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THE STATE OF BIHAR

v.

CHANDRA BHUSHAN SINGH AND ORS.

DECEMBER, 13, 2000

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[K.T. THOMAS AND R.P. SETHI, JJ.]

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Code of Criminal Procedure, 1973/Railways Property (Unlawful Possession) Act, 1966—Sections 2 (d), 173, 200 and 204/Section 8(1)—Respondent railway officials caught while unlawfully carrying away cement for sale—Inquiry proving the charges—Sub-Inspector of the Railway Protection Force filed the Inquiry Report in the Court of Judicial Magistrate—Respondents challenged the jurisdiction of the Magistrate to take cognizance upon the report submitted by the said Sub-Inspector on the ground of his not being “Police Officer” within the meaning of Section 173 Cr.PC—Magistrate

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rejected the said challenge—High Court allowed the petition for quashing order of the Magistrate filed by the respondent—On Appeal, Held : Mere fact of the inquiry being held by an investigating officer of the RPF having some similar powers as are possessed by an investigating officer would not make a complaint to be a report under Section 173 of the Code—A perusal of the Inquiry Report clearly indicates that it was not a report within the meaning of Section 173 of the Code but was a complaint filed before a Magistrate under Section 200 of the Code—A police report is also a deemed complaint if the investigation by the police is regarding a non-cognizable offence—Offences under the Act are also non-cognizable which cannot be investigated by a Police Officer under CrPC—Thus, Initiation of inquiry for an offence

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under the Act can only be on the basis of a complaint by an officer of RPF.

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Respondents are the employees of the Indian Railways who, on 25-03-1987, were caught red handed while carrying away Railway Cement unlawfully for sale. An inquiry was held upon which offences under the Railways Property (Unlawful Possession) Act, 1966 were held proved against the accused persons. An Inquiry Report (Complaint) was filed by an Inspector of the Railway Protection Force against the accused persons in the Court of Judicial Magistrate, 1st Class. Before the Magistrate, the accused persons filed applications praying for their discharge on the ground that the Sub-Inspector, RPF who submitted chargesheet against them was not a “Police officer” within the meaning of Section 173 of Code of Criminal Procedure. Consequently,

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according to them, the Magistrate had no jurisdiction to take cognizance upon his report submitted in the Court. On the said applications being rejected by the Magistrate, the accused persons filed petitions in the High Court for quashing the order of the Magistrate which were allowed. Hence these appeals. A

The respondents, conceding that the order of the High Court in challenge was unjustifiable, however, prayed that as the respondents had raised various other contentions for quashing of the proceedings before the Magistrate, this Court may either consider desirability of adjudicating such pleas or remand the case back to the High Court for decisions on the points raised but not decided. B

Allowing the appeals, the Court C

HELD 1 : A perusal of the Complaint unambiguously indicates that it was not a report within the meaning of Section 173 CrPC but a complaint filed before the Magistrate, obviously under Section 200 CrPC. The process against the accused appears to have been issued under Section 204 CrPC. Merely because the inquiry was held by a member of the Railway Protection Force having some similar powers as are possessed by an investigating officer, would not make the complaint to be a report within the meaning of Section 173 CrPC. [664-A, B] D

2. Section 2(d) CrPC encompasses a police report also as a deemed complaint if the matter is investigated by a police officer regarding the case involving commission of a non-cognizable offence. In such a case, the report submitted by a police officer cannot be held to be without jurisdiction merely because proceedings were instituted by the police officer after investigation, when he had no power to investigate. [664-E] E

3. An officer conducting an enquiry under Section 8(1) of the Railways Property (Unlawful Possession) Act, 1966 has not been invested with all powers of an officer incharge of a police station making an investigation under Chapter XIV of the CrPC. He had no power to file a charge sheet before the Magistrate concerned under Section 173 CrPC. The main purpose of the Act was to invest powers of investigation and prosecution of an offence relating to Railway Property in the RPF in the same manner as in case relating to the offences under the law dealing with excise and customs. The offences under the Act are non-cognizable which cannot be investigated by a police officer under CrPC. The result is that initiation of inquiry for an offence under this Act can be only on the basis of a complaint by an officer RPF, as was actually done in this case. [664-H; 665-A-B] F G H

A *Balkishan A. Devidayal etc. v. State of Maharashtra etc.*, [1981] 1 SCR 175, distinguished.

State of Bihar & Ors. v. Ganesh Chaudhary & Ors., Crl. Appeal Nos. 512-515 of 1997 decided on 02-05-1997, relied on.

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1111-1112 of 2000.

From the Judgment and Order dated 14.10.99 of the Patna High Court in Crl. M. Nos. 13671/95 and 18609 of 1995.

B.B. Singh and Kumar Rajesh Singh for the Appellant.

C P.S. Mishra, S. Chandrashekhar, Himanshu Shekhar and Vishnu Sharma for the Respondents.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

D Respondents, who are the employees of the Railways, were caught red handed on 25.3.1987 while carrying away Railway Cement unlawfully for sale. Upon inquiry offences under The Railways Property (Unlawful Possession) Act, 1966 (hereinafter referred to as "the Act") were held proved against the accused persons. Inquiry Report (Complaint) under the Act was filed by M.I. Khan, Inspector, RPF, Samastipur, against the accused persons in the court of Judicial Magistrate, First Class, Smastipur. The accused persons filed applications before the Magistrate praying for their discharge on the ground that Sub-Inspector of Railway Protection Force, who submitted charge-sheet against them was not a "police officer" within the meaning of Section 173 of the Code of Criminal Procedure (hereinafter referred to as "the Code") and upon his report submitted in the court, the Magistrate had no jurisdiction to take cognizance. Their prayer was rejected by the Magistrate against which they filed petitions in the High Court for quashing the order of the Magistrate. The High Court allowed the petitions of the respondents-accused and quashed the proceedings pending against them before the Railway Magistrate, vide the order impugned in these appeals.

G We have heard the learned counsel appearing for the parties and perused the record and relevant provisions of the Act besides the Code.

Mr. P.S. Mishra, the learned Sr. Advocate appearing for the respondents has frankly conceded that the order of the High Court impugned in these appeals cannot be justified. He has, however, prayed that as the respondents-accused had raised various other contentions for quashing of the proceedings

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before the Magistrate, this Court may consider desirability of adjudicating such pleas or remand the case back to the High Court for decision on the points raised but not decided. A

Section 3 of the Act provides the penalty for unlawful possession of railway property. Section 6 authorises a superior officer or member of the Force to arrest any person who has been concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned without an order from the Magistrate and without a warrant. Section 7 provides that every person arrested under the Act, shall, if the arrest is made by a person other than the officer of the Force, to forward such person, without delay to the nearest officer of the Force. Section 8 of the Act provides: B C

“Inquiry how to be made against arrested persons—(1) When any such person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such persons. D

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case: E

Provided that—

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate; F

(b) if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.” G

In this case, after seizure of the Railway property and interrogation of the accused, Case Crime No.14/87 under Section 3 of the Act was registered. As per statement of accused Baleshwar Singh further recovery of 136 bags of cement in addition to the cement already seized, was effected. Shri M.I. H

- A Khan, IPF/SPJ inquired the case and submitted the complaint before the Magistrate. Copy of the complaint has been annexed with this appeal as Annexure P-3. A perusal of Annexure P-3 unambiguously indicates that it was not a report within the meaning of Section 173 of the Code but a complaint filed before the Magistrate, obviously under Section 200 of the Code. The process against the accused appears to have been issued under Section 204 of the Code. By no stretch of imagination, Exhibit P-3 can be termed to be a report within the meaning of Section 173 of the Code. Merely because the inquiry was held by a member of the Force having some similar powers as are possessed by an investigating officer, would not make the complaint to be a report within the meaning of Section 173 of the Code.

- C Section 2(d) of the Code defines the complaint to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence but does not include a police report. Explanation to clause (d) to Section 2 of the Code provides:

- D “Explanation— A report made 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.”

- E Section 2(d) of the Code encompasses a police report also as a deemed complaint if the matter is investigated by a police officer regarding the case involving commission of a non-cognizable offence. In such a case, the report submitted by a police officer cannot be held to be without jurisdiction merely because proceedings were instituted by the police officer after investigation, when he had no power to investigate.

- F For quashing the proceedings, the High Court relied upon the judgment of this Court in *Balkishan A. Devidayal, etc. v. State of Maharashtra, etc.*, [1981] 1 SCR 175. The reliance appears to be misconceived. In that case the court, while interpreting the provisions of Section 25 of the Evidence Act held, “an officer of the RPF could not, therefore, be deemed to be a ‘police officer’ within the meaning of Section 25 of the Evidence Act and, therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act cannot be excluded from evidence under the said section”. As noted earlier by us, this Court in *Balkishan’s* case also observed that an officer conducting an inquiry under
- H Section 8(1) of the Act has not been invested with all powers of an officer

incharge of a police station making an investigation under Chapter XIV of the Code. He has no power to file a charge sheet before the Magistrate concerned under Section 173 of the Code. The main purpose of the Act was to invest powers of investigation and prosecution of an offence relating to Railway property in the RPF in the same manner as in a case relating to the offences under the law dealing with excise and customs. The offences under the Act are non-cognizable which cannot be investigated by a police officer under the Code. The result is that initiation of inquiry for an offence inquired into under this Act can be only on the basis of a complaint by an officer of the Force, as was actually done in this case.

To the same effect is the judgment of this Court in Criminal Appeal Nos. 512-515 of 1997 decided on 2.5.1997 (*State of Bihar and Ors. v. Ganesh Chaudhry & Ors.*).

Mr. Mishra, the learned Senior counsel vehemently argued that the case be remanded back to the High Court for adjudication of other grounds on the basis of which the proceedings were sought to be quashed. He pointedly referred to the averments made in para 27 of the petition filed in the High Court to urge that as the trial of the case was pending against the accused for over a period of 5 years, the proceedings against them are liable to be quashed under a notification allegedly issued by the State Government. Learned counsel has neither shown us the notification nor the authority of law under which such notification could have been issued by the State Government. He also tried to emphasise that even on admitted facts no case under Section 3 of the Act was made out against the accused and that the proceedings initiated against his clients were otherwise not sustainable. We are of the opinion that such pleas cannot be raised before us at this stage and the case cannot be remanded back to the High Court in view of the fact that the proceedings against the respondents appear to have been sufficiently prolonged on one pretext or the other for over a period of 13 years. We are, however, of the opinion that the respondents have a statutory right to raise all such pleas as are available to them under the law during the trial before the Magistrate. All such pleas, when raised, can appropriately be considered and disposed of by the trial court.

In view of what has been stated hereinabove, these appeals are allowed by setting aside the order of the High Court and upholding the order of the Magistrate refusing to discharge the respondents in the complaint pending before him. The Magistrate is further directed to expedite the trial.

R.C.K.

Appeals allowed.