

(1975) 09 CAL CK 0007
In the Calcutta High Court
Case No : Criminal No. 454 of 1974

Santosh Kumar Sarkar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-09-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 145, 190, 190(1)
Defence of India Rules, 1971 — Rule 114(11), 183

Citation : (1976) 2 ILR (Cal) 524

Hon'ble Judges : R. Bhattacharya, J

Bench : Single Bench

Advocate : D.C. Roy and Haripada Saha, for the Appellant; S.K. Palit, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhattacharya, J.—This is an application u/s 561A of the Code of Criminal Procedure filed by the Petitioner Santosh Kumar Sarkar for quashing a proceeding under Rule 114(11a.) of the Defence of India Rules, 1971, pending in the Sixth Court of Judicial Magistrate at Sealdah.

2. Upon a complaint lodged with the Officer-in-charge, Chitpore P.S., Calcutta, the Police searched the office of the firm Messrs. S.K. Sarkar at 12/1 Nilmoni Mitra Road and seized a large number of bags containing different types of pulses and on physical verification of the stock of pulses with reference to the stock displayed, six bags of "kalai" and seven bags of "arahar" were found short in the stock and according to the Police, there was a violation by the accused Petitioner of the provision as laid down in para. 3 of the West Bengal Declaration of Stock and Price of Essential Commodities Order, 1971, as subsequently amended in 1972 punishable under Rule 114(11a) of the Defence of India Rules, 1971. The Police submitted a report in the West Bengal Form No. 4251 with a prayer that the accused persons may be proceeded against according to law. It was stated in the report form popularly known as challan that it may be treated as complaint

under Rule 183, Defence of India Rules, 1971. The Police Magistrate at Sealdah Court noted in the order-sheet that he received the challan under Rule 114(11a), Defence of India Rules, against the accused who was on Court bail. Then he transferred the case to the file of another Magistrate for disposal. The bags were seized and it appears from the order-sheet that on the prayer of the accused the articles seized were directed to be handed over to the person from whom they were seized on a bond Rs. 20,000 with one surety with liberty to sell the goods with an undertaking to produce the sale proceeds on call. There was further direction that an account of the sale must be furnished as the goods were sold. Before this Court the Petitioner prays that the proceeding started against him should be quashed.

3. I have heard Mr. D.C. Roy, the learned Advocate appearing on behalf of the Petitioner and Mr. Palit for the State, It had been first contended that the learned Magistrate had no jurisdiction to take cognizance of the offence against the Petitioner upon the challan submitted by the Police Officer in respect of a non-cognizable offence which was investigated into by the Police with on permission of the Magistrate. Mr. Roy's contention is that the challan cannot be treated in any view of the matter as the complaint. In this connexion my attention has been drawn by the learned Advocates of both the parties to the decisions in the cases of Ganga Prasad Kanoo 48 Cr.L.J. 557, Nanakraj Pandit v. State (1961) 1 Cri.L.J. 644 and Abdul Halim and Another Vs. State of West Bengal, . The decisions should be applied according to the facts and circumstances of each case. Simply stated, in the case before me, the Police on receipt of a complaint verified the stock of pulses and in connection with the Thana case started on the complaint found that the stock of pulses was short by some bags contrary to the statement of stock displayed for the public. The Sub-Inspector of Police of the Enforcement Branch found that due to the violation of the provision indicated in para. 3 of the West Bengal Declaration of Stock and Price of Essential Commodities Order, 1971, duly amended in 1972, there was an offence punishable under Rule 114(11a) of the Defence of India Rules, 1971. The Police Officer, therefore, wrote these facts constituting an offence prima facie in the form of a challan and submitted to the Police Magistrate at Sealdah for starting a case against the accused. It has been clearly stated in the challan that the same may be treated as complaint under Rule 183 of the Defence of India Rules, 1971. The question arises whether this written report which was to be treated as the complaint was sufficient for the learned Magistrate to take cognizance of the offence in a case like the present one under the present Defence of India Rules. The Magistrate can take cognizance of the offence upon a written report or complaint by a public servant. The written report in the form of challan in the present case submitted by the Sub-Inspector of Police of the Enforcement Branch, a public servant can be treated quite validly under law as a complaint on which the Magistrate can take appropriate action. The question of taking permission of the learned Magistrate for investigation of a case registered at the Thana, does not arise. There may be a complaint by the Police Officer or by a

public servant in writing in the form of report which comes under the purview of Section 190 of the Code of Criminal Procedure. As the complaint was made by a public servant in the discharge of his official duty there is no necessity for his initial examination for taking cognizance by the Magistrate in view of the introduction of Clause (aa) in the proviso to Section 200 of the Code of Criminal Procedure. Taking the simple facts as they are without putting a cloak of any complication or complexity upon them, I do not find any bar in law for the learned Police Magistrate at Sealdah in taking cognizance of the offence in question. In my view, there has been a valid complaint for the learned Magistrate to act upon it. I do not think that the decision particularly relied upon by Mr. Roy in the case of Abdul Halim Supra will be of no help to him as the facts are different. The case before me is one under the Defence of India Rules and not for any offence under the Indian Penal Code. The decision in the case of Nanakraj Pandit Supra may be of some help particularly for the reason that Sen J. in that case referred to the case of Ganga Prosad Kanoo Supra already mentioned by me which was decided by a Division Bench of this Court. From the decision of the Division Bench, it can be held that the Police report can be held to be a good complaint as it is made by a public servant and that cognizance may be taken thereon.

4. An attempt has been made from the side of the Petitioner to argue that the statements made in the challan did not constitute any offence. I am afraid, I cannot accept this contention as there has been clear statement in the written complaint of the Police Officer that there was a shortage of some bags of pulses as against the statement displayed by the dealer. This fact certainly comes under the purview of the law referred to in the challan.

5. It has been next contended that the learned Magistrate did not apply his mind to the complaint of the Police Officer and that his transfer of the case to the file of another Magistrate was illegal without issuing any summons or warrant. The main question is whether the learned Magistrate took cognizance of the offence as disclosed in the complaint made by the Sub-Inspector of Police, Enforcement Branch. The order dated March 29, 1974, shows that the Police Magistrate received the challan under Rule 114(11a) of the Defence of India Rules against the accused. The learned Magistrate also noticed that the accused was on Court bail in connection with a case started by the Thana on receipt of a complaint. That was not a case under the Defence of India Rules. On receipt of the complaint of the Sub-Inspector of Police, Enforcement Branch, the Police Magistrate transferred the case to another Magistrate for disposal. The word "cognizance" has not been defined in the Code of Criminal Procedure. In this connection, I may conveniently quote an extract from the judgment delivered by Easley J. in the case of Hafizar Rahaman v. Anwarul Haque 44 C.W.N. 1114.

...This expression is also used in Section 190(1) of the Code of Criminal Procedure, which empowers certain Magistrates to take cognizance of offences. On this point Stephen and Carnduff JJ. pointed out in the case of Sourindra

Mohan Chuckerbutty v. Emperor Supra that "taking cognisance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence." Section 192(1), however, refers not merely to taking cognisance of offences but to cases of which cognisance has been taken and the language used is wider in its character than that which has been employed in Section 190(1). It would, therefore, appear that cognisance may be taken by a Magistrate of any matter in respect of which an enquiry or trial may be held under the provision of the Code of Criminal Procedure and in taking cognisance of an offence or other case, for example cases u/s 107, 110 or 145 of the Code, a Magistrate merely takes seisin of the matter for the purpose of exercising the specific powers with which he has been vested under the Code in connexion with the case in question. As soon as a Magistrate duly empowered has taken cognisance of a matter, there is a case before him which he is competent to transfer to a Subordinate Magistrate under the provisions of Section 192(1) of the Code.

In the present case there is no doubt that on receipt of the challan and on perusal of the same he decided that the matter should be considered and as such he transferred the case to the file of a competent Magistrate. This was quite legal and unless he applied his mind, the Police Magistrate could not have transferred the case. Simply because the Police Magistrate did not issue any processes, it cannot be inferred that he did not apply his mind. In fact, he accepted the complaint for consideration and that is cognisance.

6. Lastly, it has been contended by Mr. Roy that the proceeding should be quashed in view of the fact that there was no shortage of bags. Mr. Roy has argued that, that there was no shortage of any bags of pulses would be evident from the fact that on getting back the seized bags from the Police, he submitted a report to the Magistrate about the sale of all the bags of pulses as was displayed in the office. Whether there was shortage of bags on verification with the statement displayed, is a question of fact which is based upon the evidence. In the particular case, it has got to be seen whether there was evidence that the accused got back the actual number of bags as displayed from the Police after seizure as per direction of the Magistrate or he got back the stock seized short by several bags as mentioned by the Police. I do not find any undisputed material which will prove that there was no shortage of bags or that the number of bags seized from the accused was incorrect. I cannot accept the contention that prima facie on the materials there is no case for the learned Magistrate to proceed with the case or that the proceedings should be quashed at this initial state. It is for the learned Magistrate to see whether there are materials in this case for proceeding with the same. I do not find that any case has been made out for quashing the proceeding.

7. In the result, the application is rejected and the Rule stands discharged. The interim order passed by this Court is hereby vacated.

8. Send the lower Court records as early as possible so that the learned

Magistrate may proceed with the case according to law.