

(2013) 04 KAR CK 0102
In the Karnataka High Court
Case No : Criminal Petition No. 15340 of 2013

Maruthi, Amruth, Chand Pasha and Mohammed Aleem Pasha	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2014) 1 AKR 138 : (2014) 1 Crimes 519 : (2013) ILR (Kar) 5838 : (2014) 1 KarLJ 505 : (2013) 4 KCCR 3447

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Judgement

Huluvadi G. Ramesh, J.—Heard the learned counsel for the petitioners and the learned Addl. SPP for respondent. The petitioners in these two petitions have sought for quashing the case registered in Crime No. 208/2012 of Shahapur police station and to discharge them. The petitioners who claim to be the drivers of the lorry were transporting sand illegally from Krishna River Basin. In this regard, one Sri. N.S. Mukandappanavar, Senior Geologist filed, a complaint before Shahapur police for illegal mining and transportation of the sand and also had directed them to stop such illegal transport. As per the complaint, it is stated that one Vishwanatha Reddy and Vaarada Nagabhushana are misusing the seal of the authority and certifying forged documents.

2. On 17.12.2012, a meeting was held by the Sand Monitoring Committee under the chairmanship of Deputy Commissioner, Yadgir who visited the sand mining block and seized 27 trucks, tipper and Hitachi vehicle on the ground that the documents are fabricated and not genuine. The complaint was filed against the petitioners and others in Crime No. 208/2012 for the offences punishable under Sections 406, 408, 420 and 379 of IPC before Shahapur police station.

3. Challenging the filing of FIR against the petitioners on the instigation of persons and stating as per Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR" for short), the complaint ought to have been filed as per Section 2(d) of Cr.P.C. before the Magistrate, therefore, registration

of FIR by the police is bad in law and as such, there is violation of procedure in not filing the complaint before the Magistrate directly and rather the case was registered before the police which is in violation of Section 22 of MMDR Act and that Section 2(d) of Cr.P.C. contemplates the complaint to be filed by the authorized person orally or in writing and registration of FIR is not contemplated as it is bad in law, counsel has sought for quashing of FIR and in support of his argument, he also relied upon an unreported decision of this Court in Crl. P. No. 15145/2012 dated 01.02.2013 to contend that the case registered under the IPC has to be quashed.

4. Heard the learned Addl. SPP.

5. The main allegation against these petitioners is that they are transporting sand. So far as tampering of the documents is concerned, Sections 406 and 408 of IPC may not be applicable to the petitioners. Sections 379 of IPC applies to the case on hand. The petitioners were transporting the sand illegally and dishonestly and they were transporting the sand by committing theft. In the case on hand, Sections 379 attracts. Even if it is assumed that the provisions of MMDR Act is attracted, the complaint has to be filed in writing by a person authorized in this behalf by the Central Government or the State Government. So far as the filing of complaint for alleged offence of theft and cheating which attracts the provisions of IPC then necessarily the procedure followed by filing the complaint before the police that to by the authorized person, is very much with reference to Section 22 of MMDR Act.

6. The argument of the learned counsel for the petitioners is that as per Section 2(d) of Cr.P.C., the complaint ought to have been filed before the Magistrate orally or in writing with regard to the offence committed. Accordingly, it is contended that the provision has not been followed by filing the complaint and registration of FIR by the police on the complaint by the authorized officer is bad in law.

7. Learned Addl. SPP contended that in the case of State of Karnataka Vs. Adimurthy alias B. Moorthy, , in a similar situation regarding theft of electricity and registration of FIR u/s 379 of IPC is held as valid in following the procedure and contended that even Section 50 of the Electricity Act provides for a similar provision as that of Section 22 of MMDR Act. He also submitted that even in Adimurthy's case also the complaint was filed before the police for theft of electricity and the police in turn filed a charge sheet. The procedure contemplated as regards a complaint u/s 2(d) of Cr.P.C. is very much followed and submitted that it is not necessary that the complaint has to be made directly to the Magistrate. Even through the police it can be lodged and police in turn would file a report to the Magistrate. It cannot be an illegality as the Apex Court also in similar situation, treated the complaint filed to the police as a complaint and held it is not necessary the complaint has to be filed directly before the Magistrate.

Section 2(d) of Cr.P.C. reads thus:

"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.

Section 22 of MMDR Act, 1957 reads thus:

Cognizance of offences: No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

8. As per Section 4 of Cr.P.C. wherein special procedure is not contemplated in the penal statute other than IPC, then necessarily the complaint is submitted to the Magistrate by the authorized person and the same could be made in the form of private complaint as per Section 2(d) of Cr.P.C. even presentation of report through police to the Magistrate is not bad.

9. In the case on hand, the complaint is lodged by Senior Geologist Officer, as per section 22 of MMDR Act. Instead of filing of the complaint to the Magistrate directly he filed a complaint before the police who in turn filed FIR, submitted to the Magistrate and the Magistrate has taken cognizance. Section 22 of MMDR Act has been complied with by the authorized officer in filing the complaint though not directly to the Magistrate but, through the police. Even it has been recognized by the Apex Court in Adimurthy's case. The complaint filed before the police who in turn has submitted the report to the Magistrate. In that view of the matter, quashing of FIR filed before Shahapur police who in turn submitted the same to the Magistrate and on such report, the Magistrate takes cognizance then it cannot be held to be bad. What is contemplated u/s 2(d) of Cr.P.C. is only regarding filing of the complaint in writing to the Magistrate who proceeds in accordance with the procedure contemplated under the Act. If the police has submitted the report based on the complaint filed along with FIR based on which, the Magistrate has taken cognizance, it cannot be held to be bad as is held in the case of Adimurthy's case cited supra. The quashing of FIR based on the complaint filed by the authorized officer before the Shahapur police would not arise in the context, on the ground that it is in non-compliance of filing of the complaint to the Magistrate directly and it has been filed only through the police, cannot be accepted. As such the stand taken by the learned counsel for the petitioners and also the decision relied by him is not applicable to the case on hand. Even in this case, if there is violation of provisions of MMDR Act and for that also the respondent authority is at liberty to take action in accordance with law. The question of following the procedure contemplated u/s 2(d) of Cr.P.C., in directly approaching the Magistrate may not arise in this case and even otherwise, private complaint filed to the police station and submission of the report through the police at the most may be in the form of report and cannot be treated as a police report u/s 173 of Cr.P.C. Further police submits the complaint

or the report not in his private capacity but in his capacity as a police officer. His (police officer) examination u/s 200 of Cr.P.C. is not necessary. Magistrate can take cognizance without such examination in such a situation only an examination of complainant and of witnesses will be considered as a sufficient compliance of rule.

Accordingly, both the petitions are disposed of.