

(2010) 06 KAR CK 0134

In the Karnataka High Court

Case No : Criminal Petition No's. 6488 and 6513 of 2009

Henraux (India) P. Ltd. and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 11-06-2010

Acts Referred:

Citation : (2012) 4 KarLJ 612 : (2011) 2 KCCR 1265

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : C.H. Jadhav, in Criminal Petition No. 6488, 6513, 6514, 6563, 6564 and 6599 of 2009, Narendra Gowda and Honappa, in Criminal Petition No. 6547, 6585 of 2009 and K.B. Shivakumar, in Criminal Petition No. 6594 of 2009, for the Appellant; B. Rajasubramanya Bhat, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda, J.—The Petitioners in the above petitions have sought for quashing of further proceedings in C.C. Nos. 367/2008, 67/2007, 72/2007, 72/2007, 70/2007, 365/2008. FOC No. 102/06-7 and in C.C. No. 78/2007 pending on the file of the Court of Civil Judge (Jr. Dn.) & JMFC, Kanakapura.

2. Learned Counsel appearing for the Petitioners submits that the offences alleged in these cases are non cognizable in nature as they are punishable for imprisonment for less than 3 years or with fine only and the Respondent could not have investigated the same without obtaining prior permission of the jurisdictional Magistrate and therefore he prays for quashing of further proceedings in the aforesaid criminal cases pending on the file of the Court of Civil Judge (Jr. Dn.) & JMFC, Kanakapura.

3. Learned H.C.G.P. appearing for the State fairly submits that the Respondent has investigated the matter and filed charge-sheet to the Trial Court without obtaining prior permission of the jurisdictional Magistrate and he prays that the

Respondent may be given liberty to obtain permission of the jurisdictional Magistrate and proceed with the matter in accordance with law.

4. The Respondent after registering the case against the Petitioners, investigated the matter and filed charge sheet to the Court for the offence punishable under Sections 24 (f), (g), (gg) and (h) and 73 (d) of the Karnataka Forest Act, 1963 (for short "the Act") and Rule 41(2) of the Karnataka Forest Rules, 1969 (for short "the Rules").

5. The short point that arises for consideration in these petitions is:

Whether the investigation conducted and charge sheet filed by the Respondent before the Trial Court without obtaining prior permission of the Court is sustainable in law or not?

After hearing the learned Counsel appearing for the parties and perusing the relevant provisions of law I hold that the investigation held and charge sheets filed by the Respondent before the Trial Court are bad in law and they are liable to be set aside.

6. As per Section 155(2) of Code of Criminal Procedure 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.

As per Section 155(3) of Code of Criminal Procedure 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.

Unless a special enactment i.e. the Karnataka Forest Act and Rules made thereunder in the instant case, stipulates that a police officer or Forest Authority can investigate the matter notwithstanding the provisions of Sections 155(2) of Code of Criminal Procedure without obtaining prior permission or sanction of the jurisdictional Magistrate.

As per Section 155(4) of Code of Criminal Procedure 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.

7. Section 2(c) of Code of Criminal Procedure defines "cognizable offences" means an 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.

Section 2(1) of Code of Criminal Procedure defines "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

The First Schedule of Code of Criminal Procedure deals with classification of

offences under the Indian Penal Code and Clause II of First Schedule deals with classification of offences against other Laws. As per Clause II of the First Schedule an offence. Punishable with imprisonment for less than 3 years or with fine only is a non-cognizable offence.

8. The punishment prescribed for the offences committed under Sections 24 (f), (g), (gg) and (h) of the Karnataka Forest Act, is imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both, and in addition be liable to pay such compensation for the damage done to the forests as the convicting Court may direct to be paid.

9. The punishment prescribed for the offence committed u/s 73(d) of the Act is imprisonment which may extend to two years, or with fine, or with both.

Whereas no punishment is prescribed for the offence committed under Rule 41(2) of the Rules, as per Rules 43, 58 and 165 of the Rules which deal with penalties.

As the offences punishable u/s 24(f), (g), (gg) and (h) and 73 (d) of the Karnataka Forest Act are non-cognizable in nature and are punishable for less than three years or with fine or with both, no police officer shall investigate the said offence/s without the order of a Magistrate having power to try such case or commit the case for trial.

10. In the instant cases the investigation held by the Respondent is admittedly without the requisite permission of the jurisdictional Magistrate i.e., the Trial Court. Therefore the charge sheets filed on the basis of such investigation are bad in law and they are liable to be quashed.

11. Accordingly the Criminal petitions are allowed. Further proceedings in C.C. Nos. 367/2008, 67/2007, 72/2007, 72/2007, 70/2007, 365/2008, FOC No. 102/06-7 and C.C. No. 78/2007 pending on the file of the Court of Civil Judge (Jr. Dn.) & JMFC, Kanakapura are hereby quashed. Respondent is at liberty to proceed with the matter in accordance with law.