
(1983) 04 CAL CK 0005
In the Calcutta High Court
Case No : Criminal Rev. No. 525 of 1981

Corporation of Calcutta and Another	APPELLANT
Vs	
Md. Khaguddin and Others	RESPONDENT

Date of Decision : 08-04-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190(1)(a), 190(1)(b), 2(c), 2(d)
Penal Code, 1860 (IPC) — Section 182

Citation : 86 CWN 706

Hon'ble Judges : J.N. Chaudhuri, J;B.C. Chakrabarti, J

Bench : Division Bench

Advocate : Pradip Ghosh and Sekhar Basu, for the Appellant; Biswanath Sanyal and Kalinath Dutta and R.K. Ghosal for State, for the Respondent

Judgement

B.C. Chakrabarti, J.—This revisional application at the instance of the Corporation of Calcutta and the Commissioner thereof is directed against an order dated February 23, 1981 passed by the Municipal Magistrate, 4th Court, Calcutta in Misc. case No. 6 of 1981 and raises a short question whether the police challan on the basis of which the case was started u/s 537(1) of the Calcutta Municipal Act, 1951 was competently filed and whether the learned Magistrate was justified in discharging all the accused persons upon a finding that the police officer had no legal authority to start a prosecution of this nature and that the proceeding was, therefore, illegal and without jurisdiction. The case of the petitioners in short is that the opposite parties in violation of the Building Rules as contained in schedule XVI of the Municipal Act were carrying on with the construction of a building at premises No. 13A, Dacres Lane, Calcutta, without any sanction and continued with the construction in spite of the service of a notice u/s 416 of the Municipal Act directing the owner or the person carrying on the work of construction to forthwith stop all constructions including the additions and alterations thereto. The requisition to desist from the continuance of the construction not having been complied with, municipal guards were posted but without any effective result. Thereupon the Deputy City Architect, Corporation of

Calcutta in exercise of his delegated authority u/s 597(4) read with Section 34 of the Calcutta Municipal Act, 1951 made a requisition to the Officer-in-Charge, Hare Street Police Station to arrest the person or persons carrying on the said unauthorised construction. On February 21, 1981 Sri B.C. Roy, Sub-inspector of Police of Section-G attached to Hare Street P. S. arrested the opposite parties 1 to 25. On February 23, 1981 the said Sub Inspector submitted a report to the learned Municipal, Magistrate Calcutta and forwarded the accused. The report is Annexure "C" to the petition.

2. The learned Magistrate thereupon passed the aforesaid order discharging all the opposite parties 1 to 25 by the order impugned in this revisional application.

3. Being aggrieved the petitioners, namely the Corporation of Calcutta and the Commissioner filed the present revisional application and obtained the Rule.

4. Of the parties 1 and 25 the Rule was discharged as against opposite parties 1, 3, 4, 6 to 9, 11 to 16, 18, 19, 23 and 24 for failure of the petitioners to furnish the correct address for service upon them

5. The short point that falls for our consideration is whether the police was competent to start a case for violation of the provisions of the Calcutta Municipal Act for prosecution u/s 537 of the said Act. In terms of the provisions of section 537 non-compliance with the requisition u/s 416(1) is an offence punishable with a fine of Rs. 1,000/- subject to the further imposition of a daily fine not exceeding Rs. 250/- only.

6. It is contended on behalf of the petitioners that the offence is a cognizable offence and therefore the prosecution was good. In the alternative it was contended that if it was a non-cognisable offence the challan could be treated as a complaint within the meaning of the explanation to section 2(c) of the Criminal Procedure Code and as such the learned Magistrate should have taken cognizance u/s 190(1) (a) of the Code.

7. On behalf of the opposite parties Mr. Sanyal on the other hand contended that Annexure "C" which is the foundation for the prosecution could not be treated as a complaint nor as a police report and as such the Magistrate was incompetent to take cognizance upon the said Annexure "C" by whatever name it may be described. It is further contended that the offence complained of is a non-cognizable offence and as such the learned Magistrate could not take cognizance u/s 190(1) (a) of the Code as contended on behalf of the petitioners.

8. The rival contentions thus put forth raises the question whether Annexure "C" really is a complaint or not. Section 2(d) defines complaint in the following terms :

Complaint means any allegations made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some persons, whether known or unknown, has committed an offence, but it does not include a "police report Explanation. A report made by a police officer 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. Cognizable offence is defined in section 2(c) as meaning "offence for which, and cognizable case means 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.

9. The question whether the offence contemplated in this case is a cognizable offence or not appears to be incidental to the main question whether the challan submitted by the police in his case (Annexure "C") could or could not be treated as a complaint. For reasons that we shall presently discuss such a report in our view is a complaint. It is true that in terms of the definition of complaint a "police report" is excluded from the category of a complaint. But the expression "police report" has a special meaning in view of the definition of the word as given in section 2(r) of the Code. According to the definition police report means "a report forwarded by a police officer to a Magistrate under subsection (2) of section 173". Evidently Annexure "C" is not such a report. Therefore, the exclusion of a police report from the meaning of a complaint is not attracted in this case. At the same time it is true that the explanation also cannot be called in aid for the purpose of treating Annexure "C" as a complaint. The explanation contemplates a situation where the police takes up investigation of a cognizable offence, which after investigation turns out to be a non-cognizable offence. In such a situation the report made by a police officer is deemed a complaint. In the present case it cannot be said that Annexure "C" comes within the meaning of the explanation to section 2(d) either. But what seems to us is that even though it is not a police report as defined in the Code and does not otherwise come within the meaning of the explanation, yet there is no legal bar to treat Annexure "C" as a complaint if it otherwise fulfils the requisites of a valid complaint. The contention that the police officer cannot make a complaint unless the case is covered by the explanation does not seem to hold good. Any allegation made orally or in writing to a Magistrate with a view to his taking action that some person has committed an offence is a complaint. It is significant that in the definition clause there is no reference to cognizable offence or non-cognizable offence. The complaint may be in respect of any offence.

10. The fact that the police officer is competent to file a complaint even in the case of a non-cognizable offence may be illustrated with reference to an offence u/s 182 of the I. P. Code. That section contemplates the offence of giving false information to a public servant with intent to cause the public servant to use his lawful authority to the injury of another person. This is an offence which undisputedly is a non-cognizable offence. It is competent to a police officer to whom such false information is given to lodge a complaint with a view to prosecute the informant. Such a complaint is neither a police report within the meaning of section 2(r) of the code nor does it fall within the meaning of explanation to section 2(d) of the Code. And yet such a complaint may be made and entertained by the Court. Therefore, in our view it seems that the police

officer can in appropriate cases file a complaint of the nature contemplated in this case.

11. Mr. Sanyal in opposing the revisional application referred to two unreported decisions of this Court (Criminal Revision 507/79 and Criminal Revision 1672/79). We had the records of both the cases produced before us. In both these cases upon a similar report by the police officer the learned Magistrate took cognizance. The petitioners, there were the persons against whom cognizance were taken. They moved this court for quashing the proceedings and this court held that the allegations made out in the complaint (which were similar in terms and language with Annexure "C" to the present petition) did not disclose the essential ingredients of an offence u/s 416(1) of the Act. The Rules accordingly were made absolute in both the cases. What is significant is that in both those cases the report filed by the Officer-in-Charge of the Police Station after arresting the, accused persons pursuant to a requisition u/s 597(4) of the Municipal Act was treated as a complaint. We agree with the view so taken and find that Annexure "C" in this case also purports to be a complaint. Whether or not it discloses an offence is a different matter to which we shall come to later on.

12. Incidentally a question was raised whether the offence complained of in this case is a cognizable offence or not. The question as we have already indicated is merely incidental. If it is a cognizable offence the Magistrate could take cognizance u/s 190(1) (b) of the Code. If it is a non-cognizable offence cognizance could be taken by the Magistrate u/s 190(1) (a) of the Code. Therefore in the present case the question whether the offence is cognizable or not does not seem to fall for our consideration. This is relevant for the purpose as to what procedure should be adopted by the learned Magistrate in taking cognizance of the case Since however, the point was raised it would be enough for our present purposes to say that the offence complained of in this case is not a cognizable offence within the meaning of the first Schedule of the Code nor has it been made a cognizable offence by the provisions of the Calcutta Municipal Act. There are instances where a case though not coming within any of the entries in the first schedule of the Code may yet be cognizable offence under the provisions of a special statute, for example the Representation of Peoples Act, Forward Contract Regulation Act, Essential Commodities Act etc. It will bear repetition that the Calcutta Municipal Act does not make an offence u/s 416 of the Municipal Act a cognizable offence. The sine qua non is the power of the police to arrest without warrant. In the instant case the police arrested the opposite parties 1 to 25 not on the strength of any warrant issued by a Magistrate but merely on a requisition made by the Corporation u/s 597(4) of the Municipal Act. Such a requisition is not a warrant contemplated by the Code. An arrest made pursuant to such requisition cannot therefore, be equated with the power to arrest without warrant. The arrest is on the basis of a special requisition specially provided for in the Act. That in our view does not make the offence a cognizable offence. Such a view finds support from a decision of this Court in the case of State vs. Jagindar Mallick, 1979(1) Cr. LJ 539. We agree with the view

taken in that case that to bring an offence within the definition of cognizable offence, the offence by itself should be such for which the offender can be arrested without a warrant of arrest. Such is not the position here. Another decision (Union of India (UOI) Vs. Maj. I.C. Lala etc. etc.,) referred to by Mr. Ghosh on behalf of the petitioners does not seem to touch the point involved in the present case. There it was contended that since u/s 5A of the Prevention of Corruption Act no officer below the rank of Deputy Superintendent of Police could investigate or make any arrest without a warrant, they were not offences for which any police officer could arrest without warrant and as such they were not cognizable offences. It was held that the authority conferred upon a particular category of police officers to arrest without warrant makes no difference. The decision in the case of Maganlal v. Emperor AIR 34 Nagpur, 871 is also besides the point.

13. We have already indicated that the question whether the offence is cognizable or not is not a matter of great consequence in this case except for the purpose of how or in what manner the Magistrate is to proceed upon receipt of the complaint. That stage had not been reached in the instant case.

14. Mr. Sanyal, however, vehemently contended upon a reference to various sections of the Calcutta Municipal Act that the complaint could be filed only by the Corporation or by any officer of the Corporation duly empowered in that behalf. In other words the contention of Mr. Sanyal is that the police could not in any event file the complaint be it a cognizable offence or a non-cognizable one. In support of such contention reference was made to sections 582, 583, 596 and 597 of the Calcutta Municipal Act in particular. Section 582 speaks of limitation for prosecution and bars a prosecution unless complaint of such offence is made before a Magistrate within the time specified. Section 583 empowers any person who reside or owns property in Calcutta to make a complaint of the existence of any nuisance. Section 585 relates to the power of Corporation to institute legal proceedings etc. It provides that the Corporation may take or withdraw from proceedings against any person who is charged with any offence under the Act or any Rule or bye law made thereunder, section 596 requires the police to co-operate with the Corporation for carrying into effect and enforcing the provisions of the Act. Sub-section (4) of Section 597 in particular authorises a police officer to arrest any person who in violation of notice referred to in section 416 commenced the erection of a new building or any other work referred to in section 414, upon a written application in that behalf from the Commissioner a Deputy Commissioner, or any other officer not below the rank of a District Building Surveyor authorised in this behalf by the Commissioner.

15. Upon a reference to these provisions it was argued that the complaint, if any, can be filed only by the Corporation. Therefore can be no dispute that the Corporation can file the complaint. There can also be no dispute that according to the scheme of the Act it is perhaps intended, and certainly desired that the Corporation should file the complaint. But in our view none of these provisions

debars the police from filing a complaint. Such power is not excluded. Therefore even though it may be desirable for the Corporation to take the initiative in the matter of filing the complaint it cannot be said as an absolute proposition of law that none other than the Corporation can file a complaint.

16. Therefore upon treating Annexure "C" as a complaint let us see whether it satisfied the ingredients of a valid complaint and discloses an offence. In our view it does not. Annexure "C" has been termed as a charge sheet though strictly it is not a charge sheet. It merely contains an allegation that the accused persons were arrested as per requisition from the Deputy City Architect for violation of Section 416(3) (it should really have been 416(1) of the Calcutta Municipal Act) by causing unauthorised construction at 13A, Dacers Lane, Calcutta. To constitute an offence u/s 416(1) the first essential requirement is a requisition on the part of the Corporation Authorities to stop unauthorised construction, and continuance of the construction in spite of such requisition. In the instant case there is no complaint or allegation in Annexure "C" that any such requisition was given and was not heeded to. Such being the position we cannot say that Annexure "C" by itself discloses an offence. It may be that Annexure "B" read along with Annexure "C" might have disclosed an offence. But Annexure "B" is not a part of Annexure "C". Reading Annexure "C" independantly of Annexure "B" we are unable to say that this is a complaint disclosing the commission of an offence. A bare reference to a penal section of the Calcutta Municipal Act, in our view is not sufficient compliance with the requirements of a valid complaint. Consequently we are of the view that it was competent for the police to file a complaint and the learned Magistrate was required to take action thereon according to law but could not straight away through it out upon a finding that the complaint was unauthorised or without jurisdiction. But at the same time we find that the Challan treated as a complaint not having disclosed any offence no action could be taken thereon. Consequently the Rule is discharged but on different considerations. The Rule is thus disposed of.

J.N. Chaudhuri, J.

I agree.