

State v. Khazan Chand (Jindra Lal, J.)

which has been referred to in section 10 of the Act and not the suspension of the Executive Officer himself. I am, therefore, of the opinion that Deputy Commissioner had no jurisdiction to pass the impugned order, dated February 12, 1970, suspending the petitioner from his post as Executive Officer of Municipal Committee, Narnaul, and this order is liable to be quashed on that ground.

(4) For the reasons given above this petition is accepted with costs and the impugned order of the Deputy Commissioner, dated February 12, 1970, suspending the petitioner from his post as Executive Officer of Municipal Committee, Narnaul, is hereby quashed. Counsel's fee Rs. 100.

N. K. S.

APPELLATE CRIMINAL

Before Jindra Lal and A. D. Koshal, JJ.

STATE,—Appellant.

versus

KHAZAN CHAND,—Respondent.

Criminal Appeal No. 372 of 1966.

March 18, 1970.

Code of Criminal Procedure (V of 1898)—Section 155(1) and (2)—Investigation of a non-cognizable offence by a police officer without the permission of the magistrate—Police officer filing report before the magistrate having jurisdiction—Such magistrate—Whether can refuse to take cognizance of the offence—Objection regarding irregular investigation taken in initial stages of the trial—Duty of the magistrate to cure the irregularity—Stated—Objection not taken and trial resulting in conviction—Such conviction—When can be set aside—Essential Commodities Act (X of 1955)—Sections 7 and 11—Report for an offence under section 7 submitted by a police officer—Whether valid.

Held, that undoubtedly, a police officer is not authorised to investigate a non-cognizable offence without the permission of a magistrate having jurisdiction in the matter, but if he does so and files a report before a magistrate, the magistrate cannot refuse to take cognizance of the matter. He can take cognizance under any of the sub-sections of section 190 of Code of Criminal Procedure. A defect and illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating

to the cognizance or trial. If the magistrate takes cognizance under section 190, sub-section (1)b and an objection is raised at the initial stages that the investigation is without jurisdiction being in violation of the mandatory provision of section 155(2) of the Code, it is for the magistrate to consider the nature and extent of the violation and pass appropriate orders for such re-investigation as may be called for, wholly or partly, and by such officer as he considers appropriate with reference to the requirements of section 155(2) of the Code. If, on the other hand, the trial proceeds without any objection, such a trial is not illegal and in order to have it set aside prejudice to the accused must be established. (Paras 8 and 12)

Held, that where the law requires a report in writing by a public servant the requirements of the law are satisfied when a report is filed by a public servant who is also a police officer. Hence a report for an offence under section 7 of Essential Commodities Act, 1955, submitted by a police officer is valid. (Para 11).

Appeal from the order of Shri Krishna Chandra Gupta, Chief Judicial Magistrate, Hissar, dated the 27th December, 1965, acquitting the respondent.

D. S. TEWATIA, ADVOCATE, for the appellant.

B. S. GUPTA, R. S. MITTAL, C. B. KAUSHIK AND BACHITTAR SINGH, ADVOCATES, for the respondent.

JUDGMENT

JINDRA LAL, J.—This order and judgment will dispose of nine criminal appeals, being Criminal Appeals Nos. 372, 373, 374, 375, 376, 377, 378, 379 and 380 of 1966. They arise out of similar facts and involve common questions of law and were heard together.

(2) Shortly put, the facts are that the District Food and Supplies Controller, Hissar, made reports in writing to the Station House Officer, Hissar City, against the various respondents in these appeals, alleging contravention of the provisions of the Punjab Food Grains Dealers Licensing Order, 1964, and the provisions of the Punjab Gram (Regulation of Distribution) Order, 1964, made under the Essential Commodities Act of 1955.

(3) On the receipt of these reports, the Station House Officer recorded First Information Reports against the respondents and registered cases under section 7 of the Essential Commodities Act of 1955. The Station House Officer then investigated the cases and filed charge-sheets against the various respondents before the Chief Judicial Magistrate, Hissar. Taking cognizance of the cases, the Chief

Judicial Magistrate, Hissar, issued processesses to the various respondents. The respondents made applications to the Chief Judicial Magistrate for dropping proceedings against them contending that the investigation by the police was unauthorised and that consequently the Chief Judicial Magistrate could not take cognizance of the offence or try the same.

(4) It was urged that the offences disclosed in the reports made by the District Food and Supplies Controller, Hissar, and for which the respondents were to be tried were non-cognizable and that the investigation was in fact carried out in violation of the provisions contained in section 155(2) of the Code of Criminal Procedure. It was contended that since the investigation had been carried in derogation of the mandatory provisions of section 155(1) and (2), Criminal Procedure Code, the reports submitted by the officer in charge of the police station could not be valid and legal reports and, therefore, the learned Magistrate had no jurisdiction to take cognizance of the cases. Consequently, it was contended that the contravention of section 155(2), Criminal Procedure Code, affects the very act of cognizance and all proceedings are without jurisdiction and of no consequence. It was further contended that in any case the learned Magistrate could not take cognizance of the offence in view of section 11 of the Essential Commodities Act as a report submitted by a police officer is not a report by a public servant as contemplated by that section, which reads as under:—

“No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.”

(5) These contentions prevailed with the learned Chief Judicial Magistrate, who passed the orders which are the subject-matters of the above appeals before us.

(6) The learned Chief Judicial Magistrate relied upon two Single Bench judgments of this Court in *Lal Chand and others v. The State* (1), *Om Parkash v. The State* (2). In the former case, a police officer started investigation of non-cognizable cases for offences under sections 467, 468 and 471 of the Indian Penal Code and section 82 of

(1) 1964 P.L.R. 68.

(2) 1964 P.L.R. 580.

the Indian Registration Act, without the sanction or order of the Magistrate, as required by sub-section (2) of section 155, Criminal Procedure Code. It was held by a learned Single Judge of this Court that the trial was vitiated and the irregularity was not curable under section 537 of the Criminal Procedure Code. A similar view was taken in *Om Parkash v. The State* (2).

(7) Learned counsel for the State contended that these authorities did not lay down the correct law and relied, amongst other authorities, upon a judgment of the Supreme Court in *H. N. Rishbud and another v. State of Delhi* (3). Under section 5(4) of the Prevention of Corruption Act, a police officer below the rank of a Deputy Superintendent of Police is not entitled to investigate any offence punishable under sub-section (2) of section 5 of that Act without an order of a Magistrate of the First Class. The first information reports in that case were laid in April and June, 1949, but permission of the Magistrate for investigation as against public servants concerned, by a police officer of a rank lower than a Deputy Superintendent of Police, was given in March/April, 1951. Charge-sheets were filed by such officer in August/November, 1951, i.e., subsequent to the date on which permission was granted to investigate. Admittedly, however, the investigation was entirely or mostly completed in between the dates when the first information was laid and the permission to investigate by an officer of a lower rank was accorded. It was found as a fact that the whole investigation was conducted not by a Deputy Superintendent of Police, but by officers of lower rank and that after the permission was accorded, very little investigation was done. It was held in that case that section 5(4) and proviso to section 3 of the Prevention of Corruption Act as it stood prior to its amendment by Act 59 of 1952 and the corresponding section 5-A as inserted by Amending Act 59 of 1952 are mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality. It was held further that it could not be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Further, that 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) and in any case cognizance so taken is only in the

(3) A.I.R. 1955 S.C. 196.

nature of error in a proceeding antecedent to the trial. Their Lordships further held that if 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. Relying upon *Prabhu v. Emperor* (4), and *Lumbhardar Zutshi v. The King* (5), it was held that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial.

(8) In that case, the trial had proceeded and had resulted in conviction and the Court held 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. Further that when a breach of the mandatory provisions of section 5-A, Prevention of Corruption Act 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 re-investigation as may be called for wholly or partly, and by such officer as it considers appropriate with reference to the requirements of section 5-A of the Act. It will, therefore, be seen that law has been settled that a defect and illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to the cognizance or trial. Some other Courts have taken this view, but those authorities need not be mentioned in view of the law laid down by the Supreme Court.

(9) The second question that arises for consideration, in these appeals, is whether in the circumstances of the case a report submitted by a police officer can be treated as a report by a public servant. This argument was made in view of section 11 of the Essential Commodities Act, 1955, which has been set out earlier in this judgment.

(10) The learned Chief Judicial Magistrate has come to the conclusion that because private complaint was barred under section 11 of the Essential Commodities Act, the word 'report' used in that section meant a report of a public servant authorised to deal with the case, that is, that the report should have been to the Magistrate

(4) A.I.R. 1944, P.C. 73.

(5) A.I.R. 1950 P.C. 26.

either by the Director, Food and Supplies or the District Magistrate or Inspector appointed by the Director of Government since they alone had power to enter, search and seize documents under the Punjab Gram (Regulation of Distribution) Order, 1964. He, therefore, came to the conclusion that the police officer was not such a public servant and that the requirement of the law is that a report should have been by a public servant who was not a police officer.

(11) This matter has also been settled by their Lordships of the Supreme Court in *Pravin Chandra Mody v. State of Andhra Pradesh* (6). That was a case where a police officer investigating a case under section 420, Indian Penal Code, also investigated a case under section 7 of the Essential Commodities Act. A question there also arose whether the report submitted by a police officer for an offence under section 7 of the Essential Commodities Act could be treated as a report by a public servant. It was held by Hidayatullah J. as he then was speaking for the Court that in all those cases where the law requires a report in writing by a public servant the requirements of the law are satisfied when a report is filed by a public servant who is also a police officer. Consequently, in view of this Supreme Court authority it is futile to contend that the report was not by a public servant, as required by section 11 of the Essential Commodities Act.

(12) The law, therefore seems to be clear. Undoubtedly, a police officer is not authorised to investigate a non-cognizable offence without the permission of a Magistrate having jurisdiction in the matter, but if he does so and files a report before a Magistrate, the Magistrate cannot refuse to take cognizance of the matter. Under what sub-section of section 190, Criminal Procedure Code, he takes cognizance is another matter, with which we are not concerned in these proceedings. If the Magistrate takes cognizance under section 190, sub-section 1(b) and an objection is raised at the initial stages that the investigation was without jurisdiction or illegal, it is for the Magistrate to cure the irregularity as envisaged in *H. N. Rishbud and another v. State of Delhi* (3). If, on the other hand, the trial proceeds without any objection, such a trial is not illegal and in order to have it set aside prejudice to the accused must be established.

(13) Large number of other authorities were cited at the bar from both sides, but it is not necessary to refer to them in view of the two authorities noted above.

(6) A.I.R. 1965, S.C. 1185.

Chuharia v. Gram Panchayat (Mahajan, J.)

(14) In view of what has been observed above, it is patent that the acquittal of the accused in each of these cases is contrary to law. We notice, however, that cases against the various respondents were registered as far back as 1964 and the orders of the Chief Judicial Magistrate acquitting them were announced in 1965. The offences are of a petty nature, the allegation being that the respondents had not maintained foodgrain stock registers as prescribed under condition No. 3 of the foodgrain licenses held by them and that they had not maintained the accounts correctly. In view of these circumstances, we do not consider that in the present cases a retrial need be ordered. These appeals shall stand disposed of accordingly.

A. D. KOSHAL, J.—I agree.

N.K.S.

APPELLATE CIVIL

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

CHUHARIA,—Appellant.

versus

GRAM PANCHAYAT,—Respondent.

Regular Second Appeal No. 894 of 1966.

March 19, 1970.

Punjab Gram Panchayat Act (IV of 1953)—Sections 23 and 46—Order of Gram Panchayat imposing fine in absentia—Whether void—Panchayat—Whether can impose fine without following procedure under section 46.

Held, that the distinction between a void decision and a voidable decision is that a void decision need not be set aside—it is a nullity and is *non-est*—whereas a voidable decision is a good decision so long it holds the field and is not set aside in proceedings taken for that purpose. The prosecution of an accused *in absentia* is not merely illegal but is void. Where a Gram Panchayat imposes fine under section 23 of Punjab Gram Panchayat Act in the absence of the person accused of an encroachment on the *shamlat* land, it is like the trial of the accused *in absentia* and is no trial. Hence the order imposing the fine *in absentia* is void. (Para 7).