
(2011) 12 DEL CK 0082
In the Delhi High Court
Case No : Criminal M.C. 246 of 2011

Ankit Shah and Anr

APPELLANT

Vs

State and Anr

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 155(2), 155(4), 190, 190(1)(a)
Penal Code, 1860 (IPC) — Section 183, 186, 189, 332, 34

Citation : (2011) 12 DEL CK 0082

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : R.P. Luthra, for the Appellant; Fizani Husain, APP for the State with Rajender Prasad, ASI P.S. Krishna Nagar, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This is a petition u/s 482 Cr.PC preferred by the petitioner for quashing FIR No. 271/2009 under Sections 186, 353, 189, 332/34 IPC registered at Police Station K. Nagar Delhi and all the consequential proceedings arising therefrom including the order dated 7.7.2010 passed by learned MM whereby he took cognizance of the offence punishable under Sections 186, 189 IPC against all the four accused persons arrayed in the aforesaid FIR.

2. Before advertng to the grounds on which the reliefs are sought by the petitioners, facts in nutshell may be noted. The Employees Provident Fund Department, Government of India (complainant in the aforesaid FIR) made a complaint against the accused persons that on 9.7.2009, the Enforcement Squad visited the premises of M/s Shah Namkeens in order to examine the record of the establishment to explore the possibility of its coverage under EP & MP Act, 1952. They introduced themselves and asked for the production of records for verification. The person at the reception not only declined to produce any record but also misbehaved rudely with them. One of the sons of the owner Mr. Sunil Shah appeared and started clicking photographs of the officials and threatened

with dire consequences. Their staff, including the lady officer who had gone behind the showroom verifying the record pertaining to the establishment were also obstructed to enter and they were misbehaved. The workers were made to run away by the management and so no headcount of the workers could be made. It was alleged that sons of Mr. Sunil Shah and Mr. J.S. Tyagi, the Manager, not only misbehaved with the officers but also did not provide relevant record despite sufficient requests made to them and in this way they tried to obstruct the squad members in conducting their official duty and also tried to harm them by manhandling and causing threats to their lives, ultimately they had to call the police. The SHO of the area arrived at the spot with sufficient police force. The owner switched off the lights, fans, ACs and closed the doors. The SHO intervened and directed the owner Mr. Sunil Shah and his sons to produce the records, but they declined. They also did not open the door for verification of the records pertaining to the establishment. Later, owner Mr. Sunil Shah also contacted the SHO on phone and declined to produce the records. It was on these allegations that the case against the two sons namely Amit Shah, Ankit Shah and Manager Jasvir Tyagi and employee Ram Goptal Goswami was registered vide the aforesaid FIR.

3. The learned MM took cognizance of the offence under Sections 186, 189 IPC only vide the impugned order. As none of the officials of the department sustained any injury the MM vide order dated 10.07.2009 dropped sections 332/353 IPC.

4. The impugned order has been assailed by the petitioners before this Court mainly on two grounds, namely. (i) that the offence under Sections 186, 189 IPC being non cognizable, the police has no authority to investigate the case without the permissions of the learned MM u/s 155(2) Cr. P.C. and lay charge-sheet and hence the entire proceedings are null and void and (ii) that the names of the sons of the owner i.e. petitioners were not mentioned in the complaint and so their identity was not established.

5. On the other hand, learned counsel for the department submitted that the offences which were committed by the petitioners and co-accused are both cognizable and non-cognizable and hence the investigation was rightly conducted by the police u/s 155(4) Cr.PC. It was submitted that in any case, the Magistrate was competent to take cognizance of the offences and can be deemed to have so taken u/s 190(1) Cr.P.C. It was submitted that further, in any case, the irregularity, if any, in the investigation did not cause any prejudice to the accused or failure of justice and was curable u/s 465 Cr.PC. The learned counsel for the department/complainant has placed reliance in the case of P. Kunhumammed Vs. State of Kerala, .

6. It is, thus, essential to quote the relevant provisions of law contained in section 155 and 190 Cr. P.C. and also section 2(d) Cr.P.C. which read like this:

Section 155 Cr.P.C.

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 a cognizable case, notwithstanding that the other offences are non-cognizable.

Section 190 Cr.P.C.

1) Subject to the provisions of this Chapter, any Magistrate of the first 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 it 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 offences as are within his competence to inquire into or try.

Section 2(d) Cr.P.C.

(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, 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;

7. A conjoint reading of the aforesaid sections (section 155 and 190 of Cr.P.C.) the following prepositions were noted by the Kerala High Court in the case of P. Kunhumammed v. State of Kerala as under:

Section 155(2) of the new Code prohibits investigation by a police officer into a non-cognizable offence without the order of a Magistrate. A violation of this

provision would stamp the investigation with illegality. (2) This defect in the investigation can be obviated and prejudice to the accused avoided by the Magistrate ordering investigation u/s 202 of the Code. (3) The report of a police officer following an investigation contrary to Section 155(2) could be treated as a complaint u/s 2(d) and Section 190(1)(a) of the Code if at the commencement of the investigation the police officer is led to believe that the case involved commission of a cognizable offence or if there is doubt about it and investigation establishes only commission of a non-cognizable offence. (4) If at the commencement of the investigation it is apparent that the case involved only commission of a non-cognizable offence, the report followed by investigation cannot be treated as a complaint u/s 2(h) or Section 190(1)(a) of the Code. (5) Whenever a report of a police officer relating to a non-cognizable offence is brought to the notice of a Magistrate he has to look into the matter and apply his judicial mind and find out whether, (a) it is a case where reinvestigation has to be ordered u/s 202 of the Code, or (b) whether it could be treated as a complaint u/s 2(d) and Section 190(1)(a) of the Code and if so cognizance could be taken, (c) or whether it is a case where the report cannot be treated as a complaint u/s 2(a) and Section 190(1)(a) of the Code or, (d) it is a fit case for taking cognizance taking into consideration all the attendant circumstances. (6) If these aspects are not brought to the notice of or adverted to by the Magistrate at that stage and trial is concluded, the trial cannot be said to be vitiated on account of the defect as the defect in the investigation precedent to trial could be cured by Section 465 of the new Code, unless failure of justice has been occasioned thereby.

8. In the present case the FIR was registered under sections 186/189/332/353/34 IPC which are both cognizable and non-cognizable. The investigation was started by police under 155(4) Cr.P.C. However, the Magistrate took cognizance of the offences u/s 186/189 IPC which were non cognizable and dropped the cognizable offences u/s 332/353 IPC. It is apparently because of the fact that there was no assault or injury sustained by any official of the raiding party of the department. This would show that the Magistrate did apply his mind that offences were not made out under sections 332/353 IPC, but, are made out under sections 186/189 IPC. The cognizance seems to have been rightly taken by him u/s 190 Cr. P.C. In any case, even if it is taken that the investigation was without permission of Magistrate u/s 155(2) Cr.P.C., there was no illegality in taking cognizance since in that case it could be treated as a complaint made by police officer in terms of section 190(1)(a) and Section 2(d) read with explanation appended thereto. Still further this can at the most be said to be an irregularity which would not said to have either caused prejudice to the accused persons or resulted in manifest failure of justice. Such an irregularity was curable u/s 465 Cr. P.C.

9. With regard to the plea that the names of the sons of the owner were not mentioned and so their identity was not established, I am not at all impressed by this submission of the learned counsel. Though the names of the sons of the

owner Sunil Shah were not mentioned in the complaint, presumable as their names were not known at the time of making complaint, but it was categorically alleged that they were the sons of the owner Sunil Shah who committed the offences as noted above.

10. In view of my above discussion, I do not find any merit in the present petition and the same is hereby dismissed.