

(1961) 04 RAJ CK 0001
In the Rajasthan High Court
Case No : Criminal Appeal No. 99 of 1961

State of Rajasthan

APPELLANT

Vs

Mahmood Ghasi Musalman and Another

RESPONDENT

Date of Decision : 28-04-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 155, 173, 247, 4(1)
Police Act, 1861 — Section 24

Citation : AIR 1962 Raj 1 : (1961) RLW 498

Hon'ble Judges : J.S. Ranawat, J;D.S. Dave, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ranawat, J.—This is an appeal by the State from an order of the Sub-divisional Magistrate, Baran dated the 14th of October 1960, dismissing the case on default of the appearance of the Public Prosecutor or someone on his behalf. Though no specific provision of law has been referred to by the Sub-divisional Magistrate under which he purported to act, yet from the nature of the order that was written by the said officer, it seems that he presumably desired to take action u/s 247 of the Criminal Procedure Code in dismissing the case.

2. The Station House Officer Police Kotwali Baran district Kota submitted a report to the Sub-divisional Magistrate on the 7th of September 1960 stating the facts of an occurrence that was alleged to have taken place on the 2nd of September, 1960 at 11 a.m. in the bazar of Baran and in which the accused Mahmood and Gopilal indulged in a fight on a public road which, in the opinion of the Police Officer, was likely to lead to a disturbance of the public peace. The report further stated that an offence u/s 160 of the Indian Penal Code of affray had been committed by the accused persons and that suitable action may be taken against them. On receipt of the report, the Sub-divisional Magistrate registered a case and issued processes against the accused persons and when they appeared on the 24th of September, 1960 he examined them and also summoned prosecution

witnesses to appear on the next date.

On the date fixed for the hearing, the Public Prosecutor failed to appear and the learned Sub-divisional Magistrate, therefore, dismissed the case and acquitted the accused persons. In this appeal it has been urged that the order of the Magistrate was wrong inasmuch as Section 247 was not applicable to the case for it had not been registered on a private complaint cognizance having been taken on a police report. It is, therefore, prayed that the order of the Sub-divisional Magistrate acquitting the accused may be set aside and the case remanded for further trial.

3. Notices were issued to the accused persons, but they have failed to put in their appearance. It may be noted that u/s 247 of the Criminal Procedure Code, it is incumbent on a Magistrate to acquit the accused unless for some reason he thinks proper to adjourn the hearing of the case to some other day, if the summons had been issued on complaint and if upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing is adjourned the complainant fails to appear. In the instant case, the Station House Officer, Police Station Baran submitted a report and the case was taken cognizance of on that report. The question for determination is whether the report of the Station House Officer, under the circumstances of this case, can be treated to be a report of a police officer for the purposes of Section 247 of the Criminal Procedure Code, or a complaint as defined by Section 4(1)(h) of the Criminal Procedure Code.

According to the definition u/s 4(1)(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Criminal Procedure Code, that some person whether known or unknown, has committed an offence. A report of a police officer made in exercise of his powers and duties as such officer is not a complaint. However, a police officer is not incompetent to make a complaint in his private and individual capacity and in such a case his report may be regarded to be a complaint. The point at issue thus is whether the report of the police officer in the instant case amounted to a complaint? In cognisable cases, the police officers have to submit their reports u/s 173 of the Criminal Procedure Code and such reports are reports of police officers and they are not complaints u/s 4(1)(h). Reports submitted by police officers in pursuance of direction issued to them by Magistrates, u/s 155 are also police reports even though they may relate to non-cognizable offences.

In *Devi Singh and Another Vs. Shiv Ram Singh*, it was held by this Court that the report of a police officer mentioned in Section 190 (1)(b) is not confined to a report of a cognizable offence and it includes a police report in a non-cognizable case u/s 155 of the Criminal Procedure Code. It was further observed in the judgment of *Devi Singh and Another Vs. Shiv Ram Singh*, that provisions of Section 247 of the Criminal Procedure Code would not be attracted to such cases. In that case police reports of non-cognizable cases and those that were not covered by Section 155 did not come up for consideration. In the instant

case, the police report was in connection with an offence u/s 160, I. P. C. which according to Schedule 2 of the Criminal Procedure Code, is a non-cognizable offence and the said report was not covered by the provision of Section 155 of the Criminal Procedure Code. However, the said report was submitted by the Station House Officer in exercise of his functions as a police officer. Such a report would fall within the scope of Section 24 of the Police Act.

It cannot, therefore, be conceived that the police report in question was by the Station House Officer in his private or individual capacity. The report was obviously by a police officer in exercise of his functions as such officer. In our opinion, where a report is submitted by a police officer in the capacity of his being an officer of the police, such report cannot be considered anything other than a police report, though it may pertain to a non-cognizable offence. Such police reports cannot be regarded as complaints within the meaning of Section 4(1)(h) of the Criminal Procedure Code. The provisions of Section 247 of the Criminal Procedure Code are not attracted to the cases registered on a police report. It is not competent to a Magistrate to acquit the accused merely because the prosecuting officer makes default in his appearance. In *Sarferaz Khan v. Emperor*, 19 Ind Cas 314 (All), a similar view was expressed. That decision is of a date prior to the amendment of Section 190(1)(b) by the Criminal Procedure (Amendment) Act, 1923. Similar view was expressed in *Sheikh Abdul Ali v. Emperor*, 59 Ind Cas 41: (AIR 1920 Pat 700). Mr. Justice Jwala Prasad observed :

"The report of the Police is not restricted only to reports under Chapter XIV upon information lodged to the Police, but embraces all reports by the Police submitted u/s 24 of the Police Act."

An application by the police to a Magistrate to take action against a person amounts to a "Police report" within the meaning of the term in Clause (b) of Section 190. By the Criminal Procedure (Amendment) Act of 1923 Section 190(1) (b) has been amended and instead of the words "police report", the words "upon a report in writing of such facts made by any police officer" have been substituted. This change in the language has put an end to the controversy that was at one time raised on account of the technical meaning of the words "police report". It has made the expression more liberal so as to include the reports made by the police officers in exercise of their duty u/s 24 of the Police Act.

After the amendment of Section 190 (1)(b) it is generally accepted that a Magistrate can take cognizance of even a non-cognizable offence upon a report made by a police officer; vide *Saramma Zacharia v. State*, AIR 1953 Tra 43. In this view of the matter, we think the instant case cannot be deemed to have been registered on a private complaint and the Magistrate was, therefore, in error in applying the provision of Section 247 for dismissing the case and acquitting the accused for non-appearance of the prosecuting officer. The appeal is allowed and the order of acquittal passed by the Sub-divisional Magistrate is set aside and the case is remanded to his file for proceeding further according to law from the stage at which he had dismissed the case by recording an order of

acquittal.