

(1996) 10 CAL CK 0029
In the Calcutta High Court
Case No : Criminal Revn. No. 1823 of 1996

Illies Ali

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Bengal Criminal Law Amendment Act, 1934 — Section 4(1)
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 173(2), 190(1), 2

Citation : (1997) CriLJ 803

Hon'ble Judges : Asish Baran Mukherjee, J

Bench : Single Bench

Advocate : Minati Gomes, for the Appellant; R.K. Ghosal, for the Respondent

Judgement

Asish Baran Mukherjee, J.—The revisional application has been preferred against the order dated 17-1-96 passed by the Ld. Chief Judicial Magistrate, Malda in N.G.R. case No. 2513 of 1989.

2. The case of the petitioner is that on 8-7-89 while he was standing by the side of National Highway No. 34 with 17 (seventeen) pieces of batteries of different sizes with a view to despatch the same, he was arrested by police and the batteries were seized on an allegation of offence u/s 4(1) B.C.L.A. Act. On 26-12-95 an application was filed by the petitioner before the Magistrate praying for discharge on the ground of non-compliance of Section 155(2), Cr. P.C. By impugned order of C.J.M. rejected the prayer of discharge.

3. Being aggrieved the present revisional application has been preferred alleging that the impugned order is not in accordance with law since the police machinery did not follow the procedure laid down in Section 155(2), Cr. P.C. It has also been alleged that the matter is pending for long 8 (eight) years without any contribution towards delay from the side of the petitioner. Accordingly, for the violation of the principles of Article 21 of the Constitution as also for the violation of mandatory provision of Section 155(2), Cr.P.C. the present revisional

application for quashing the said proceeding and discharging the accused has been filed.

4. I have heard the Ld. Advocates representing both the sides and have also perused the impugned order of the Ld. C.J.M. dated 17-1-96 passed in N.G.R. case No. 2513 of 1989. On assessee scrutiny of the said order, it appears to me that the Ld. Magistrate has committed an error by treating the permission which is to be obtained by a police officer prior to investigation of non-cognizable offence as a mere technical formality. The Magistrate observes "I hold that no taking of permission from the Magistrate is a mere technical flaw. It has not occasioned any miscarriage of justice. Moreover, that technical flaw can easily be cured by giving permission in anticipation or at a later stage".

5. The relevant provision runs as follows :-

No police officer shall investigate a non-cognizable case without an order of a Magistrate having power to try such a case or commit the case for trial". This provision puts an embargo in the power of the police officer to investigate a non-cognizable case without prior permission of the concerned Magistrate. There is no scope for drawing a conclusion that obtaining of permission is a mere formality and that a post facto permission may be given by the Magistrate to cure the illegality. It is a bar on the power of the police officer about investigating into a non-cognizable offence without prior permission of the Magistrate concerned in the event of police officer investigating into a non-cognizable case without such permission being given the prosecution report submitted by him cannot be accepted by the concerned Magistrate in accordance with Section 190(1)(b) of the Cr.P.C. It is true that with the enlargement of the definition of complaint as mentioned in Section 2(d), Cr.P.C. the position has been made to some extent clear when report of a police officer in a non-cognizable case may be treated as complaint and the police officer be treated as complainant and in such an eventuality cognizance can be taken by the Magistrate concerned not u/s 190(1)(b), Cr.P.C. but u/s 190(1)(a), Cr.P.C. without the police officer being examined as a complainant. But the said definition has made it clear that a police report as mentioned in Section 173(2), Cr.P.C. cannot be treated as a complaint.

6. Now the point is whether in the instant case the prosecution report as submitted by the police officer may be treated as a complaint within the definition of the explanation to Section 2(d), Cr.P.C. A careful analysis of the prosecution report shows that the police officer from the very inception of arrest was aware that he was investigating a non-cognizable offence. If we carefully peruse the explanation to Section 2(d), Cr.P.C, it will appear that the said explanation is attracted to the report of the police made after investigation in the event it discloses the commission of a non-cognizable offence. In other words, the police officer at the beginning of investigation must start with a bona fide belief that the offence in question to be investigated by him as a cognizable one. If after investigation the said offence comes to be one as non-cognizable then notwithstanding the omission to obtain any permission from the Magistrate in

terms of Section 155(2), Cr.P.C. he said report may be treated as a complaint in accordance with the explanation to Section 2(d), Cr.P.C. The provision of Section 155(2), Cr.P.C. in my opinion cannot be by-passed with the help of the explanation to Section 2(d), Cr.P.C. by allowing a police officer to investigate an offence suo motu knowing fully well that the offence in question is a non-cognizable one. In other words, he cannot be allowed to start investigation in a non-cognizable offence without obtaining prior permission of the Magistrate concerned and in such an eventuality the report submitted by him disclosing a non-cognizable offence cannot in my opinion come within the purview of the explanation of Section 2(d), Cr. P.C.

7. In our case, the police officer concerned from the very inception was aware that he was investigating a non-cognizable offence without obtaining prior permission of the Magistrate and as such the report submitted by him cannot be treated as complaint. The very wording of the explanation clearly shows that at the beginning prima facie the offence in question should appear to the police officer as cognizable one but after investigation discloses to be a non-cognizable one.

8. Besides the arrest in question was made on 8-7-89 when 17 pieces of batteries of different sizes were found in the possession of the petitioner standing by the side of National Highway 34, allegedly with a view to transport the same to their respective destinations. Even after lapse of more than six years, there has not been any progress in the case except the submission of a prosecution report. The impugned order reveals that no evidence has been adduced in this case. Having regard to the nature and circumstances of the case and the offence involved and the pendency of the same for more than six years, the circumstances violated the provisions of Article 21 of the Constitution on the point of speedy and expeditious trial. Therefore, on both the accounts, namely, violation of the provision of Section 155(2), Cr. P.C. as also the violation of the principles enshrined in Article 21 of the Constitution the proceeding in question need be quashed.

9. In the result, the proceeding being G. R. case 2513 of 1989 pending before the Ld. C.J.M., Malda stands quashed. The accused petitioner is released from his bail bond.