his employees were given beatings. After investigation, charge-sheet came to be filed under Sections 323/341/308/427/34 IPC.



While hearing arguments on charge, learned ASJ came to the conclusion that there was no sufficient evidence to frame charge for the offences punishable under Sections 308/341 IPC however, he found enough material for framing of charges under Sections 323/427/34 IPC. As the offences under Sections 323/427/34 IPC were triable by the Magistrate, the matter was remanded to the court of concerned M.M vide order dated 18.08.2022. The concerned M.M. thereafter passed the impugned order.

3. In the aforesaid backdrop, the petitioner's case rests solely on the submission that the charged offence being non-cognizable, there is non-compliance of Section 155(2) Cr.P.C., as no prior permission was taken from the Magistrate before investigation. This submission is misplaced and rejected. In N.K. Sharma v. State¹, a Division Bench of this Court was faced with an almost similar issue, wherein while answering the reference, it was observed:-

“It is one thing to say that the allegations made in the first information report does not disclose a cognizable offence and it is another thing to say that either upon investigation or at the time of trial the Court having regard to the materials on record come to a conclusion that in fact the accused is guilty of offence which was non-cognizable in nature.

Furthermore even at this stage, the accused persons cannot take recourse of the provisions of Section 482 of the Code of Criminal Procedure praying for quashing of first information report inasmuch as not only charge-sheet has been filed but cognizance of the offence has been taken by the Magistrate concerned in exercise of his power under Section 190 of the Code of Criminal Procedure. The very fact that the learned Magistrate upon application of his mind on the basis of the

¹ Order/judgement dated 20.09.2002 passed in CRL.Misc.Main. 2042/2001



material which was pressed before him pursuant to or in furtherance of the investigation carried out satisfied himself that there exists materials for taking cognizance of a cognizable offence and further more even came to the conclusion that an order directing charge under Section 324/34 IPC should be framed, it cannot be said that in this situation, Section 155(2) of the Criminal Procedure Code would come into play. The decision of the learned Single Judge of this Court in Mam Chand (supra) must be viewed from that angle. In that case the learned Single Judge has come to the conclusion that having regard to the material on record no cognizable offence was found to have committed. In that view of the matter and relying upon the decisions referred to therein it was held:-

“I do not find much substance in the contention urged on behalf of the State that since the FIR was registered under Section 324 IPC and the said offence being cognizable, there was no bar in the police investigating the case. Once, on the circumstances prevalent at the time of registration of the case, it is evident that a non-cognizable offence is not made out, permitting the police to first register a cognizable offence, carry out investigations and ultimately if it is found that a cognizable offence was not made out, would be giving a long rope to the police. The nature of the offence is to be gathered from the facts available at the relevant time and if there is a doubt as to whether a cognizable offence is made out or not, the police can report it to the Magistrate concerned and obtain appropriate orders. On the one hand, no prejudice will be caused to the prosecution by adopting a safer course and on the other it will eliminate the possibility of misuse of power by the police. This approach will also be in consonance with the spirit and intention of Section 155 of the Code.”



On the other hand the Apex Court in H.N. Rishbud (supra) categorically held that even if there was certain irregularities at the time of first information report or complaint, the same would not vitiate the trial in the following terms:-

“The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.

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 if cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 Cr.P.C. is one out of a group of sections under the heading “Conditions requisite for initiation of proceedings”. The language of this section is marked contrast with that of the other sections of the group under the same heading, i.e., Section 193 and 195 to 1999.



These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. 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 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. To such a situation Section 537 Cr.P.C. which is in the following terms is attracted:

“Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge proclamation, order, judgment or other proceedings before or during trial or in an enquiry or other proceedings under this code, unless such error omission or irregularity has in fact occasioned a failure of justice.”

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. That an illegality committed in the course of investigation does not affect the competence and



the jurisdiction of the Court for trial is well settled as appears from the cases in „Prabhu v. Emperor, AIR 1944 PC 73 (C) and „Lumbhardar Zutshi v. The King. AIR 1950 PC 26 (D). These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present case with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.”

There is another aspect of the matter which must also be taken note of viz. the definition of “complaint” as contained in Section 2(d) of the Code of Criminal Procedure, which reads 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.;



The functions of explanation as stated by the Apex Court in S.Sundaram Pillai etc., Vs. R. Pattabiraman AIR 1985 Supreme Court 582 are:-

“The object of an explanation to a statutory provision is

a) to explain the meaning and intendment of the Act itself b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserved.

c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

d) an explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purpose and intendment of the enactment, and right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”

Thus by reason of the aforementioned explanation appended to Section 2(d); intendment of the Act itself has been manifested. Thus even if the learned Magistrate could not have taken cognizance on the basis of the report filed by the police authorities under Section 173 of the Code of Criminal Procedure he could have treated the said charge-sheet to be a complaint and take cognizance thereupon. This is pointed out only for the purpose of showing that even if the matter is considered from this angle we have no other option but to reach to the conclusion that the trial in a case of this nature would not be vitiated.”



4. Pertinently, as noted above, the FIR came to be registered under Sections 323/342/427/34 wherein Section 342 is cognizable. Even charge-sheet came to be filed under Sections 323/341/308/427/34 and cognizance was taken upon it. Thus, at the relevant time, the Court was, prima facie, satisfied of the offences. However later, at the stage of hearing arguments on charge, the Sessions Court was of the opinion that the cognizable offences are not made out. Thus, the entire investigation cannot be said to have vitiated on the aforesaid count as the charge-sheet can be considered as a complaint under Section 2(d) Cr.P.C. At the time of framing of charge, the application of mind is independent and at that stage the Court is not bound either by the offences invoked in the charge-sheet or the order taking cognizance. Accordingly, it is directed that the charge-sheet be treated as a complaint and trial be proceeded forthwith.
5. Petition is disposed of in the above terms alongwith miscellaneous applications.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 29, 2024/ga