

Ranbir Prakash Vs. State

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Court : Delhi

Decided On : Jan-08-1985

Reported in : 1985(1)Crimes752; 27(1985)DLT242; 1985(8)DRJ219

Judge : Malik Sharief-ud-Din, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 191(1)(9)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 828 of 1983

Appellant : Ranbir Prakash

Respondent : State

Advocate for Pet/Ap. : D.D. Sharma and; P.S. Sharma, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) This petition arises out of an order passed by learned Metropolitan Magistrate on 26-4-82 and confirmed by an Addl. Sessions Judge, New Delhi on. 8-3-83 refusing to drop the proceedings that were initiated against the petitioner on a police report under Section 482, 483 and 485 IPC.

(2) Stating briefly the facts are that on 5th February, 1981 S.I. Kanta Pershad of Special Cell (South Distt.) while on petrol with his staff came across one Ram

Dhari near Sewa Nagar and found him carrying a bundle of printed lables 'Fowara Chhap Bidi'. Ram Dhari disclosed that he was an employee of the petitioner who was running a printing press at Haiderpur. On inspection of the press the S.I. discovered six bags containing 'Fowara Chhap Bidi' lables and dyes of different popular registered brands of Bidis. On further enquiry it was found that the petitioner was also having a godown at 519, Katra Neel Gali Krishna, Chandni Chowk, Delhi. On inspection of the said godown, 10 bags of loose Bidi and 73 bags of labels of different brand of bidies were found present in the godown and seized. On investigation it was found that the proprietors of various registered popular brand of bidies had not given any authority to the petitioner either to print labels of their brands or to pack for sale bidies with their brands of labels. It was thus found that the petitioner was counterfeiting the various registered popular trade marks of bidi manufacturers.

(3) The learned Metropolitan Magistrate after taking cognizance ultimately found it to be a case under Sections 77 and 78 of the Trade and Merchandise Marks Act, 1958 and gave a notice of the same as envisaged by Section 250 of Cr. P.C. providing an opportunity to the petitioner to plead guilty or not guilty.

(4) It would be seen that before the learned Magistrate issued the aforesaid notice the learned defense counsel moved an application under Section 258 Cr.P.C. for dropping of the proceedings against the accused on the ground that the offences of which cognizance was taken were non-cognizable and .the police officer who made a report about the same was not competent to investigate the same. His contention before the courts below as also before me is that, in fact, on 5th February 1981 the whole investigation was over and it was late in the day, on 6th February 1981 that the police officer felt the need to seek permission of the court under Section 155(2) of Cr.P.C. to investigate the case. He, thereforee, thought that it could not be treated to be a police report and that the cognizance taken by the I learned Magistrate was incompetent. The learned Magistrate as well as the learned Addl. Sessions Judge declined to agree with the argument. The learned Magistrate simultaneously found that the offences made out were under Sections 77 and 78 of the Trade and Merchandise Marks Act, 1958 and ' he proceeded in the matter accordingly. The petitioner is actually aggrieved of this order and he

has again raised the same issue and has prayed that the proceedings as such be quashed.

(5) The proposition of law that has been canvassed by Mr. Dutt before me is that since on the date when the case in respect of non-cognizable offence actually came to be investigated the police officer investigating the case was not authorised to investigate as provided under Section 155(2) Cr.P.C. it cannot be deemed to be a police report and cognizance taken thereof would be deemed to be a nullity in the eyes of law.

(6) After consideration of the arguments urged on behalf of both the sides I find myself at complete disagreement with Mr. Dutt, learned counsels for the petitioner, who again, as in the trial court, has invited my attention to the case of Subhash Singh Modak v. State, 1974 Cri L. J 185 wherein it has been observed that the provisions of Section 155(2) Cr.P.C. are mandatory and where objection to nonconformance is taken before termination of the case) the illegality is a material one not curable under Section 537 Cr.P.C. and vitiates the ultimate order passed in the case. It may be stated that the learned Magistrate in declining the contention has relied on H.N. Rishbud v. State of Delhi, : 1955 CriLJ526 My reasons for not subscribing to the contentions raised by Mr. Dutt are as under.

(7) Section 190 Cr.P.C. makes provision that the Magistrates specified therein may take cognizance of any offence, upon receiving a complaint of facts which constitute such offence, upon a police report of such facts, or on information received from any person other than a police officer, or upon his own knowledge. Indeed, in one sense clauses (a), (b) and (c) of Sub-section (1) of Section 190 Cr. P.C. are conditions requisite for taking, cognizance. It would however, not be correct to say that cognizance, say on an invalid police report, is prohibited and therefore is a nullity. This section speaks of cognizance of 'any offence'. Its scope is not restricted to cognizance of non-cognizable offences only. The expression 'take cognizance of any offence' has not been defined in the Code. In its broad and literal sense it would mean 'take notice of any offence' with a view to initiate judicial proceedings against the offender in respect of the offence. Since the Magistrate on receiving the complaint goes through the same and decides to

proceed in accordance with Chapter Xv he will be deemed to have taken cognizance. Thus, taking of cognizance precedes the examination of the complainant and witnesses.

(8) At this stage it is necessary for me to indicate as to what is meant by a complaint. It is defined in Section 2(d) of Cr. P.C. which reads as under;

'''complaint' means any allegations 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; Explanationn-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 com- plainant.'

(9) It would thus be seen that the complaint of facts constituting an offence need not be in writing nor it is obligatory that it should reach the court directly through complainant. It may be sent by post as well. The term 'complaint' would even include allegations made against the person unknown. If a Magistrate takes cognizance under clause (a) of Sub-section (1) of Section 190 Cr.P.C. on the basis of a complaint of facts, he would take cognizance and proceedings would be instituted even though persons who had committed offence were not known at that time. It would further be noticed that the words used in clause (a) of Sub-section (1) of Section 190 Cr. P.C. are 'upon receiving a complaint of facts which constitutes such offence'. It does not state who can make the complaint. Surely, it can be any body including a public servant. Thus a police officer who is also a public servant is also competent enough to make a complaint and there is nothing to prevent the court from taking cognizance on it if it discloses the commission of an offence.

(10) The conclusion this case has, however, arisen because Mr. Dutt seems to be labouring under an impression that since it was a police report, cognizance was taken only under clause (b) of Sub-section (1) of Section 190 Cr. P.C. and that it could not otherwise be taken at all. Apparently, even if it is assumed for the sake of argument that this did not strictly constitute a police report as envisaged by

Section 190 or Section 173 Cr. P.C. in that case there was nothing to prevent a Magistrate from treating it as a complaint and from taking cognizance otherwise than on police report appropriately under clause (a) of Sub-section (1) of Section 190 Cr. P.C. In fact, this is what exactly seems to have happened in this case.

(11) I may make it clear that the foundation of the jurisdiction of the Magistrate for taking cognizance does not depend upon the validity or invalidity of investigation. It only depends upon the set of facts and circumstances placed before the court from which the court comes to the conclusion that it constitutes a commission of offence. The correct position, therefore, would be that even an invalid report by a police officer can be treated to be a complaint of facts constituting an offence and the Magistrate is fully competent to take cognizance under clause (a) of Sub-section (1) of Section 190 Cr.P.C. and the procedure to be followed would be one followed in a complaint case. Taking of cognizance under Section 190 Cr. P.C. is restricted only under clause (b) of Sub-section (1) while clause (a) of this section is wider in its sweep and there is nothing to prevent a Magistrate to treat an invalid police report as a complaint and take cognizance of the same- In that view of the matter a defect or illegality in investigation, howsoever serious has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt, a police report which results from investigation is provided in clause (b) of Sub-section (1) of Section 190 as the material on which cognizance is taken but it cannot be maintained that a valid and legal police report is the only foundation of jurisdiction of the court to take cognizance under Section 190 Cr. P.C.

(12) Section 2(d) of the Code of Criminal Procedure indeed excludes from the definition of a complaint a 'police report'. This, however, does not deprive the police officer of his right to make a complaint instead of a report, much less does it deprive the court of its power to treat such a report as a complaint and to proceed upon the facts disclosed therein, if it discloses the commission of an offence. Even under clause (a) of Sub-section (1) of Section 190 Cr. P.C. if the complaint for some reason is invalid the Magistrate can still act upon the information contained therein as the object of this clause is to enable the Magistrate to see that justice is vindicated, notwithstanding the fact that the persons individually aggrieved are unwilling or for some reason unable to prosecute. In that view of the matter, I am

of the view that the first limb of argument urged by Mr. Dutt breaks. Jurisdiction of the Magistrate to take cognizance is independent of the manner in which the facts constituting commission of offence are discovered and placed before the Magistrate.

(13) The second limb of argument of Mr. Dutt is that the report on which the learned Magistrate acted was under Section 482, 483 and 485 of Ipc and that the learned Magistrate was not justified in proceeding against the petitioner under Sections 77 and 78 of the Trade and Merchandise Marks Act of 1958. I do not agree. It is an established proposition of law that where proceedings are initiated with reference to one offence but it subsequently appears in the course of proceedings that a different offence or an additional offence has been committed in the course of the same transaction, the court can proceed with reference to such offence against any person who appears to be implicated. In taking such action the court takes cognizance of such offence by virtue of its being seized of the case and it will be wrong to say that the court has taken cognizance upon its own knowledge. In taking cognizance on a complaint, a Magistrate is not confined to the offences mentioned in ' the complaint. He can take cognizance of any offence which in his opinion is constituted by the facts disclosed in the complaint. With these observations I find no force in the petition. It is dismissed.