

Ramappa Vs. State of Karnataka and ors.

Ramappa Vs. State of Karnataka and ors.

SooperKanoon Citation : sooperkanoon.com/370789

Court : Karnataka

Decided On : Dec-29-1983

Reported in : ILR1984KAR1064

Judge : Narayan Rai Kudoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 325, 341, 342, 352, 379, 451, 504 and 506

Appeal No. : Criminal Petn. No. 918 of 1983

Appellant : Ramappa

Respondent : State of Karnataka and ors.

Advocate for Def. : T.J. Chouta, Govt. Pleader

Advocate for Pet/Ap. : K.S. Savanur, Adv.

Judgement :

ORDER

1. This Criminal Petition is one under S. 482 of the Cr.P.C. 1973 (for short the 'Code') presented by a certain Ramappa against the order dt. 15-12-1983 passed by the J.M.F.C. Kundgol on a private complaint made by him under S. 200 of the Code against respondents 2 to 4, a Sub-Inspector and two Police Constables attached to Kundgol Police Station of Dharwad District for offences punishable

under Ss. 451, 323, 325, 352, 341, 342, 379, 504 and 506 I.P.C. in Private Complaint No. 47/1983 directing the Superintendent of Police, Dharwad District, to investigate the complaint under S. 156(3) of the Code and make a report. It may be stated here that the Magistrate did not examine upon oath the complainant and any of the witnesses and record their statement before directing investigation under S. 156(3).

2. The correctness and legality of the order made by the Magistrate was sought to be challenged by Sri K. S. Savanur, learned counsel for the petitioner on three main grounds. They are :

(i) The Magistrate should have recorded the statement of the complainant as well as the witnesses upon oath before directing investigation of the complaint under S. 156(3) of the Code by the Police;

(ii) As some of the offences alleged in the complaint are non-cognizable offences, the police could not investigate such a complaint under the Code; and

(iii) The order of the Magistrate referring the complaint for investigation to the Superintendent of Police was improper for the reason the complaint was one directed against his subordinate officials.

I shall proceed to consider these three grounds in the order in which they were argued before me.

GROUND No. (i)

3. For better appreciation of the first ground of attack, I apropos to advert to some of the provisions of the Code.

4. Chapter XII of the Code deals with information to the police and their powers of investigation S. 156 included in Chapter XII deals with the police officer's power to investigate cognizable cases. Sub-section (1) empowers an officer in charge of a police station to investigate without the order of the Magistrate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII

of the Code. Sub-section (2) provides that no proceeding of a police officer in any such case shall at any stage, be called in question on the ground that the case was one which such officer was not empowered under S. 156 to investigate. Sub-section (3) which is material for our purpose reads :

'Any Magistrate empowered under S. 190 may order such an investigation as above mentioned.'

Chapter XIV lays down the conditions requisite for initiation of proceedings S. 190 which is under Chapter XIV deals with cognizance of offences by Magistrates. It reads as under :

'190(1) Subject to the provisions of this Chapter, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf under sub-section (2) may take cognizance of any offence :-

- a) upon receiving a complaint of facts which constitute such offence,
- b) upon a police report of such facts;
- c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offence as are within his competence to inquire into or try.'

Chapter XV of the Code lays down the procedure to be followed in inquiries on the complaints made directly to the Magistrate. Chapter XV takes into its fold Sections 200 to 203, Section 200 provides for the examination of the complainant. It reads :

'200. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate;

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses :-

- a) If a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 :

Provided further that if the Magistrate makes over the case to another Magistrate under S. 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.'

Section 201 provides for the procedure by Magistrate not competent to take cognizance of the case. Section 202 deals with postponement of issue of process, the material portion of which reads as follows :

'202(1). Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under S. 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceedings :

Provided that no such direction for investigation shall be made :-

- a) XX XX XX
- b) Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under S. 200'

Note : Sub-sections (2) and (3) are not relevant for our purpose.

Section 203 deals with dismissal of complaint.

'Complaint' as defined under S. 2(d) reads :

'Complaint' means any allegation made orally or in writing to 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.'

'Police Report' as defined under Section 2(r) reads :

'Police Report' means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173.'

5. A bare reading of the above provisions makes it clear that a Magistrate who is competent to take cognizance of any offence as provided under Section 190, on receipt of a complaint directly from the party, either hold an enquiry following the procedure laid down in Chapter XV or refer the complaint for investigation of the police under S. 156(3) embodied in Chapter XII of the Code. If the Magistrate chooses to hold an inquiry under Chapter XV on a complaint presented to him directly by the party, he is required to examine upon oath the complainant and the witnesses, present, if any, reduce the substance of such examination to writing, to be signed by the complainant and the witnesses and also by him as laid down in Section 200, except in the case of complaints to which the provisions of the first proviso to Section 200 are attracted. It is also open to the Magistrate as provided under sub-section (1) of Section 202, on receipt of a complaint of an offence of which he is authorised to take cognizance, if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he think fit for the purpose of deciding whether or not there is sufficient ground for proceeding and where the Magistrate chooses to direct an investigation under sub-section (1) of S. 202 of a complaint other than made by a Court, it is obligatory upon him to examine the complainant and the witnesses present if any on oath as provided under Section 200 before directing such investigation. If on the other hand the Magistrate deems it necessary to take action under S. 156(3), he should refer the

complaint for investigation by the police without resorting to an inquiry as contemplated under Chapter XV provided the complaint discloses cognizable offence. Admittedly in the case on hand the learned Magistrate did not choose to hold an inquiry upon the complaint presented to him by the petitioner under Chapter XV. On the other hand, it is obvious from the action taken by him that he took action under S. 156(3) of the Code, to which Chapter XV does not apply. There is no dispute that the learned Magistrate who made the impugned order is empowered to take cognizance of the offence alleged in the complaint under S. 190 of the Code. Besides, most of the offences alleged in the complaint are also cognizable offences. The fact that some of the offences alleged in the complaint are non-cognizable offences, does not alter the situation, because of Section 155(4) of the Code which states that where the 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. I do not find any provision nor any provision in the Code was pointed out by Sri Savanur by which the Magistrate is obliged to follow the procedure contained in Chapter XV even when the Magistrate chooses to take action on the complaint presented to him under S. 156(3) of the Code. The decision of the Supreme Court in Chandra Deo v. Prakash Chandra : [1964]1SCR639 on which reliance was placed by Sri Savanur, in my opinion, does not apply to the facts of the case nor it would support his contention that the Magistrate was obliged to examine upon oath the complainant and the witnesses if any and reduce the substance of their statement to writing before referring the complaint for investigation under S. 156(3) of the Code. The decision does not bear upon the scope of the investigation under S. 156(3) of the Code of a private complaint referred by a Magistrate for investigation. For the reasons aforesaid I find no substance in this ground.

GROUND NO. (ii) :

6. Sri Savanur, learned counsel for the petitioner, contended that the police have no power investigate the complaint presented by the petitioner as some of the offences alleged in the complaint are also non-cognizable offences. I do not think any detailed discussion is necessary to point out the fallacy of this argument. Section 155 which finds a place in Chapter XII of the Code provides for giving

information to the police regarding non-cognizable cases and their powers of investigation of such cases. Sub-section (1) provides that when information is given to an officer in-charge of a police station of the commission of a non-cognizable offence within the limits of his station, he shall enter or cause to be entered the substance of the information in a book to be kept by him in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate. Sub-section (2) provides that 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. Sub-section (3) lays down that any police officer receiving an order from the Magistrate to investigate non-cognizable offence may exercise the same powers in respect of the investigation as an officer in-charge of a police station may exercise in a cognizable case except the power to arrest without warrant. Sub-section (4) stipulates that 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. There is no doubt that the Code gives wide powers to an officer in-charge of a police station to investigate any cognizable case without the order of a Magistrate. In view of the clear provisions contained in sub-section (4) of S. 155, the case arising out of the complaint presented by the petitioner shall be deemed to be a cognizable case which the police are empowered to investigate under the Code notwithstanding the fact that some of the offences alleged in the complaint are non-cognizable. Thus I find no force in the second ground urged by Sri Savanur.

GROUND NO. (iii) :

7. The propriety of the order made by the learned Magistrate in directing the investigation of the complaint presented by the petitioner to be conducted by the Superintendent of Police, Dharwad, is the point involved for decision under this ground. On this question Sri Savanur argued that since the complaint was directed against a Sub-Inspector of Police and two police constables working under the very same Superintendent of Police, the order of the learned Magistrate in directing the Superintendent of Police to investigate the case highly improper as no impartial investigation could be expected at his hands and no witnesses would come forward to depose before him during the investigation of a case which was

directed against his subordinate police officials.

8. I am really unable to understand the logic behind this argument unless one could say emphatically that no impartial investigation could be expected from a police officer, however high the officer is ranked in the hierarchy of the police force, if he is to investigate a complaint filed against his subordinate police officials. The argument canvassed on this line appears to me too far-fetched to reach such a conclusion. If the law courts were to accept such argument without any kind of reservation, then it would amount to distrusting the entire police force in discharging their powers of investigation entrusted to them under the Code which will have disastrous consequence in the administration of criminal justice. In the instant case, the learned Magistrate has thought of directing the investigation of the complaint by the Superintendent of Police who is the District Head of the Police, obviously bearing in mind that the complaint was directed against some of the subordinate police officials working in the same District. In such a situation, I do not find any impropriety in the order made by the learned Magistrate directing the Superintendent of Police of the District to investigate the complaint and submit a report. Hence I find no substance in this ground also.

9. These are the only grounds canvassed by Sri Savanur in support of the admission of this Criminal Petition. Since I find no substance in any of the grounds taken by him, the petition is liable to be rejected and it is accordingly rejected at the admission stage.

10. Petition disallowed.