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**(1963) 10 P&H CK 0032**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Appeal No. 1138 of 1962**

Lal Chand and Others

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision :** 24-10-1963

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 467

**Citation :** (1963) 10 P&H CK 0032

**Hon'ble Judges :** Shamsheer Bahadur, J

**Bench :** Single Bench

**Advocate :** M.R. Mahajan, for the Appellant; M.R. Punj, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shamsheer Bahadur, J.—This is an appeal of five appellants who have all been convicted by the learned Additional Sessions Judge, Hoshiarpur, u/s 467, Indian Penal Code, and have been awarded a sentence of three years' rigorous Imprisonment each coupled with a fine of Rs. 50/-, and also for the same term of imprisonment u/s 82 of the Registration Act. Out of the five appellants, Lal Chand and Narainu are brothers, while Khemi Ram, Devi Ram and Daya Ram are Zaildars of villages Kanon and Kalwari.

2. The five appellants were charged along with Ghungru, who has been acquitted, with the offences of cheating and preparing forged documents. It is not disputed that Net Ram and his elder brother Parma Nand lived for many years with the father of Lal Chand and Narainu. Parma Nand before his death gifted his entire land in favour of the father of these two appellants. A similar gift was made by Net Ram, who is said to have married the mother of Lal Chand and Narainu on their father's death. Net Ram died some time in the beginning of 1960. The subject matter of the prosecution is the gift deed (Exhibit P. A.) executed by Net Ram in favour of the appellants Lal Chand, Narainu and their third brother Bir Singh on 8th of December, 1959. The proceedings were initiated on a somewhat strange and unusual report. One Khem Dass P. W. 3, a Lambardar of

village Siri Kot reported to Sub-Inspector Gian Chand of Police Station Saraj on 12th of March, 1960 at 12.45 P. M. (Exhibit P.C.) that Lai Chand and Narainu got a gift deed executed in their favour from an old man Net Ram who was stated to be of 75 to 80 years of age and suffering from the infirmities of both deafness and dumbness. In the report it was stated that Net Ram had been living with the donees for the last 3 or 4 years. It was further stated in the report that Parma Nand had already gifted his land about 12 or 14 years ago in favour of Fateh Chand, father of Lal Chand and Narainu while he was alive. Net Ram, according to this report, died in the afternoon of 11th of March, 1960, in his village Kanon, and Khem Dass claimed to have joined his funeral procession. While the informant asserted that he had no doubt or suspicion in his mind that Net Ram had met his death in the natural course of events but "he had heard on the way that a forged document had been executed in favour of Lal Chand and his brothers by Net Ram". On receiving this report, Sub-Inspector Gian Chand recorded a first information report at Police Station Saraj at 2-30 P. M. on 14th March, 1960, recapitulating the facts which had already been reduced to writing in the report of Khem Dass (Exhibit P.C.). One additional fact was mentioned in this report that Ghungru had personated as Net Ram before the Sub-Registrar before whom the document Exhibit P.A. was registered. Thereafter Gian Chand started investigation of the case, and the prosecution against, the five appellants and Ghungru was launched for the offences of cheating and preparing a forged document. In the first instance, all the accused were discharged by the Court of the Committing Magistrate. A revision was preferred and the case was remanded. On remand, all the accused were committed for trial and the learned Sessions Judge of Hoshiarpur while holding that the offence of cheating u/s 419, Indian Penal Code, had not been brought home against Ghungru, acquitted him. The five appellants have been convicted u/s 467, Indian Penal Code, and section 82 of the Indian Registration Act.

3. The first contention raised on behalf of the appellants is that the entire base of the trial being the report Exhibit P.C. in relation to non-cognizable offences it is liable to be set aside. It is submitted that the procedure laid down for the investigation of non-cognizable offences in section 155 of the Code of Criminal Procedure has not been followed. Under sub-section (1) of section 155, when an officer-in-charge of a police-station receives information of the commission of a non-cognizable offence, he has to record the substance of such information and refer the informant to the Magistrate. Sub-section (2) places an interdict on a police officer to investigate a non-cognizable case "without the order of a Magistrate of the 1st or 2nd class having power to try such case..." The police officer under sub-section (3) of section 155 can proceed with the investigation of a non cognizable offence only on the order received from the Magistrate. It is only the order of the Magistrate that invests the police officer in charge of a police station to exercise the same powers of investigation as in a cognizable case.

4. Mr. Mahajan submits that Sub-Inspector Gian Chand proceeded to investigate

the case without any order of the Magistrate and the trial is accordingly vitiated. That the offences under which the appellants were charged are non-cognizable does not admit of any dispute, the only exception being section 419 for which Ghungru has been acquitted. In any event, the substantial point for investigation related to offences under sections 467, 468 and 471 of the Indian Penal Code and section 82 of the Registration Act which are all non-cognizable offences. It is contended that the irregularity committed by the Sub-Inspector is not such as can be cured by the provisions of section 537 of the Code of Criminal Procedure. Reliance has been placed on a judgment of Anna Chandy J. in Podan and others v. State of Kerala (1962) 1 Cr. L.J. 339, where she held that:-

Section 155 (2) expressly prohibits the investigation by the Police suo motu of non-cognizable offences. The order of the Magistrate is a condition precedent for such investigation.

The learned Judge further held that:

If a Police Sub-Inspector were to take cognizance of non-cognizable offences, record signed statements from the accused, proceed to the spot, examine witnesses and practically do everything necessary for the investigation of cognizable offences", such an action cannot be justified, and further that "the irregularity cannot be cured u/s 537 as it results in failure of justice". A similar view had been taken by a Division Bench of Saurashtra High Court of Shah and Baxi JJ. in Labhshanker Kesavji and another v. State 1955 C.L.J. 839. In this case it was held that the investigation without the order of the Magistrate is totally without jurisdiction and a report submitted on such investigation is not a report upon which the Magistrate can validly take cognizance of the offence and the entire trial is vitiated as without jurisdiction. There is another Single Bench authority of J.P. Mitter J. in Abdul Halim and Another Vs. State of West Bengal, where it was held that:-

Provisions of section 155 (2) cannot be rendered nugatory by regarding police report as a valid report u/s 190 (1) (b).

5. In my opinion, the contention of the learned counsel is well-founded and the entire trial suffers from an inherent blemish the investigation having been conducted by the Sub-Inspector without statutory authority, and indeed in contravention of it.

6. Another submission of the learned counsel must be briefly adverted to. It is submitted that though the penalty for making false documents is provided in section 82 of the Indian Registration Act, there is a special provision in section 83 that:-

A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the may be, the offence has been

committed.

This, in my opinion, is not helpful to the appellants as the opening words make it clear that it deals with the offence which first came to the knowledge of the registering officer. It is only in offences which come to the knowledge of the registering officer that the sanction is required. In the present instance the case was started by the Sub-Inspector on the information which he acquired from Khem Dass and strictly speaking the requirement of sanction is not essential in this case. It may, however, be observed that the Sub-Registrar, who appeared as P.W. 1, never stated that he had been deceived in any manner or that he felt doubtful about the identity of Net Ram. Khemi Ram appellant in fact identified Net Ram before the Sub-Registrar along with the appellants Daya Ram and Devi Ram appellants. It is stated in the endorsement that Net Ram had been identified by persons whom the Sub-Registrar knew and he also felt satisfied after an adjournment had been granted that the valuation of the property transferred to Lal Chand and his brothers was correct.

7. Before concluding, I would like to make special reference to the evidence of Man Chand D. W. 1, who is the first cousin of Net Ram deceased. Man Chand testified that Net Ram had been living with Lal Chand's father for 20 to 25 years and made a statement, which has not been challenged in cross-examination, that after the death of Lal Chand's father, Net Ram married his mother. In my opinion, it is not necessary to express any view on the merits of this case as the appeal must succeed on the ground that the whole trial is vitiated as the police officer started investigation of non-cognizable cases without the sanction or order of the Magistrate.

8. The appeal will be allowed and the convictions of the appellants set aside.