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Court No. - 85

Case :- APPLICATION U/S 482 No. - 17371 of 2020

Applicant :- Mahendra Kumar Chaudhary And 2 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Amit Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. The present case brings to the fore the legal conundrum relating to issues seemingly circumambient the interpretation of the provisions under Section 2(d) of the Code of Criminal Procedure, 1973[1] and the explanation appended to the section.

2. Heard Sri S.N. Mishra alongwith Sri Amit Kumar Singh, learned counsel for the applicants and Sri Vinod Kant, learned Additional Advocate General along with Sri Pankaj Saxena, learned Additional Government Advocate-I appearing for the State-opposite party.

3. The present application under Section 482 of the Code has been filed seeking to quash the entire proceedings of Criminal Case No. 3412 of 2020 (State Vs. Mahendra Kumar Chaudhary and others), arising out of N.C.R. No. 75 of 2019, under Sections 323, 504 of the Indian Penal Code, 1860[2], Police Station Bakhira, District Sant Kabir Nagar including charge sheet dated 30.09.2019 as well as cognizance order dated 29.07.2020 passed by learned Judicial Magistrate, Sant Kabir Nagar.

4. As per facts of the case, pleaded in the application, proceedings of the Criminal Case No.3412 of 2020 (State Vs. Mahendra Kumar Chaudhary and Others) were initiated with the

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1 The Code
2 The Penal Code

registration of NCR No. 75 of 2019, under Sections 323 and 504 IPC at Police Station Bakhira, District Sant Kabir Nagar.

5. Learned Additional Advocate General has taken instructions which indicate that an order under Section 155(2) of the Code was passed by the Magistrate directing investigation and pursuant thereto a "police report" under Section 173(2) of the Code dated 29.07.2019 was placed before the Magistrate upon which cognizance was taken on the same date.

6. The principal submission, which is sought to be raised to seek quashing of the proceedings, is that the complaint having been made in respect of non-cognizable offence and the police report also having been submitted with regard to non-cognizable offence, in view of the explanation to Section 2(d) of the Code, the police report shall be deemed to be a complaint and the case would be required to be proceeded with as a complaint case. In support of his submissions learned counsel places reliance upon the judgments in the cases of **Ghanshyam Dubey @ Litile And Others vs. State of U.P. and Another[3], Dr. Rakesh Kumar Sharma vs. State of U.P. and Another[4] and Alok Kumar Shukla vs. State of U.P. and Another[5].**

7. Learned Additional Advocate General has controverted the aforesaid contention by submitting that the explanation to Section 2(d) of the Code would come into play only in a situation where to begin with the complaint which was lodged was in respect of a cognizable offence but after investigation the police report which was submitted disclosed a non-cognizable offence. He submits that in the present case where the proceedings were initiated pursuant to registration of an NCR in respect of non-cognizable offence, and the same was investigated upon an order passed by

3 2013 (4) ADJ 474
4 2007 (9) ADJ 478
5 Application u/s 482 Cr.P.C. No.42698 of 2013, decided on 26.11.2013

the Magistrate under Section 155(2) of the Code and the police report subsequent thereto disclosed non-cognizable offence, the explanation under Section 2(d) of the Code would not be attracted. To support his contention, learned Additional Advocate General has placed reliance upon the judgment of the Supreme Court in the case of **Keshab Lal Thakur vs. State of Bihar**[6].

8. It has further been pointed out that looking at the nature of the offence disclosed in the police report, the case which is to be tried would be a summons case and the procedure prescribed for the same would be as per Chapter XX of the Code, wherein there is no distinction, with regard to manner in which the trial is to proceed, between cases instituted on a police report and those instituted otherwise than on a police report i.e. a complaint. It is accordingly, submitted that the present case being a summons case there would be no material change in the procedure of trial and as such the applicant cannot be said to have been prejudiced by the order of cognizance passed by the Magistrate.

9. As regards the judgment in the case of **Ghansyam Dubey alias Litile** (supra), it is submitted that the decision having been passed without considering authoritative pronouncement in the case of **Keshab Lal Thakur** (supra) and also the relevant statutory provisions, the same cannot be said to be a conclusive authority on the point.

10. In order to appreciate the rival contentions, the relevant provisions under the Code may be adverted to.

> **"2. Definitions.**—In this Code, unless the context otherwise requires, —
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> (*c*) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

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6 (1996) 11 SCC 55

(*d*) “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.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

(*h*) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(*l*) “non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant;

(*n*) “offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871 (1 of 1871);

(*o*) “officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;

(*r*) “police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(*w*) “summons-case” means a case relating to an offence, and not being a warrant-case;

(*x*) “warrant-case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

155. Information as to non-cognizable cases and investigation of such cases.—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(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.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

173. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(2) (*i*) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(*a*) the names of the parties;

(*b*) the nature of the information;

(*c*) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(*e*) whether the accused has been arrested;

(*f*) whether he has been released on his bond and, if so, whether with or without sureties;

(*g*) whether he has been forwarded in custody under section 170;

(*h*) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

(*ii*) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the

complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

205. Magistrate may dispense with personal attendance of accused.—(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

11. The corresponding provisions contained under the old Code i.e. Criminal Procedure Code, 1898[7], which are also required to be referred to, are as follows:-

"4. Definitions. - (I) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context **: —**

(*h*) "Complaint" - "complaint" means the 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 it does not include the report of a police officer:

7 the old Code

154. Information in cognizable cases. - Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and he read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

155. Information in non-cognizable cases. - (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

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

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. Investigation into cognizable cases. - (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

173. Report of police-officer. - (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under Section 158, the report shall, in any cases in which the Local

Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial :

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

190. Cognizance of offences by Magistrates. - (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence :

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial."

12. The provisions relating to information to the police and their powers to investigate are contained under Chapter XII of the Code of Criminal Procedure, 1973. Section 154 of the Code provides for the manner of giving information to an officer in-charge of the police station relating to commission of a cognizable offence, and the manner in which the same is to be reduced in writing and entered in a book maintained for the purpose. Section 155 of the Code relates to giving of information as to non-cognizable cases and investigation of such cases. Sub-section (1) thereof, provides that when information is given

to an officer in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter it in the prescribed book and refer the informant to the Magistrate. Sub-section (2) states that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such cases or commit the case for trial. As per sub-section (3), any police officer receiving such order may exercise the same powers in respect of the investigation as an officer in charge of a police station may exercise in a cognizable case, except the power to arrest without warrant.

13. In terms of Section 156(1) of the Code, any officer in-charge of a police station may investigate any cognizable offence, without the order of a Magistrate. Sub-section (3) of Section 156 provides that any Magistrate empowered under Section 190 may order an investigation.

14. Section 173 of the Code, as per terms of sub-section (1) and sub-section (2) thereof, lays down that every investigation under Chapter XII shall be completed without unnecessary delay and on completion the officer in charge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in the prescribed form setting forth the required particulars.

15. Section 190 of the Code relates to cognizance of offences by Magistrates and falls under Chapter XIV, which is in respect of conditions requisite for initiation of proceedings. Section 190 of the Code lays down that the concerned Magistrate may take cognizance of any offence in three contingencies, namely; (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer

or upon his own knowledge, that such offence has been committed.

16. Now referring to the provisions under 1898 Code (old Code), Section 190 of the old Code contemplates cognizance of offences being taken by Magistrates in three contingencies, namely; (a) upon receiving a complaint of facts which constitute such offence, (b) upon a report in writing of such facts by any police officer, and (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

17. The power to take cognizance under Section 190(1)(b) of the old Code could be attracted only upon a report in writing of any police officer under Section 173 of the said Code. The report under Section 173 could follow either upon investigation by a competent police officer into a cognizable offence or investigation by a competent police officer into a non-cognizable offence made under an order of the Magistrate as contemplated under Section 155(2) of the old Code. Such a report would not be held to be a complaint having been excluded as per terms of Section 4(1)(h) of the old Code. A report by the police following an investigation into a non-cognizable case made without the order of a Magistrate, could not be treated as a valid report by the police officer for the purposes of Section 173 or Section 190(1)(b) of the old Code; however, it could be treated as a complaint for the purposes of Section 190(1)(a) of the old Code, leaving it open to the Magistrate to take cognizance thereupon. It was also open to the Magistrate to decline to take cognizance or to order fresh investigation, depending on the facts and circumstances of the particular case.

18. A comparison of the provisions under the old Code and the Code, as it presently stands, would go to show that Sections 154,

155, 156, 173 and 190 of the Code are more or less, the same as the corresponding provisions of the old Code, except that Section 190(1)(b) refers to “a police report” and not a “report of the police officer”. The old Code does not define “a police report” or “ a report of the police officer”; Section 2(r) of the new Code defines a “police report” as a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173. Section 2(d) of the new Code defines a “complaint” in a manner which is as same in the old Code except that it excludes ‘a police report’ instead of excluding the ‘report of the police officer’ as in the old Code. In addition, an explanation has been added to the definition of “complaint” which states that a report made by a police officer in case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

19. In order to appreciate the aforementioned changes, a comparative overview of the relevant sections may be shown in a tabular form:-

Criminal Procedure Code, 1898 (the old Code)	**Criminal Procedure Code, 1973 (the Code)**
Section 4(1)(*h*)- “complaint” means the 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 it does not include ***the report of a police officer.***	Section 2(d)- “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.*** ***Explanation.— A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;***

—	***Section 2(r) — "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173;***
Section 190(1)(*b*) — upon a ***report in writing of such facts made by any police-officer*;**	Section 190(1)(*b*) — upon a ***police report of such facts*;**

20. Under the old Code, in some cases, it was held that "report of a police officer" as was the expression used, and excluded from the definition of the term "complaint", under the old Section 4(1)(h), meant report in a cognizable offence and the report in a non-cognizable offence would be treated as a complaint. (See **Emperor v. Ghulam Hussain**[8], **Jagdeo Panday and Another v. N.C. Hill, Assist. Superintendent of Police, Myitkyina**[9])

21. The contrary view taken in some cases was that the expression "complaint" excludes police report whether in a cognizable or non-cognizable offence. (See **Emperor v. Babulal Munnilal**[10], **Bholanath Das and Others v. Emperor**[11], **Hatimali and Another v. The Crown**[12], **State of Rajasthan v. Mahmood Ghasi Musalman and Another**[13]).

22. Essentially there was a conflict in the decisions on two points: (i) whether report of a police officer in a non-cognizable case investigated without the order of a Magistrate as required by Section 155(2) would fall under the old Section 190(1)(b); (ii) whether definition of "complaint" under Section 4(1)(h) applied to a police report.

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8 AIR 1925 Lahore 237
9 AIR 1938 Rangoon 257
10 AIR 1936 Nagpur 86
11 28 CWN 490
12 AIR (37) 1950 Nagpur 38
13 AIR 1962 RAJASTHAN 1

23. **The Law Commission** in its **41st Report**[14], in order to resolve the conflict recommended that the definition should make it clear that the report made by police on an unauthorised investigation of a non-cognizable case is a complaint and accordingly, in the definition of "complaint", the words "a police report", were to be substituted for "report by a police officer" and the following explanation was proposed to be inserted.

> "**Explanation.-** A report made by a police officer in a non-cognizable case investigated without conforming to the provisions of sub-section (2) of section 155 shall be deemed to be a complaint."

24. The definition of "police report" was also proposed to be inserted vide Section 2(r). Further, under Section 190(1)(b), the words "police report of such facts" were to be substituted for "report in writing of such facts made by a police officer" with the object of limiting it to a report under Section 173; leaving other kinds of reports by a police officer to be treated as complaint. (41st Report, pp. 9-10, 102-103)

25. The relevant extracts from the Law Commission Report are as follows:-

> "**1.26 (v)**. The definition of "complaint" in clause (h) was discussed in detail in the previous Report[15]. In view of the conflicting decisions and uncertainty in regard to this definition and the connected provisions in sections 173, 190, 207A and 251A of the Code, the Commission recommended that the definition should make it clear that the report made by the police on an unauthorized investigation of a non-cognizable case is a complaint. We agree with this recommendation and propose to substitute for the words "the report of a police officer" in clause (h) the words "a police report". A definition of police report will have to be added in this section.
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> **1.27 (ii)** As indicated in the previous paragraph, sub-para. (v), a clause will be necessary defining "police report" as follows: —
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> > "(rr) 'police report' means a report by a police officer to a Magistrate under sub-section (1) of section 173."
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14 The Law Commission, 41st Report (Vol. I, p. 9)
15 37th Report, para. 75 and Appendix III.

15.72. The group of sections, from section 190 to section 199B, describes the methods by which, and the limitations subject to which, various Criminal Courts are entitled to take cognizance of offences.

Section 190 first mentions the classes of Magistrates entitled to take cognizance, and then says that cognizance may be taken—

"(a) upon receiving a complaint of acts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed."

15.73. Clause (c) is of limited practical importance as resort to it is not had in many cases. Leaving that alone, and speaking broadly, the cases fall into two categories: —

(1) those started on complaint; and

(2) those started on a police-report.

A "complaint" is defined in section 4(1) (h) as not including the "report of a police officer". It seems to us, however, that there is no practical advantage in distinguishing a case started on a complaint from a case started on "the report of a police officer" which is not given under section 173. In Chapter XXI of the Code, where two different procedures are laid down for the trial of two different kinds of cases, the point of distinction is whether the case was instituted on a "police report" or not, and the expression "the report of a police officer" is not used. The same is the case in Chapter XVIII.

15.74. At first sight, of course, the difference in meaning between a "police report" and the "report of a police officer" may seem slight, but authoritative decisions show that the expression "police report", which was in fact the expression used in clause (b) of section 190(1) before 1923, has a technical connotation, limited to a report made by an investigating officer under section 173 of the Code. Such an investigation can only be of a cognizable offence, or if made into a non-cognizable offence, it must be with the permission of a Magistrate required by section 155. We, therefore, consider it important that Magistrates should be readily able to distinguish a case instituted on a "police report" from any other kind of case; and to facilitate this, we propose, that the expression "police report" should be clearly defined in the Code itself, and the definition should follow the judicial decisions, limiting it to a report made under section 173. For the same reasons, we propose that clause (b) of section 190, sub-section (1) should mention only a "police report", leaving other kinds of reports by a police officer to be treated as complaints. We have already proposed the necessary verbal alteration in the definition of "complaint" now contained in section 4.

15.75. These proposals, we hope, will do away with the controversy whether the present wording of section 190(1) (b) does or does not include a report made regarding a non-cognizable offence investigated by a police officer without the orders of a Magistrate, which on occasions has arisen. At the same time, there will be a clear-cut division between cases properly investigated by the police and others, and the

> distinction between cases instituted on a police report and other cases will be easy to make."

26. The Joint Committee while approving the recommendation of the Law Commission, in order to clarify the intention that the report will be deemed to be a complaint only if the offence is discovered after investigation by the police to be a non-cognizable one, redrafted the explanation, as is in the present form.

27. It would be apposite to state that the Law Commission Report may be referred to as an internal aid to a statutory construction to ascertain the legislative intent behind the provision, particularly in a situation where a particular enactment or amendment is the result of the recommendation of the Law Commission of India, as held in **Mithilesh Kumari & Anr vs Prem Behari Khare**[16].

28. Section 2(d) alongwith explanation, as it finds place under the new Code, is as follows:-

> "(*d*) "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.
>
> Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

29. The legislative changes, referred to above, made it clear that under the new Code, the "police report" i.e. the report forwarded by a police officer to a Magistrate under Section 173(2), cannot be treated as a complaint.

30. The ambiguity created by the decisions rendered in the context of the old Code, wherein a view was taken that the report of a police officer in a non-cognizable offence following any investigation made without an order of the Magistrate could be

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16 (1989) 2 SCC 95

treated as a complaint for the purposes of Section 190(1) (a) and Section 4(1) (h), stood removed. The legislative changes brought in the definition of "complaint" and the insertion of the explanation made it clear that the report made by a police officer will be deemed to be a complaint only if the offence is discovered, after investigation by the police, to be a non-cognizable one. The explanation clearly states that a report by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be a complainant.

31. The intent, purpose and effect of an Explanation appended to a statutory provision was considered in **S.Sundaram Pillai Vs. V.R.Pattabiraman and others**[17]**.** It was held that the Explanation is meant to explain or clarify certain ambiguities in the provision. Referring to earlier decisions in **Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. CTO,**[18] **Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar**[19]**, Hiralal Rattanlal Vs. State of U.P.**[20], **Dattatraya Govind Mahajan v. State of Maharashtra**[21] and also the principles laid down in **Sarathi** in **Interpretation of Statutes**, **Swarup** in **Legislation and Interpretation** and **Bindra** in **Interpretation of Statutes** (5th Edn.), the object of Explanation to a statutory provision was elaborated.

> **"46**...It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in *Interpretation of Statutes* while dwelling on the various aspects of an Explanation observes as follows:

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17 (1985) 1 SCC 591
18 AIR 1961 SC 315
19 AIR 1967 SC 389
20 (1973) 1 SCC 216
21 (1977) 2 SCC 548

(*a*) The object of an Explanation is to understand the Act in the light of the explanation.

(*b*) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute.

(p. 329)

47. Swarup in *Legislation and Interpretation* very aptly sums up the scope and effect of an Explanation thus:

> "Sometimes an Explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an Explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain.... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa." (pp. 297-98)

48. Bindra in *Interpretation of Statutes* (5th Edn.) at p. 67 states thus:

> "An Explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an Explanation only explains and does not expand or add to the scope of the original section... The purpose of an Explanation is, however, not to limit the scope of the main provision.... The construction of the Explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An 'Explanation' must be interpreted according to its own tenor."

49. The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in *Burmah Shell Oil Storage and Distributing Co. of India Ltd.* v. *CTO* [(1961) 1 SCR 902 : AIR 1961 SC 315 : (1960) 11 STC 764] a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus:

> "Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1)(fl) of the Article and not *vice versa*. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles."

50. In *Bihta Cooperative Development Cane Marketing Union Ltd*. v. *Bank of Bihar* [(1967) 1 SCR 848 : AIR 1967 SC 389 : 37 Com Cas 98] this Court observed thus:

> "The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."

51. In *Hiralal Rattanlal case* [(1973) 1 SCC 216 : 1973 SCC (Tax) 307] this Court observed thus: [SCC para 25, p. 225: SCC (Tax) p. 316]

> "On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (*c*). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation."

> **52.** In *Dattatraya Govind Mahajan* v. *State of Maharashtra* [(1977) 2 SCR 790 : (1977) 2 SCC 548 : AIR 1977 SC 915] Bhagwati, J. observed thus: (SCC p. 563, para 9)
>
> > "It is true that the orthodox function of an Explanation is to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it.... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations."
>
> **53.** Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—
>
> > **"(*a*) to explain the meaning and intendment of the Act itself,**
> >
> > **(*b*) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,**
> >
> > **(*c*) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,**
> >
> > **(*d*) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and**
> >
> > **(*e*) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."**
>
> (emphasis supplied)

32. The provisions contained under Section 2(d) alongwith the explanation, under the new Code, fell for consideration in **Keshab Lal Thakur Vs. State of Bihar** (supra). It related to a case, registered on a report under Section 31 of the Representation of People Act, 1950, where on completion of investigation a report in final form was submitted praying for discharge on the ground that offence was non-cognizable one. Taking note of the fact that the offence was non-cognizable and the police was not entitled to investigate in the absence of any order under Section 155 (2), and the Magistrate could not have taken cognizance upon such report, the proceedings were quashed.

33. On the scope of the explanation to Section 2(d), it was observed that the explanation would be available only in a case

where the police initiates investigation into a cognizable offence but ultimately finds that only a non-cognizable offence has been made out.

34. The decision in the case of **Ghanshyam Dubey alias Litile** (supra), which is sought to be relied upon on behalf of the applicants having been rendered without taking notice of the binding precedent in the case of **Keshab Lal Thakur** (supra) and also the statutory scheme referred to above, and in the absence of consideration of the issues raised herein, the same cannot be held to be a conclusive authority on the point.

35. In the case of **Dr. Rakesh Kumar Sharma** (supra) a report was originally lodged under Section 307 of the Penal Code (a cognizable offence) and upon investigation the police report disclosed a non-cognizable offence under section 504. It was in these set of facts that the police report was held to be a complaint in view of the explanation to Section 2(d).

36. The decision in **Alok Kumar Shukla** (supra) was in a case where the police report was submitted unauthorisedly in a non-cognizable offence without any order of the Magistrate under section 155 (2) Cr.P.C.; accordingly, the same was held to be a complaint as per the explanation of Section 2(d).

37. The aforementioned decisions in the cases of **Dr. Rakesh Kumar Sharma** and **Alok Kumar Shukla** would, therefore, be distinguishable on facts.

38. The three cases referred to above, namely the cases of **Ghanshyam Dubey alias Litile** (supra), **Dr. Rakesh Kumar Sharma** (supra) and **Alok Kumar Sharma** (supra) bring to the fore three situations :

Case I. *where the police report has been submitted following investigation in a non-cognizable case without conforming to the provisions of sub-section (2) of Section 155;*

Case II*. where the police investigates a case relating to a cognizable offence, which discloses, after investigation, the commission of a non-cognizable offence;*

Case III*. where a non-cognizable offence is reported and upon an order by the Magistrate under sub-section (2) of Section 155, the same is investigated, and the police report which is submitted also discloses non-cognizable offence.*

39. Taking the above cases to be illustrative, the three alternative situations which would emerge are :

39.1. In ***Case I*** where the police report has been submitted following investigation in a non-cognizable case without conforming to the provisions of sub-section (2) of Section 155, the same would be deemed to be a complaint.

39.2. In ***Case II*** where the police investigates a case relating to a cognizable offence, which discloses, after investigation, the commission of a non-cognizable offence, the same would also be deemed to be a complaint by virtue of the explanation to Section 2 (d).

39.3. In ***Case III*** where a non-cognizable offence is reported and upon an order by the Magistrate under sub-section (2) of Section 155, the same is investigated and the police report, which is submitted, also discloses non-cognizable offence, the same would not be covered within the purview of the explanation to Section 2 (d) to bring it within the ambit of the term 'complaint'.

40. It would therefore follow as a legal proposition that in case where commission of a non-cognizable offence alone is alleged, at

the commencement of the investigation, cannot and does not, fall within the scope of the explanation, so as to bring it within the purview of a “complaint”. The explanation takes within its sweep only a case, where at the stage of commencement of the investigation commission of a cognizable offence is alleged or where it is doubtful as to whether it relates to a cognizable or a non-cognizable offence, and the investigation discloses only the commission of a non-cognizable offence; other categories, stand excluded by necessary implication.

41. The effect of a police officer investigating a case and laying the report without authority or jurisdiction to do so, and the question as to whether proceedings can be held to be vitiated upon a defect in investigation or the same can be held to be a mere irregularity was subject matter of consideration in **H.N. Rishbud and others Vs. State of Delhi**[22], and it was held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. The relevant observations made in this regard are being extracted below :-

> "9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.
>
> A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190, CrPC as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, CrPC is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of

22 AIR 1955 SC 196

this section is in marked contrast with that of the other sections of the group under the same heading, i.e. Sections 193 and 195 to 199.

These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537, CrPC which is in the following terms is attracted :

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in-'Prabhu v. Emperor', AIR 1944 PC 73 (C) and 'Lumbhardar Zutshi v. The King', AIR 1950 PC 26 (D).

...We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

42. It was thereafter held in the case of **H.N. Rishbud (supra)** that when the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified. It was observed as follows:-

> “10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such

> reinvestigation as the circumstances of an individual case may call for.
>
> Such a course is not altogether outside the contemplation of the scheme of the Code as appears from section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. ... When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under section 537, CrPC of making out that such an error has in fact occasioned a failure of justice. ...
>
> In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate..."

43. It would be interesting to consider as to whether in situations where the report made by the police officer having been held to be covered by the explanation to Section 2(d) and accordingly having been deemed to be a complaint, the cognizance taken by the Magistrate can be assailed on the ground that the procedure as required in the case of a private complaint as per the provisions under Sections 200 and 202 has not been followed. The question would be whether on a complaint, in such cases, the issuance of process under Section 204 and the summoning of the accused could have been made by the Magistrate upon taking cognizance under section 190(1)(a) without following the procedure under Section 200 relating to examination of the complainant.

44. For ease of reference Section 200 of the Code is being extracted below:-

> "**200. Examination of complainant**.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

> (a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or
>
> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
>
> Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

45. Clause (a) of the first proviso to Section 200 of the Code provides that when the complaint is made in writing by a public servant acting or purporting to act in the discharge of his official duties, the Magistrate need not examine the complainant and the witnesses before proceeding with the matter and issuing process. Therefore, in a case where a report made by a police officer is held to be a complaint by virtue of the explanation to Section 2(d) and the Magistrate proceeds to take cognizance thereon under Section 190(1)(a), treating it to be a complaint, and proceeds to issue process without following the procedure of examining the complainant under Section 200 and the witnesses under Section 202, the issuance of process or the summons cannot be held to be vitiated.

46. Moreover, in the facts of the present case looking at the nature of the offence disclosed in the police report, the case which is to be tried would be a summons case and the procedure prescribed for the same would be as per Chapter XX of the Code, wherein there is no distinction with regard to the manner in which the trial is to proceed between cases instituted on a police report and those instituted otherwise than on a police report i.e. a complaint. Accordingly, there would be no material change in the procedure of trial and as such the applicant cannot be said to have been prejudiced by the order of cognizance by the Magistrate, for this reason also.

47. In the case at hand, the proceedings were initiated with the registration of an NCR relating to non-cognizable offence and the investigation was carried out by the police pursuant to an order of the Magistrate under Section 155(2) of the Code and thereafter a police report under Section 173(2) also disclosing non-cognizable offence was placed whereupon cognizance was taken by the Magistrate. In view of the foregoing discussion, these set of facts would correspond to ***Case III***, as referred to in paragraph 39 and accordingly, the same would not be covered within the purview of the explanation to Section 2(d) to bring it within the ambit of the term "complaint". The cognizance taken by the Magistrate, therefore, cannot be faulted with.

48. This court is, therefore, not inclined to exercise its inherent jurisdiction under Section 482 of the Code in the facts of the present case.

48. The application thus, fails and is accordingly, **dismissed.**

Order Date :- 01.12.2021
Kirti/Pratima

(Dr. Y.K. Srivastava, J.)