

(2015) 09 KAR CK 0177
In the Karnataka High Court
Case No : Criminal Petition No. 1684 of 2015

Jyothi G.

APPELLANT

Vs

The Tahsildar, T. Narasipura Taluk and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(d), 200, 201, 202, 203
Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act,
1993 — Section 13, 17(3), 18, 3

Citation : (2015) 09 KAR CK 0177

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Nityanand V. Naik, Advocate, for the Appellant; B. Visweswaraiah,
Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J.—The petitioner herein has been charge sheeted for the offence punishable under Section 3 read with 13 of the Employment of Manual Scavengers and Construction of Dry Latrines, (Prohibition) Act, 1993, (for brevity "Act"). The allegation of the complainant-Tahsildar is that, on instruction of the accused persons i.e. PDO, Bill Collector and watermen, the workers had cleaned the manholes with bare hands and cleared the accumulated garbage.

2. Heard both sides.

3. Learned counsel for the petitioner Sri. Nityananda V. Naik, submits that complainant/Tahsildar lodged the complaint directly to the jurisdictional police in violation of the procedure contemplated under Section 17(3) of the Act. That apart, cognizance is taken beyond the limitation period stipulated by Section 18 of the Act. Therefore, whole procedure is vitiated.

4. It is evident from the records that on 12.11.2012, the Tahsildar had lodged the complaint before Respondent No. 2-Police which came to be registered in

Crime No. 296/2012. After the investigation, the charge sheet was filed to the Court on 08.07.2013. As per Section 17(3) of the Act, "No court shall take cognizance of any offence under this Act except upon a complaint made by a person generally or specially authorized in this behalf by the Executive Authority". That takes me to complaint as defined in Section 2(d) of Cr.P.C. (for brevity "Code").

"2(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, whether 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".

5. It is clear that the statute contemplates a complaint to Magistrate but not a complaint to police, and the report of police officer after investigation is a deemed complaint. Complaint to police is not within the scheme of Code. It is information to the police officer that is contemplated. Complaints to Magistrate is dealt by Chapter XV of the Code from Sections 200 to 203 of the Code. For the moment, it suffices to take note that no complaint as contemplated under Sec. 17(3) of the Act was filed before the Jurisdictional Magistrate, on which he could have taken cognizance of the offence alleged.

Further, Section 18 of the Act contemplates "No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the complainant". As observed supra in respect of the incident of 12.11.2012, charge sheet was filed on 08.07.2013. By that time, three months had already run out for the court to take cognizance and the prosecution even if were to invoke the explanation clause of Section 2(d) of the Code, that Final Report/Charge Sheet is a valid "Deemed Complaint", then also they stand to loose because of Section 18 of the Act. When the Court is not competent to take cognizance of the matter, entire charge sheet and consequential proceedings shall go.

6. The petition is allowed. The entire proceedings in C.C. No. 324/2013 on the file of Senior Civil Judge & JMFC, T. Narasipura and FIR in Crime No. 296/2012 filed by the second respondent are quashed.