*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   **CRL.M.C. 3484/2009 & Crl. MA. No. 11807/2009**

%   Reserved on : 22nd December, 2009
Pronounced on: 6th January, 2010

RAJEEV RASTOGI & ORS.   ..... Petitioners
!   Through: Mr. Dinesh Mathur, Sr. Adv. with Mr. Atul Guleria, Adv.

versus

$ STATE   ..... Respondent
!   Through: Mr. R.N. Vats, APP.

*   **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: V.K. JAIN, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution seeking quashing of the case arising from FIR No. 613/2007 at Police Station Krishna Nagar under Section 323 and 341 of IPC read with Section 34 thereof.

2. The FIR was registered on a compliant made by one Anupam Rastogi, who alleged that on 15th December, 2007, he

had come to the house of her daughter Neha at E-3/9 Krishna Nagar to discuss certain family matters and was present on the first floor, when he was called downstairs by the father-in-law of his daughter. Four other persons named in the FIR were also present there. The discussion resulted in an altercation and during the course of altercation two of them namely Subodh and Miku caught hold of him by the neck, whereas Pappu and Guddu gave him legs and fist blows. Charge sheet for offences punishable under Sections 323/341/34 of IPC was filed after completion of investigation.

3. At the time of arguments before the trial court on issue of notice under Section 251 of the Code of Criminal Procedure, it was contended on behalf of the petitioners that non cognizable offence is made out against them on the basis of the allegations made in the FIR and no permission had been taken from the Magistrate for carrying out investigation into non-cognizable offence. The learned Metropolitan Magistrate agreed that no offence under Section 341 of IPC was made out, but declined to review the order whereby cognizance was taken under Sections 323/341/34 of IPC on the ground that he did not have power to review an earlier order whereby cognizance was taken. Notice, accordingly, was given to the petitioners for the offence punishable under Sections 323/341/34 of IPC giving an option to

the petitioners to move this Court for quashing the FIR and consequent proceedings.

4. Relying upon the decision of this Court in ***'Dr. Lata & Anr. Vs. State & Anr.'*** 2009(2) JCC 903, it was contended by the learned senior counsel for the petitioners that since the offence under Section 341 of IPC is admittedly not made out and the offence under Section 323 of IPC is a non-cognizable offence, the investigation having been conducted illegally, cognizance was bad in law and the proceedings are, therefore, liable to be quashed.

5. Section 190(1) of the Code of Criminal Procedure, which deals with cognizance of offences by Magistrate reads as under:

> "**190. Cognizance of offence by Magistrate**- (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…"

6. Thus cognizance can be taken by the Magistrate upon (a)receipt of a complaint disclosing facts constituting

commission of an offence (b)upon a police report disclosing such facts or (c)on his own knowledge.

7. A bare perusal of Clause (b) above, would show that the Magistrate can take cognizance of any offence, irrespective of whether it is a cognizable offence or a non-cognizable offence upon a police report disclosing such facts as would constitute commission of an offence. The foundation of the jurisdiction of the Magistrate for taking cognizance of an offence does not depend upon the validity or otherwise of an investigation carried out by the police. It depends only upon the set of facts and circumstances placed before the Court, from which the Court comes to a conclusion that they constitute commission of an offence. It would, therefore, not be correct to say that cognizance of an invalid police report is prohibited necessarily in law and is, therefore, a nullity.

8. In '***H.N. Rishbud vs. State of Delhi'***, AIR 1955 SC 196, the Hon'ble Supreme Court inter-alia observed as under:

> "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, Cr.P.C. 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…
>
> 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…
>
> 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…"

9. Therefore, even if investigation was invalid for want of order of the Magistrate under Section 155(2) of the Code of Criminal Procedure, the police report based upon such an investigation is not nullified and does not become non est merely on account of this procedural lapse in the investigation and it is very much permissible for the Court to take cognizance even of a non-cognizable offence, on the basis of the evidence collected during such an investigation, unless some prejudice is shown to have been caused to the accused for want of requisite order under Section 155(2) of the Code.

10. Assuming that the provisions of Section 155(2) are mandatory and the police report based upon facts discovered during such an investigation cannot form the basis for taking cognizance under Section 190(1)(b) of the Code of Criminal Procedure, a cognizance can still be taken, on the basis of such a

report, under Section 190(1)(a) of the Code of Criminal Procedure.

11. Complaint has been defined in Section2(d) of the Code of Criminal Procedure as under:

> **2(d)** "complaint" means any allegation made orally or in writing to a Magistrate, which 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."

12. Definition of 'complaint' given in the Code of Criminal Procedure, 1898 did not include the above referred explanation. The purpose of adding the explanation in the Code of Criminal Procedure, 1973 was to make it possible for the Court to take cognizance of a non-cognizable offence even on the basis of a police report, by treating it as a complaint. If the report made by a police officer is to be treated as a complaint, it is immaterial whether the investigation was carried out on receipt of information disclosing commission of cognizable as well as non-cognizable offence and during the course of investigation, commission of only a non-cognizable offence was found or it was carried out on the basis of complaint which disclosed commission only of a non-cognizable offence and was conducted

without obtaining requisite orders from the Magistrate under Section 155(2) of the Code. Section 190(1) does not say as to who can make complaint. The complaint can be oral and need not necessarily be in writing. It is also not necessary that the complaint should be made only by the victim of the crime. Since the Magistrate takes cognizance of the offence, the proceedings on taking cognizance would be initiated even though the persons who had committed the offence were not known at that time. The complainant can also be a public servant. The police officer, who is a public servant is competent to make a complaint and there is nothing in law which prevents a Court from taking cognizance on a complaint made by a police officer, if it discloses the commission of an offence. There is no provision in the Code of Criminal Procedure, which prevents a Magistrate from taking an invalid police report into consideration and taking cognizance on the basis of the facts disclosed in such a report. In fact, even before enactment of the Code of Criminal Procedure, 1973, it was held in a number of decisions including '***A. Kanniyah vs. State'*** AIR 1967 Madras 390, ***'Kanti Lal vs. State'*** AIR 1970 Bombay 225 and '***Public Prosecutor vs. A.V. Ramiah***' 1958 Cr.L.J. 737 that where a police officer carries investigation into a non-cognizable offence, without the order of the Magistrate, and files a charge sheet, such a charge sheet can be treated as a complaint. The judicial pronouncement has been given statutory recognition by adding the explanation to the

definition of complaint in the Code of Criminal Procedure, 1973. In taking this view, I am fortified by the decisions of this Court in '***Ranbir Prakash vs. State***' 27 (1985) DLT 242 and '***Narain Singh vs. State***' 1986 Rajdhani Law Reporter 545. Similar view was taken in '***Chaman Prakash vs. State***' 2007 (3) JCC 1983, '***Kamal Kishore Kalra vs. State***' 151 (2008) DLT 546 and a recent decision of this Court in Crl.M.C. 642/2009 decided on 11th December, 2009. The cognizance on a complaint filed by a public servant, in discharge of his official duties can be taken without examining him and other witnesses. Hence the cognizance taken in this case cannot be said to be bad in law.

13. As far as the decision in the case of Dr. Lata (supra) is concerned, the issue has been dealt with in para 6 of the judgment, which reads as under:

> "The FIR even if taken on its face value does not bring out a case for wrongful restraint and therefore, the offence under Section 341 IPC is clearly not even prima facie made out. As regards offence under Section 323 IPC, it is clearly non-cognizable and could not have been proceeded with by the registration of an FIR."

14. Since the above referred judgment does not take into consideration the definition of 'complaint' given in Section 2(d) of the Code of Criminal Procedure and also does not take into consideration the above referred four decisions of this Court

rendered prior to the decision in the case of Dr. Lata (supra) was rendered, I am unable to take the same view.

15. For the reasons stated above, the petitioners must face trial for the offence punishable under Section 323 of IPC read with Section 34 thereof. However, since no offence under Section 341 of IPC is made out from the allegations made against them, their trial under that Section cannot be allowed to continue. The proceedings pending against the petitioners are, therefore, quashed to the extent they pertain to offence under Section 341 of IPC. The proceedings will, however, continue for the offence punishable under Section 323 of IPC read with Section 34 thereof.

Crl.M.C. No.3484/2009 & Crl.M.A. No. 11807/2009 stand disposed of.

(V.K.JAIN)
JUDGE

JANUARY 6, 2010
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