
(2019) 03 CHH CK 0001

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 775 Of 2015

Shyam Sunder Agrawal And Ors

APPELLANT

Vs

State Of Chhattisgarh Through

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 427

Code Of Criminal Procedure, 1973 — Section 155(2)

Citation : (2019) 03 CHH CK 0001

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Ashish Gupta, Aditya Sharma

Final Decision : Allowed

Judgement

1. Heard.

2. The present petition is to quash the order dated 22.04.2015 passed by the Special Judge, Raigarh in Criminal Revision No.131/2014, whereby the revisional Court has affirmed the order dated 28.08.2014 passed in criminal case No.173/2013, by such order, prayer made by the petitioners to quash the proceeding initiated under Section 427 IPC on the ground that the police has not obtained the permission from the Court to investigate the case, was dismissed.

3. Learned counsel for the petitioners would submit that on a report made on 04.10.2012 by one Ramkishan Dalmiya the police registered an offence and subsequently the charge-sheet was filed under Section 427 IPC. It is stated that Section 427 IPC the offence being non-cognizable in nature the investigation cannot be carried out without the permission of the Court as per Section 155 (2) Cr.P.C. He, therefore, submits that the subsequent grant of permission by the Court even if was made, it was nonest and it cannot cure the inherent defect by retrospective operation.

4. Per contra, learned State counsel opposes the same and submits that the

order of the Court below is well merited which do not call for any interference.

5. Perused the documents and the order of the Courts below. Perusal of the documents and the order would show that on a report made by Ramkishan Dalmiya on 04.10.2012 the police started investigation. Necessarily the reading of the report would show that the offence of a nature under Section 427 IPC which is a mischief causing damage to the amount of Rs.50/- was complained, as it was stated that by pouring water into the shop certain damage was made to the goods and items kept in the shop. Further document shows that the statement of Ramkishan Dalmiya was recorded by the police on 10.10.2012, another document would show that the statement of Tingu alias Sandeep Dalmiya was recorded on 23.01.2013 and the charge-sheet was filed. The charges were framed by the Court on 28.08.2014, which reveals that the charges under Section 427 IPC was framed.

6. Section 427 IPC makes the offence as non-cognizable. Section 155 (2) Cr.P.C. reads that no police officer shall investigate non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. In the reply of the State it is contended that the permission was granted by the Court as per Annexure R-1 on 24.01.2013 and the date at the top of the Annexure R-1 is written as 21.01.2013. The revisional Court has made a reference that the permission was granted on 21.01.2013, which is not supported by the document Annexure R-1.

7. In view of the aforesaid facts following chronological dates and events have been made out:-

(i) The report was made by the complainant for an offence of non-cognizable in nature on 04.10.2012.

(ii) The police thereafter as appears recorded statement of witnesses on 10.10.2012 and last statement was recorded on 23.01.2013.

(iii) Along with the reply of the State document Annexure R-1 is filed which shows that the permission by the Magistrate was granted on 24.01.2013 to investigate the offence.

(iv) Section 155 sub-section (2) of the Cr.P.C. reads as under:-

"155. Information as to non-cognizable cases and investigating of such cases. -

(1) xxx xxx xxx

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

8. In view of the aforesaid facts as has been held by the Karnataka High Court in the matter of Siddanagouda Vs. State of Karnataka (1998 CRI. L.J. 2162) and also by the High Court of M.P. in the matter of Arun Kumar Bhargava Vs. State of M.P. {2001(1) M.P.L.J. 691} that the police cannot investigate the non-cognizable offence and any investigation if is made without the permission of the competent

Magistrate as contemplated by Section 155 (2) Cr.P.C. would be illegal. The subsequent permission of competent Magistrate obtained by police officer would not validate the illegal investigation that was carried out. In this case apparently as appears that in the non-cognizable offence the investigation was carried out by the Police without the permission of the Magistrate and subsequently the permission was obtained on 24.01.2013, therefore, it would not validate the earlier investigation carried out. Consequently, the order dated 22.04.2015 is set aside. In a result, the proceedings of the criminal case No.173/2013 pending before the JMFC, Raigarh is hereby quashed.

9. Accordingly, the petition stands allowed.