

Narain Singh Vs. State (Delhi Administration)

Narain Singh Vs. State (Delhi Administration)

SooperKanoon Citation : sooperkanoon.com/690343

Court : Delhi

Decided On : Dec-13-1985

Reported in : 1986(2)Crimes535; 30(1986)DLT118; 1986(10)DRJ109; 1986RLR545

Judge : J.D. Jain, J.

Acts : [Delhi Police Act, 1978](#) - Sections 93; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 444 of 1984

Appellant : Narain Singh

Respondent : State (Delhi Administration)

Advocate for Pet/Ap. : Ravinder Chadha,; S.T. Singh and; D.R. Sethi, Advs

Judgement :

J.D. Jain, J.

(1) This petition under Section 482' Code of Criminal Proceedure (hereinafter referred to as .the Code), raises some important questions of law. However, the facts giving rise to it lie in a narrow compass.

(2) On 4th July 1983, the petitioner, his wife Smt. Malti Devi, the tenant of the petitioner Ramesh Chand and his wife Smt. Bhagwati Devi Were arrested by Si Bachan Singh of Police Station Sultan Pari under Section 93 read with Section 97 of the Delhi Police Act (for short 'the Act'). It was alleged that the petitioner and his wife on the one hand and Ramesh Chand and his wife on the other were indulging in abusive language and were fighting with each other in a public street and they would not desist C from doing so despite intervention by the people residing in the Mohalla and even the police. They were produced before the concerned Metropolitan Magistrate on that very day and were released on bail on furnishing a personal bond of Rs. 500.00 each. A report termed by the police as kalendra under Section 93/97 was also filed by the police on the same date. They were directed to present themselves again in Court on 20th August 1983. The case was then adjourned from time to time on one or the other ground and proceedings could not be commenced upto 10th February 1984 when the case was again adjourned to 30th April 1984. Thereupon the petitioner challenged the institution of the criminal proceedings against him in revision but the same was dismissed by an Additional Sessions Judge vide order dated 3rd May 1984 on the short ground that he had not filed the certified copies of the various orders which had been called in question, within time. Hence, this petition under Section 482.

(3) The chief contention of the learned counsel for the petitioner is that the so called kalendra filed by the police against him and other accused which strangely enough comprise both the rival parties is neither a police report within the meaning of Section 173(2) nor a complaint as defined in Section 2(d) of the Code and as such the Magistrate was not competent to take cognizance of the offence either under clause (a) or clause (b) of Section 190 of the Code So, the first question which falls for determination is whether the offence in question is cognizable or not. Section 93 of the Act deals with the offence of misbehavior with intent to provoke a breach of the peace. It reads as under :

'NO person shall use in any street or public place any threatening abusive or insulting words or behavior with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.'

(4) It may be noticed on the plain language of this Section that the culpability arises only if the misbehavior mentioned in the Section takes place in any street or public place but not otherwise. Section 97 prescribes penalty for the offence under Sections 80 to 96 which, inter alia, includes offence under Section 93. The offender on conviction is liable to be punished with a fine which may extend to Rs. 100.00 or in default of payment of fine with imprisonment for a term not exceeding eight days.

(5) Section 59 which occurs in Chapter Vi of the Act and deals with the executive duties and powers of police officers provides that :

'59.Duty of police officer to enforce provisions of the Act (1). It shall be the duty of every police officer to ensure compliance with the provisions of this Act or any rule, regulation or order made there under and for that purpose such police officer may, (a) warn persona who from ignorance fail to comply with any provision of this Act or any rule, regulation or order made there under; (b) require any person acting or about to act contrary to any provision of this Act or rule, regulation or order made there under to desist from so doing ; (c) subject to the provisions of Sub-sections (2) and (3), arrest any person contravening any provision of this Act or any rule, regulation or order made there under, where such contravention is an offence punishable under this Act ; (2) A police officer shall sot arrest any person under clause (c) of Sub-section (1) without a warrant issued by a Metropolitan Magistrate, unless such person (c) commits in the presence of such police officer an offence punishable under Section 97, Sub-section (1) of Section 108, clause (a), (b) or (c) of Section 110 or Sub-section (2) of Section 113 in respect of the contravention of any order made under Section 33 or Section 34; (d) (e) (f) commits in his presence in any street or public place any non-cognizable offence punishable under this Act or any rule or regulation made there under if such person (i) after being warned by the police officer persists in committing such offence; or (ii) refuses to accompany the police officer to a police station on -being required so to do.'

(6) A bare reading of this Section would show that a police officer cannot arrest any person under clause (c) of Sub-section (1) without a warrant issued by a

Metropolitan Magistrate unless such person commits an offence mentioned in clauses (c) and (f) of Sub-section {2} in the presence of such police officer. An offence punishable under Section 97 is also covered by clause (c) of Sub-section (2). Hence, it is manifest that if an offence punishable under Section 97 is committed in the presence of a police officer he can arrest the offender without a warrant issued by a Metropolitan Magistrate.

(7) Clause (c) of Section 2 Which is the definition Section in the Code defines 'cognizable offence' as an offence for which, and 'cognizable case' as a case in which, a police officer may, in accordance with the first Schedule: or under any Other law for the time being in force, arrest without warrant. Clause (1) of the said section defines 'non-cognizable offence' as meaning an offence for which, and 'non-cognizable case' meaning a case in which, a police officer has no authority to arrest without warrant. The first Schedule to the Code gives the classification as to whether an offence is cognizable or non-cognizable, bailable or otherwise etc. Part-I of the Schedule deals with offences under the Indian Penal Code while Part-II gives classification of offences against other laws. The relevant entry in the context of the instant case is to be found at No. 3 in the second part of the Schedule. Its perusal would show that an offence under any law other than Indian Penal Code would be non-cognizable if it is punishable with imprisonment for less than three years or with fine only. Since the offence under Section 97 of the Act is punishable only with a fine of Rs. 100.00 or in default imprisonment for eight days, it would certainly be a non-cognizable offence as per Part-II of the first Schedule. It is, therefore, to be seen if it has been made a cognizable offence under the Act itself or not.

(8) I have already reproduced Section 59 of the Act which empowers the police officer to effect arrest of an offender under Section 97 of the Act. It is manifest from its perusal that if such an offence is committed by any person he cannot be arrested by any police officer without a warrant issued by a Metropolitan Magistrate unless, of course, the offence is committed in the very sight of police officer. In other words, the power to arrest without a warrant can be invoked by a police officer only when the offence is committed in his presence and not otherwise. Evidently, therefore, an offence under Section 97 cannot be said to be

cognizable in itself and it is only under certain circumstances, namely, its commission in the presence of the police officer that the power of arrest without warrant can be exercised by the latter. Since the power of arrest is not unfettered or plenary as is obviously contemplated in Section 2(c) of the Code and its exercise is restricted and limited to a particular situation, I am of the considered view that the offence in question is non-cognizable. It is indeed incomprehensible how an offence would be cognizable in certain circumstances and non-cognizable in certain other circumstances. The logical consequence of accepting this argument would be that the nature of offence would change according to the particular situation envisaged in Section 5 of the Act. In *Public Prosecutor v. A.V. Ramiah*, a Division Bench of Andhra Pradesh High Court held that an offence under Section 12 of the Madras Gaming Act was not a cognizable offence within the meaning of Sectn 4(1)(f), Code of Criminal Procedure, 1898, inasmuch as Section 13 of the said Act did not confer an unrestricted power of arrest on a police officer but gave him only a limited power, in that he could arrest without a warrant only if the offence was committed in his view but not otherwise. Their Lordship's observed that it was not for all offences under Section 12 but only for some that a police officer might arrest without warrant. It, therefore, followed that an offence under Section 12 of the said Act was not a cognizable offence.

(9) Likewise a learned Single Judge of Calcutta High Court in *'State of West Bengal v. Joginder Mallick*. which was a case under Section 33A of the Calcutta Sub-urban Police Act, expressed the view that:

'NOTWITHSTANDING the power of the police officer to arrest without warrant, a person committing an offence under Section 33A of the Act. in exercise of the powers conferred by Section 43(1), the offence is not a cognizable one. To bring an offence within the definition of 'cognizable offence' under Section 2(c) of the Code, the offence by itself should be such for which the offender can be arrested without a warrant of arrest. If for commission of such offence under certain circumstances the police is given the power to arrest without warrant that would not make the offence cognizable. In that view of the matter and in view of the punishment provided for the offence under Section 33A of the Act it is not a 'cognizable offence' under the First Schedule of the Code nor has the offence

been made a cognizable one under the Act. The only power that has been given under the Act is that when it is committed under certain circumstances, the police has a right to arrest without warrant'

(10) I am in respectful agreement with the views expressed by the Division Bench of the Andhra Pradesh High Court and the learned Single Judge of Calcutta High Court in this regard. The purpose for which the power to arrest has been given to a police officer under Section 59(2)(c) of the Act is quite patent. It is to enable the police officer in whose presence an offence of misbehavior with intent to provoke a breach of the peace or which may cause a breach of peace cannot be expected to be a mere silent spectator. It is ridiculous to suggest that the police officer will have to rush to a Magistrate to obtain a warrant for apprehending the culprits. In other words, he has to act quickly and take a decision for himself at the spot. Hence, I am of the considered view that an offence punishable under Section 97 of the Act cannot be said to be cognizable offence merely because power to arrest has been conferred on a police officer to arrest the accused under certain circumstances. In other words, such an offence is non-cognizable.

(11) If this be the correct legal position the question would naturally arise whether the report of a police officer which has been termed as kalendra can be said to be a police report within the meaning of Section 190(1)(b) of the Code in view of the express prohibition contained in Section 155 of the Code debarring a police officer to investigate a non-cognizable offence without prior permission of the concerned Magistrate. Section 155(1) provides that when an 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. Sub-section (2) thereof lays down 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. It is thus obvious that after entering information with regard to a non-cognizable offence in the diary maintained at the police station the police officer should refer the informant to the Magistrate. He may, of course, also report the case to the Magistrate for orders under Sub-section

(2). However, it is manifest that it is only under the orders of a Magistrate that the police can investigate into a non-cognizable offence. Further the provision in the Section requiring an order of the Magistrate, for investigation is amendatory provision and cannot be treated as merely directory. Consequently an investigation conducted in violation thereof is illegal. The question would, however, arise as to whether the defect or illegality in investigation debars the Magistrate from taking cognizance on the basis of the report eventually submitted by the police officer or whether it would vitiate a trial based on such investigation. This question came up for consideration before the Supreme Court in *H.N. Rishbud and another v State of Delhi*, : 1955 CriLJ526 , which was a case under the Prevention of Corruption Act. There the investigation into an offence under Section 5(2) of the said Act was conducted by a police officer without obtaining an order of the Magistrate as required by Section 5(4) of the said Act. The Supreme Court held that the provision of the Section requiring an order of a Magistrate to a police officer, not otherwise authorised to investigate, was mandatory and the investigation bore the stamp of illegality. However, it observed :

'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, Criminal Procedure Code as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance.....? 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 under Clause (a) or (b) of Section 190(1) 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, Criminal Procedure Code (Old) is attracted.'

(12) But, their Lordships sounded a note of caution that if the breach of the mandatory provision is brought to the notice of the Court at a sufficiently early stage of the trial, the Court while not declining cognizance will have to consider the nature and extent of the violation and pass appropriate orders for such re-

investigation as may be called for, wholly or partly and by such officer as it considers appropriate with reference to the requirement of law. Reference in this context be also made to *Dr.M.C.Sulkunte v. The State of Mysore*, : 1971 CriLJ519 , in which too investigation including laying the trap had been carried out by a police officer below the rank of Deputy Superintendent of Police. The offence under Section 5(2) of the Prevention of Corruption Act is a cognizable offence. However, the principle of the aforesaid decisions of the Supreme Court, viz. that the invalidity of the investigation has no relation with the competence of the Court to take cognizance would apply with equal force to non-cognizable offences also. As observed by their Lordships in *H N. Rishbud (supra.)* even an invalid report may fall either in Clause (a) or Clause (b) of Section 190(1) of the Code. On the strength of these observations it was held by various High Courts that a report by a police officer in non-cognizable offence investigated without authorisation by a Magistrate would be treated as a complaint of facts which constitute an offence even if it does not amount to a report of a police officer as contemplated in Section 173 of the Code. See in this connection *A. Kanniah and others v. State*, Air 1967 Madras 390, *Kantilal Takhatmal Jain and another v. State*, : AIR1970 Bom225 and *Public Prosecutor v. A V. Ramiah (supra.)*. The gist of these authorities is that where a police officer does investigate into an offence which is non-cognizable without the order of Magistrate and files a charge-sheet, it is nonetheless to be treated as a complaint and not a police report. The label put on it by the police is of no significance. This legal position appears to have been recognized by the legislature by amending the definition of the word 'complaint' in the Code. 'The report of a police officer' under the Code of 1898 was not a complaint because of the express exclusion of the same from the ambit of the expression 'complaint'. Even in the present definition of the expression 'complaint' it is stated that it does not include a police report. However, an Explanationn has been added to the definition of complaint as under :

'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.'

(13) Obviously the addition of the Explanationn is aimed at clarifying the legal position that even if investigation of a non-cognizable offence by a police officer is unauthorised i.e. it has been conducted without prior permission from the concerned Magistrate, it would amount to a complaint on the basis of which cognizance may be taken by the Court. It is pertinent to notice here that a new clause (r) defining the words 'police report' has been added in Section 2 of the Code. The said Clause expressly states that 'police report' means a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173. It is thus crystal clear that unless a report made by a police officer falls within the purview of Section 173(2) of the Code it cannot be said to be a police report. Hence, by necessary implication a report by a police officer in consequence of an unauthorised investigation into a non-cognizable offence would necessarily be a complaint. It may be pertinent to notice here that Sub-section (3) of Section 155 of the Code explicitly says that a police officer receiving an order of a Magistrate to investigate a non-cognizable case 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. It will obviously imply that once permission to investigate a non-cognizable offence has been accorded by the concerned Magistrate, his power of investigation will be at par with that in a cognizable case. In other words, the report submitted by the police officer in such a case on the conclusion of the investigation would fall within the ambit of Section 173(2). If that be so, there was hardly any necessity for addition of the Explanationn to the definition of the expression 'complaint' because after an order from the concerned Magistrate the police officer investigating a non-cognizable case would be competent to present a report under Section 173 on the basis of which cognizance can be taken under Section 190(1)(b) of the Code. It is, thereforee, obvious that it was to cover a case of unauthorised investigation of a non-cognizable offence by a police officer that the Explanationn to the definition of complaint has been added. In this view of the matter, thereforee, the so-called kalendra filed by the police in the instant. case would constitute a complaint. It may not be out of place to mention here that given the power to arrest under Section 59(2)(c) of the Act the police officer, who effects the arrest, is legally bound to report the arrest effected by him as also the circumstances in which the arrest is

made to the concerned Magistrate. This is precisely what was done by the concerned police officer in the instant case and his report proceeded on the basis that the offence was committed in his pretence. So, the Magistrate was competent to take cognizance of the offence on the basis of such report which, as observed earlier, was tantamount to a complaint. The mere fact that it was captioned 'kalendra", an expression commonly used in police parlance with regard to the reports other than those under Section 173 of the Code, would hardly make any difference and it will nonetheless amount to a complaint as defined in Section 2(d) of the Code.

(14) I am fortified in the view I have expressed hereinbefore by several decisions of various High Courts, viz. Tapan Kumar Ghosal v. State of West Bengal and another, 1976 (1) Cal. L.J. 213 State of West Bengal v. Joginder Mallick, also of Calcutta High Court, Maniyeri Madhavan v. State of Kerala, (Kerala High Court), Bajji v. The State of Madhya Pradesh, and Chiltikkoodathil Manuel Augustin v. State of Kerala and another, In all these cases it was held that where the police investigates into a non-cognizable offence without obtaining any order of a Magistrate as required under Section 155(2) of the Code and submits a report thereafter, the report so submitted by the police should be treated as a complaint in view of the definition of that expression Along with the Explanation thereto as given in Section 2(d) of the Code and the definition of the 'police report' as given in Section 2(r) and the Magistrate will be competent to take cognizance thereon under Section 190(1)(a) of the Code and proceed according to law as applicable to a complaint case. Indeed, Maniyeri Madhavan's case (supra) appears to be on all fours with the facts of the instant case. The petitioner therein was found behaving in a disorderly and indecent manner using obscene and abusive language against passers-by and neighbours and thereby committed an offence punishable under Section 290, Indian Penal Code. The Court took cognizance of the offence and issued summons to the petitioner. The order of summoning was challenged under Section 482 of the Code. Observed the learned Judge of the Kerala High Court that :

'THE Station House Officer in this case did not do any act of investigation as contemplated under the Criminal Procedure Code. The report of the police officer

proceeded on the basis that the offence was committed in his presence. Under these circumstances, the report submitted by him which is called 'petty case charge-sheet' cannot be treated as a police report defined under Section 2(r) and coming within the scope of Section 190(1)(b) of the Code. On the other hand, it has to be treated as a complaint under Section 2(d) and coming within the scope of Section 190(1)(a) of the Code.'

(15) The learned Judge further observed that :

'WHERE a report submitted by a Station House Officer cannot be treated as a police report under Section 173 of the Code, under certain circumstances, it could be treated as a complaint as defined in Section 2(d) of the Code and coming within the scope of Section 190(1)(a) of the Code. In such a case the Station House Officer submits the complaint or the report not in his private capacity but in his capacity as a police officer. It cannot be said that his examination on oath is necessary under Section 200 of the Code and that cognizance cannot be taken without his examination.'

(16) I am in complete agreement with this view and that would be the correct view to be taken in the instant case.

(17) I am, however, constrained to observe that the learned Magistrate (Shri D.S Bawa) seems to have totally ignored the provisions contained in Sections 260 and 206 of the Code and he went on adjourning the case in a most perfunctory and casual manner. Even the learned Additional Sessions Judge has remarked that he (the learned Metropolitan Magistrate) had perhaps no other option because the petitioner and his co-accused were physically produced by the concerned police officer and as such question of issuing any summons did not arise. However, he seems to have overlooked the other aspect of the matter, namely, that the Magistrate should still have proceeded with the instant case forthwith as it is essentially a petty case. Section 260 empowers a Magistrate to try summarily certain offences enumerated therein. Obviously the object of the said section is expeditious disposal of the cases relating to minor offences and to shorten the record and work of the Magistrate. Section 206 facilitates the task of the Magistrate still further, in that it enables him to record plea of guilty of the accused

in cases of petty offences even through proxy i.e. pleader etc. by issuing special summons. For the purposes of the said section petty offence means any offence punishable only with fine not exceeding Rs. 1,000.00 but does not include any offence so punishable under the Motor Vehicles Act, 1939 or under any other law which provides for convicting the accused persons in his absence on the plea of guilty. Since the Act although a special law does not provide for convicting the accused persons on a plea of guilty in their absence, recourse can be taken to the provisions of Section 206 of the Code only in a case like the present. No doubt, the petitioner and his co-accused were produced in person by the police officer who had effected their arrest and) therefore, they had to be bailed out but the Magistrate would have been well advised to take cognizance of the offence and try the accused accordingly then and there, the maximum punishment for the offence under Section 97 of the Act, as stated above, being Rs. 100/* only. Adjourning the case from time to time is bound to cause undue harassment, hardship and avoidable expense to a person accused of a petty offence like the one in question. I earnestly hope that the Magistracy in Delhi show genuine concern for dealing with such like cases expeditiously and they avail of the provisions contained in Sections 206 and 260 of the Code liberally. Normally I would have remanded this case for further proceedings in the trial Court. However, having regard to the quantum of punishment which may be indicted on th(r) petitioner in the instant case and the fact that he has already undergone lot of harassment as the case has been hanging like a damocles sword on his head since 4th July 1983, I do not think that the interests of justice require adoption of such a course. The ends of justice would be fully met if the further proceedings against him are quashed and he is set at liberty. Hence, it is ordered accordingly.