

(2013) 01 AHC CK 0265

In the Allahabad High Court

Case No : Application U/S 482 No.- 1001 of 2013

Lal Bahadur Gupta and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(d)
Penal Code, 1860 (IPC) — Section 323, 504

Citation : (2013) 01 AHC CK 0265

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Chandra Prakash Singh, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Sunil Hali, J.—Heard learned counsel for the applicants and learned A.G.A. The applicants have seek quashing of the Charge sheet no, nil of 2012, arising out of NCR No. 111 of 2011, under sections 323, 504 IPC P.S. Paniyara, District Maharajganj.

2. The Magistrate has taken cognizance u/s 190B on a report submitted by the police in respect of offences which were non-cognizable. According to explanation of Section 2(d) of the Criminal Procedure Code, 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.

3. It is contended by the learned counsel for the applicants that the Magistrate has taken cognizance on this report filed u/s 190B in respect to non-cognizable offences under Sections 323, 504 I.P.C.

4. From the perusal of the order, it clearly emerges that the police has investigated the case in respect of offences which were non-cognizable and submitted report before the Magistrate who has taken cognizance on the said

report. The charge sheet reflects that applicants have committed under Sections 323, 504 IPC which are non-cognizable. In such a situation, the report submitted by police has to be treated as a complaint. The Magistrate has no power to take cognizance directly on the basis of a police report. He can take cognizance only after treating it as a complaint. In view of this, the cognizance taken by the Magistrate is hereby set aside. Accordingly, the application is allowed. However, it is made clear that the case shall be treated to be a complaint case and the procedure prescribed for hearing of the complaint shall be followed by the court concerned before summoning the applicants.