
(1987) 08 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 128 of 1986

Het Ram Beniwal and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-08-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 200, 201, 202
Penal Code, 1860 (IPC) — Section 120B, 427, 504

Citation : (1988) 1 RLW 322 : (1988) 1 WLN 350

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Lodha, J.—The two petitioners, against whom cognizance has been taken by the learned Chief Judicial Magistrate, Sriganganagar, have challenged the order of the learned Magistrate dated May 21, 1985, by which he directed the investigation u/s 155(2), Cr. PC and further the order dated April 17, 1986, by which cognizance has been taken against them for offences under Sections 427 and 120B, IPC.

2. Briefly stated, the facts giving rise to this application are that non-petitioner No. 2 Harish Thapar, Manager of the factory J.T.C Mills, Sriganganagar filed a report before the Police Kotwali, Sriganganagar on April 29, 1985 alleging that the labourers and their leaders had spoiled and damaged about 30,000 meters of cloth of the mill with an intention of causing wrongful loss to the Mill and, thus, they have committed offence u/s 427 and 120B, IPC. On this report, the police found that the report related to a non-cognizable offence and therefore, it referred the complainant to the court. It appears that thereupon an application u/s 155(2), Cr. PC was filed by Shri Harish Thapar before the learned Chief Judicial Magistrate stating the fact of his having approached the police and the direction of the police to refer to the court. It was prayed in the application that since a serious offence has been committed by the accused persons and on a private

complaint, necessary material may not be possibly brought before the court the investigation by the police was necessary and it was requested that the police may be directed to investigate the matter and put up the report before the court. On this application the learned Chief Judicial Magistrate considered the question and came to the conclusion that in the circumstances of the case, the police investigation appears to be necessary. He, thereupon, directed the police station, Kotwali, Sriganganagar to investigate the matter u/s 155(2) and report the result in accordance with law. It appears that the police investigated into the case and filed a challan against the accused persons. The learned Magistrate, there upon, considered the matter and came to the conclusion that there was sufficient material before him to proceed against the accused for offences under Sections 427 and 120B IPC. He, thus, took cognizance of these offences and issued summonses against accused Nos. 1 to 73 by his order dated April 17, 1986. The petitioners have now challenged the orders dated May 28, 1985 and April 17, 1986.

3. The order dated May 11, 1985 is challenged on the ground that order for investigation case be obtained only by the police and such an order investigation in a non-cognizable case, cannot be issued by the learned Magistrate on an application by any private party or even suo moto. It is further urged that when the police refers the informant to a Magistrate u/s 155(1). Cr. PC the only course open to the complainant is to file a complaint u/s 200, Cr. PC and thereupon, the learned Magistrate can proceed under Sections 200, 201 and 202 Cr. PC and in exercise of his powers u/s 202, he can direct further investigation by the police before any process is issued against the accused. The order dated April 17, 1986 is challenged on the ground that when investigation by the police itself was without jurisdiction and illegal the learned Magistrate could not have taken cognizance of the offences on the police report and, therefore, this order is liable to be set aside. Since the two matters are connected, I have heard the learned Counsel in respect of both of them in a single application u/s 482, Cr. PC although ordinarily when two different orders are sought to be challenged, two separate applications should have been filed.

4. I shall first take up the order dated May 21, 1985. The contention of the learned Counsel for the petitioners is two-fold: (1) that the order u/s 155(2) can be obtained only by the police and the learned Magistrate cannot pass order for investigation into a non-cognizable case on an application by a private party or even suo moto and (2) that the only course open to a party referred to the court u/s 155(1) is to file a complaint and thereupon the learned Magistrate has to act in accordance with sections 200 to 202, Cr. PC. Learned Counsel for both the sides have clearly stated that they have not been able to lay their hands on any authorities for or against the first contention raised by the learned Counsel for the petitioners and therefore the matter will have to be considered on the basis of the language of Section 155 and the first principles of interpretation. Section 155, Cr. PC reads as under:

155. Information as to non-cognizable cases and investigation of such cases--(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 not cognizable.

Now, the concluding words of Sub-section (1) of Section 155 "and refer the informant to the Magistrate" are very significant. If the intention of the Legislature was that in a non-cognizable case when a report is made to the police, the police would not investigate the same without the order of the Magistrate and the course left to the complainant (informant) was to file a complaint before the court u/s 200, Cr. PC the words "refer the informant to the Magistrate" would not have been used in their place it could easily have been said "and ask the informant to file a complaint before a competent court". Therefore, from these words, the inference is that it is left to the informant whether to approach the court for an order under Sub-section (2) of Section 155 or to file a complaint u/s 200 and he is not left to the only course of filing a complaint. The course of moving the court for an order under subsection (2) of Section 155 is not altogether denied to him. Then, the words of Sub-section (2) also in no way restrict the court to act upon the request by the police alone and not to act on any application by a private person or suo moto. The words only prohibit the police officer to investigate a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial, but it does not in any way restrain the Magistrate from passing such order on the basis of any application or information by a private informant or even suo moto. I am, thus clearly of the opinion that the learned Magistrate was within his jurisdiction to pass the order dated May 21, 1985 on the application filed by Shri Harish Thapar before him, and it was not necessary for Shri Harish Thapar to move a formal complaint before the learned Magistrate.

5. Looking to the other aspect, whether the only course open to the informant, who has been referred by the police to the Magistrate, is to file a complaint, as urged by the learned Counsel for the petitioner; it may at once be stated that, as already stated above, while discussing the first aspect of the arguments, I have come to the conclusion that both the courses are open to the informant; either to

move the court to pass order u/s 155(2) or to file a complaint. When a complaint is filed before the Magistrate there are two courses open to him. If he takes cognizance on the complaint he will have to examine the complainant and his witnesses, if any, immediately and thereafter, he may proceed u/s 202. Cr. PC. In exercise of the power u/s 202, he may postpone issue of process against the accused and either inquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding further. This clearly shows that the learned Magistrate can direct investigation by a police on a private complaint only after he has taken cognizance and not before it. On the other hand, Section 155(2) envisages that a Magistrate may direct the investigation by a police even in a non-cognizable offence before he takes cognizance of the same. Though directly not on the point this view appears to be supported by a decision reported in Jugal Kishore v. State 1972 Cri. LJ 377 in which the learned Magistrate had directed the police to investigate into a non-cognizable offence u/s 504, IPC on the basis of a report in a newspaper.

6. It also appears that sections 155, 156 and 200, Cr. PC cater for three different situations: Section 155(2) directs that the police will not start investigation in a non-cognizable offence and refer the informant to the Magistrate. Sub-section (2) thereof provides that the police may investigate in a non-cognizable offence under an order of the Magistrate; Section 156 refers investigation by the police in a cognizable offence either suo moto or under the direction of the Court and Section 200 refers to cognizable of a case to be taken by the Magistrate on a private complaint and u/s 202 the Magistrate may direct the police to investigate even in a non-cognizable case where cognizance has been taken on a private complaint. In these circumstances, I am clearly of the opinion that the contention raised by the learned Counsel challenging the order of learned Magistrate dated May 21, 1985, is of no substance and, therefore, the order passed by the learned Magistrate does not call for any interference.

7. When the order dated May 21, 1985 is a valid order, on the report submitted by the police as a result of the investigation made by it u/s 155(2) Cr. PC the learned Magistrate was fully competent to take cognizance on the basis of such a report and, therefore, that order also does not call for interference.

8. Before parting with this case, I shall take this opportunity to sound a note of caution to the Magistrates that this course of directing an investigation by the police in a cognizable case u/s 155(2), Cr PC is not to be taken as a routine and a handle to avoid taking cognizance of complaints Section 200 Cr. PC to avoid the process of examining the complainant and his witnesses. Such a course should be adopted sparingly and only in such cases in which it may be very difficult and improbable if not impossible for a private party to collect the necessary material and put the same before the Magistrate even for the purpose of enabling him to take cognizance on a private complaint What has been decided above is that the Magistrate has power to direct investigation by the police in a non-cognizable

case on the request of a private party or suo moto and not necessarily at the instance of the police but it should not be taken to mean that in each and every such case, he may resort to this. As already stated above, this power has to be exercised sparingly and rarely in very special case, the nature of which has been mentioned above.

9. The result, therefore, is that this application fails and is, hereby, rejected.